

# Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains\*

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  - A. Background

\* This article was presented during the first day of the Colloquium. It is an abridged version of the case study entitled, "Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya People's Assertion of Rights Over their Ancestral Domains." The study was commissioned by the ILO-UNDP to the *Tanggapang Panligal ng Katutubong Pilipino* or the Legal Assistance Center for Indigenous Filipinos (PANLIPI). The study was done in collaboration with the Iraya Mangyans in the Municipalities of Abra de Ilog, Mamburao, Paluan, and Sta. Cruz, who gave their free and prior informed consent to the study.

The case study aimed to document the struggle of the Iraya Mangyan in the protection and management of their ancestral domains in the face of blatant "development aggression". It demonstrated processes for the resolution or harmonization of conflicting or overlapping resource use rights within ancestral domains in relation to applicable national laws, foremost of which is the Indigenous Peoples' Rights Act of 1997, and the National Integrated Protected Areas System, otherwise known as Republic Act 7586 (NIPAS) and various government projects therein.

The case study further proposed guidelines for rationalizing various resource utilization and conservation programs within the ancestral domains of the Iraya Mangyan, using their Indigenous Knowledge Systems and Practices (IKSPs) as a framework.

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## I. INTRODUCTION

"Claims and counterclaims" describe the situation in the Mt. Halcon and Mt. Calavite Ranges, where the Iraya peoples and the forest officers had been embroiled in a state of running conflict on several critical issues that bear repercussions on the right of the Iraya to their ancestral domains and the resources found therein.<sup>1</sup> This situation is reflected on many projects

1. In recognition of their rights to their ancestral domains as mandated in the Constitution and the Indigenous Peoples Rights Act, many activities conducted or introduced into the ancestral domains of the indigenous peoples require their free and prior informed consent. Free and Prior Informed Consent or (FPIC) is the consensus of all members of the ICCs/IPs to be

such as the Tamaraw Reservation, the F.B. Harrison National Park, and the Mt. Halcon Heritage Park, Range Management, Community Based Forest Management, and Low Income Upland Communities Project.

The Iraya Mangyans are the indigenous peoples (IP) occupying the northwestern part of Mindoro, where one of the country's highest peaks, Mt. Halcon, basks and the area along the Mt. Calavite ranges where the FB Harrison Reservation, now called the Mt. Calavite Wildlife Sanctuary, lies. With an estimated population of 35,000 in 1998, the Iraya now occupy ancestral domains located in certain municipalities in Occidental Mindoro, specifically Abra de Ilog, Paluan, Mamburao and Sta. Cruz.

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. The study viewed this concept as essential to the exercise of the indigenous peoples' right to take control of their lands and resources.

Ironically, while a large number of development projects introduced by government in ancestral domains aim among others, at sustainable development and conservation of the resource, alleviation of poverty and asset reform, these projects are perceived to have caused widespread devastation of the resource, impoverished communities and marginalized indigenous peoples who are fast losing vast tracts of their ancestral domains through usurpation. The study showed that the conflict over a large number of projects stemmed from the fact that it does not consider the circumstances of the community, the needs of the people nor the traditional practices that has maintained the health, integrity and sustainability of the resource.

The elemental thesis of the case study therefore, is that respect for indigenous knowledge systems and practices will reduce conflicts in the implementation of resource utilization projects within ancestral domains and therefore facilitates the attainment of the goals of conservation and development.

This case study provided information on the modes of conflict resolution and guidelines for reconciling various resource utilization and conservation programs within the ancestral domains of the Iraya Mangyans of Occidental Mindoro, using their indigenous traditional framework and their ideas on conservation as point of view.

The framework will enable the National Commission on Indigenous Peoples (NCIP) and other government agencies implementing projects within ancestral domains to reconcile and harmonize different conservation and development strategies, with the least resistance from the indigenous peoples. Specifically, it will likewise guide the process for operationalizing Section 52 (i), Section 58 and Section 62 of the IPRA.

In the conduct of the study, emphasis was laid on the application of the provision on Free Prior and Informed Consent, as contained under Section 3 of the IPRA. The study purports to guide the process of implementing issuances on Free and Prior Informed Consent.

The word Iraya is derived from the prefix, *I* — denoting people, and *raya* — a variation of *laya* which means upstream or up river or upland. Accordingly, the meaning of the word is people from the upstream. Historically however, the Iraya used to occupy the coastal region until settlers from other places pushed them inland. The word Iraya also means "man," "person" and "adult."

Recollecting their history, the Iraya would say that, during the olden times, they occupied the thickly forested town proper known as the *poblacion* or the *lumang bayan* which is actually part of the lowlands. These areas, also called *kahuyan*, were later cleared by *tagbari* (non-Mangyans) through *kaingin* (slash and burn agriculture).

During the Japanese period, armed men invaded the area and the Irayas were forced to flee to the uplands. Life for them was peaceful till the 1950s when loggers, cattle raisers and lowland farmers started to encroach upon their upland areas.

The introduction of cattle raising by the lowlanders led to the practice of burning cogon, an important grass used for homes by the Iraya, and allocating farm space for domesticated cattle. This, together with the encroachment by lowlanders, caused food scarcity for the Iraya. The *tagbari* engaged in poison and electro-fishing in the streams and dynamite fishing in the ocean as a means to exploit marine resources. Logging concessions were awarded to concessionaires while several hectares of Irayan lands were reserved for the tamaraw. Challenges to ancestral domain management and protection also come from bands of armed men taking advantage of the resources in their domains.

The most serious of the challenges faced by the Iraya with regard to their lands is the continuing unjustified refusal of some government agencies to enforce and respect their rights to ancestral domains despite constitutional and statutory mandates. The erroneous contention that the Iraya ancestral domains are public lands has resulted in unjust disposition of the Iraya lands and resources, and negation of their right to decide on matters pertaining to land utilization and development.

The vigilant assertion by the Iraya of their rights to their ancestral domains is a history of perseverance, courage and staunch resistance against projects that trample upon their rights. It is a story of how the Iraya have survived the many challenges confronting them in relation to the protection and management of their ancestral domains.

In this light, pivotal concerns of this study, are therefore, the implementation and enforcement of the Indigenous Peoples' Rights Act,<sup>2</sup>

2. Republic Act 8371, An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/ Indigenous Peoples, Creating a National

or IPRA, which mandates the recognition of the rights of indigenous peoples over their lands and resources vis-à-vis the expansion of opportunities and territories available for indigenous peoples.

This study documents the Iraya Mangyan's struggle to protect and manage their ancestral domains in the face of blatant "development aggression" that threaten their efforts. It demonstrates processes for the eventual resolution or harmonization of conflicting or overlapping resource use rights within the ancestral domains in relation to applicable national laws such as the IPRA, the National Integrated Protected Areas System,<sup>3</sup> or NIPAS, and the various government projects implementing them. This paper further proposes guidelines for rationalizing various resource utilization and conservation programs within the ancestral domains of the Iraya Mangyan, using their Indigenous Knowledge Systems and Practices (IKSPs) as a framework.

## II. THE IRAYA MANGYANS: THE PEOPLE

### A. History

The Mangyans, who were believed to have come from the southern regions of the archipelago, settled the shores of Mindoro Island approximately 600-700 years ago. Subsequently, they were forced to leave their coastal settlements by more aggressive groups. Traditionally known for being bellicose people, the Mangyans would choose to give up an area uncontested rather than fight for it. Thirteenth century Chinese dynastic records shows flourishing trade with Mindoro inhabitants of ceramics, porcelain and the like which contributed to the shaping of an indigenous material culture.

As history shows, the Mangyans became the object of contention between two armies fighting for their spheres of influence – the Moro and the Christians. The shy, withdrawn and hardworking nature of the Mangyan came to the attention of American entrepreneurs who saw their potential as a labor force.

The racist tribal policies adopted by the Americans abetted and perpetrated the discrimination against non-Christian indigenous groups in the Philippines. The Mangyans were forced to live in reservations, similar to those created for the Native American Indians, and were relocated to

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Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds therefor, and for other Purposes (1997).

3. Republic Act 7586, An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for other Purposes (1992).

areas far from the lowland settlements inhabited mostly by the *Tagalogs*. In addition, non-Mangyans, Christians or *Tagalogs*, referred to by the Iraya Mangyans as *Tagbari*, have displaced them from their ancestral domain with the use of spurious land titles.

### B. Economy

Engaged in shifting cultivation, the Mangyans are into subsistence economy, which is dependent on the availability of cultivable space. They are now users of plow and carabao due to government restrictions in the widespread practice of swidden or shifting agriculture.

A number of indigenous practices that had been followed by the Iraya have contributed greatly to the conservation of the resources within their ancestral domains. These practices include hunting, gathering, swidden farming, erosion prevention, controlled logging, fishing and gathering of cogon grass. Also, great importance is given to the ritual performance of the first rice seed planting in most Mangyan groups because of the significance of rice in their livelihood, diet and spiritual belief.

The Iraya have a tradition of helping each other in the community called *saknungan* or *bayanihan*, in which members of the community voluntarily do work for others for free, and the others do the same in return. However, the *Tagbari* have encouraged them to accept payment for assistance; as a result, the Iraya now engage in paid labor. Their culture, which has been adversely affected by the *Tagbari* influence, has affected the management of the lands to some extent.

### C. Political System

The Mangyans have no rigid political structure although most of them recognize at least one leader who is believed to possess powers, both magical and religious. The leader usually leads a ritual, which is a celebration of an agricultural rite.

In the Mangyan culture, the elders are the leaders and normally the influential persons. They are the repository of the history, customs, traditions and knowledge and skills of the people. Also, these elders give advice on customary laws. Interestingly, some Mangyan villages have adopted the same system of administering other organized towns where there is a village mayor and an assistant *teniente*. In some instances, an *Amayan* or judge may be designated to hear the complaints of the villagers. Recently, the barangay system has been adopted.

Peace and order is easily maintained because the Mangyans are generally peaceful. For them, wrongdoing may be settled peacefully. In fact, the concept of crime is not found in their custom. Although small fines are

understood, the concepts of incarceration and criminality are unknown. In this connection, compensation is the most prevalent form of retribution. In case of divorce, a friend may offer a good meal or a slaughtered pig to bring the two parties back.

Trial by ordeal is one of the most feared practices in the Mangyan justice system. This is applied specifically in cases of theft and adultery. The offenders are asked to immerse their hands in boiling water to pick up an object. For the Iraya, scalding is evidence of guilt. This judicial method is called *tigian*.

#### D. Social Organizations, Customs and Practices

Society is generally based on the nuclear family or a single household.

Courtship requires a young man win the approval of the family of the maiden. To this end, he renders service, pays bride price, offers presents and serenades the maiden. Child and fixed marriages are also being practiced. Generally, monogamy is observed but polygamy and polyandry are sometimes followed.

As regards marriage, the ceremony is officiated by an old member of the village. The elder person joins the hands of the couple in prayer, begging Apo Iraya to bless the couple with children, health and long life. In other Iraya villages, the newlyweds are asked to lie down on a mat to ensure themselves a fruitful marriage. After the ceremony, they are not allowed to sleep together for the first eight days.

### III. THE IRAYA MANGYAN AND THEIR RELATIONSHIP TO THEIR ANCESTRAL DOMAIN

The Iraya Mangyans' ancestral domains, particularly those within the concern of this case study, fall within the municipalities of Abra de Ilog, Paluan, Mamburao and Sta. Cruz all in the province of Occidental Mindoro. This province is one of the two provinces of the island of Mindoro, which is part of the Southern Tagalog Region or Region IV of the Philippines.

The province of Occidental Mindoro is composed of 11 municipalities, with an area of 5, 879 sq. km. and a population of 282,593. Its capital town is Mamburao. Bound on the eastern side by the Calavite passage and on the southern side by the Mindoro strait, it is the western part of the island of Mindoro, south of Batangas.

Occidental Mindoro consists of high rolling mountains in the east. To the west are coastal plains where the towns are situated. Numerous rivers flow from the eastern mountain ranges: Pagbahan and Mamburao-Matamayor in the north, Mompong and Amnay in the center, and

Caguray and Busuanga in the south. The climate is dry from November to April and wet during the rest of the year. The province lies in the path of destructive typhoons.

#### A. Background

Chinese traders, even before the coming of the Spanish, knew Mindoro which was formerly called Mait. In 1570, the Spanish began to explore the island and named it "Mina de Oro" (mine of gold) after finding some precious metals therein although no major gold discoveries were ever made. Missionaries became active around Ilin Island, Lubang Island, and Mamburao. Moro raids later forced them to abandon these places. In 1754, the Muslims established strongholds in Mamburao and Balete (near Sablayan). From there, they launched raids against nearby settlements. An expedition sent by Governor Simon de Anda put an end to these raids.

In the early years, Mindoro was administered as part of Bonbon, now, Batangas. Early in the 17th century, the island was separated from Bonbon and organized into a *corregimiento*. In 1902, the island of Lubang, formerly part of Cavite, was annexed to Mindoro. In the same year, Mindoro and Lubang were annexed to Marinduque when the latter became a regular province. Mindoro became a province in 1921. On June 13, 1950, Mindoro was divided into two provinces, Occidental Mindoro and Oriental Mindoro.

#### B. The People

The plains of Occidental Mindoro are inhabited by the Tagalogs and the remote, forested interior by the Mangyans. Extensive tribal settlements of Mangyans in the province belong to such sub-groups as the Iraya, Alangan, Tadyawan, Buhid, Hanunuo, and Bangon. The Mangyans are simple people. Once coastal dwellers, they were driven into the mountains to avoid religious conversion by the Spaniards, raids by Moro pirates, and the influx of recent migrants. Leading a semi-nomadic existence, Mangyans live in loose clusters of up to 20 bamboo huts with thatched-roofs and raised floors.

#### C. Commerce and Industry

Occidental Mindoro is basically an agricultural province. The principal products are rice, coconut, peanut, and abaca. The inhabitants are also engaged in cattle and poultry raising, logging, and fishing. The waters on the West Coast comprise one of the most important fishing grounds in the country. Hunting along the banks of the Busuanga River can yield deer, wild boars, and tamaraw.

#### D. *The Location and Scope of the Iraya Ancestral Domains*

The Iraya would say that they traditionally occupied the lowlands or the town proper known today as the *poblacion* or the *lumang bayan*. In those times the low lands were still *kahuyan* or forested.

The Iraya claim that the *Tagbaris* caused them to transfer to the interior or mountainous areas of their domains. The *Tagbari* likewise cleared by the areas by the process of *kaingin*. During the Japanese period, armed men invaded the area and the Irayas were forced to flee further into the upper recesses of their domains. They consider the scope of their ancestral domain as covering plains (*kapatagan*), mountains, rivers, riceland, mining sites where gold, talco, green stone and carbon, *pugahan* (where trees similar to coconut trees abound), burial sites, communities where they live and the forest where they gather food. The natural resources within their ancestral domains are trees, mine, gold, *uway*, *buho*, *bagto*, *bagin*, logs, *nami* and *puga*. The most important resources for their livelihood are soil, water, air, *uway*, honeybee, *nami*, *urabi*, and *kalpo*. To most Iraya, *nami* (a rootcrop), bananas, *ube* and *gabi* constitute traditional food. *Nami* is preserved by drying and keeping it in storage for consumption during the rainy season when they could not go out to look for food. During the rainy season, the rivers are swollen; hence, they could not fish or plant.

#### E. *Management of the Iraya Ancestral Domains*

Like all other IPs, the Iraya navigate their lives through bio-physical and social realities based on their own cognitive map. They have their own cognition of reality in general. Flora and fauna is generally viewed for communal use. Consequently, their worldview is that nature is a space where natural and supernatural interpenetrate.<sup>4</sup>

#### F. *The "Spirit World" as "Protector" of Wildlife*

Akin to all other indigenous Filipinos, the Iraya perceive nature as governed by guardian spirits that must be appeased and shown respect. To use nature in a wanton manner is to disrespect the nature spirits; hence, the explorer exposes himself to supernatural punishment.<sup>5</sup> Thus, the Iraya assert the belief that land must be used properly, the riverside protected and hunting be done only during appropriate season.

4. For a more thorough discussion, see RENE VICTOR R. AGBAYANI, FINAL REPORT: ESTABLISHMENT AND MANAGEMENT OF BUFFERZONES (ADB-TA) PROGRAM ON BIODIVERSITY CONSERVATION AND NATIONAL PROTECTED AREAS (1997).

5. *Id.*

The Iraya interact with the environment guided by compliance with the wishes of spirits and based on omens and taboos. Rituals always accompany utilization of natural resources. Permission from identified guardian spirits is sought before resources are used. Whether opening a *kaingin* or hunting wild boar or deer, the Iraya resource management is always balanced with respect for the environment because of the need to maintain harmony with the spirit world. For example, in shifting agriculture, the Iraya would not open any area in their ancestral domains as swidden farms. Areas would be reserved for the spirits. This area is respected; otherwise, the area will either dry up or many people in the community will get sick.

When an Iraya opens a *kaingin* or swidden farm, they seek permission from the spirits. They initially clear a small area about one (1) square meter, which they call a *lawag*. A prayer is then said in order to ask favor from the spirit that they be allowed to use the area for *kaingin*. An omen or sign in a dream indicates to them if they are allowed or not. If the sign is favorable, they could use the land for their own purpose; if not, the same would be reserved for the spirits.

Certain trees, which include all big ones, are considered as abode of spirits and are generally not cut down. For most IPs, the *balete* (strangler fig) tree is considered sacred and provides an altar for their offerings. However, either sacred or dangerous places (spaces inhabited by malevolent spirits) are not limited to trees or groves only. Certain peaks or slopes are considered sacred and are treated as IP altars or churches. These are off limits to hunting and swidden farming.

Among the IPs, belief in the spirit world also means belief in the efficacy of spiritual sanctions. For example, the Iraya believe that the *tamaraw* is a sacred animal. In this regard, anybody who kills one will likewise die, or the community will suffer the retribution of the gods such that a lot of people will get sick or even die. With such a worldview, what could be the highest possible authority protecting wildlife but the spirit world.

#### G. *Wildlife and Nature as Sources of Economic Necessities*

Analogous to all other IPs, the Iraya treat nature as a source where they can secure their economic needs. The forest and the waters are their marketplace since it teems with wildlife, fish, honey, fruits and berries and edible native plants. Further, the forest provides their timber needs and supplies for construction. Nature, whose herbs and roots are gathered to treat sickness and assorted injuries, is their pharmacy.

The Iraya work for the preservation of different species because these are food sources for human, bees and wildlife. They do this since these

form part of their hunting, gathering and trapping sites. More particularly, certain plant species are conserved as food. Wild boar is known to forage on fallen *balite* fruit and similar ones. Some lithocarpus trees would be protected as important sources for nectar and honey.

The Iraya have customary or traditional restrictions as regards cutting shoots of bamboo or *uhay* used in weaving. They care for rattan so that it can be used for the future. In addition, certain native grasses and palm are preserved because they are used for weaving. To illustrate, cogon grass is not burned because it is used for building houses. However, only a few species of trees are used for this purpose. When cutting down trees, their only means is a bolo and an ax, unlike the lowlanders who use machinery like the chain saw. More imperatively, there is control in the logging of trees. Not all logs are cut. To this end, some species are reserved as a means to control erosion.

The *uway* is used rarely in such a manner that, if the same is not yet ripe for harvest, they do not harvest or use it. When harvesting the *Nami*, some are left and replanted instead of harvesting everything so that there would be something left for the next season. In the same fashion, the *urabi*, another rootcrop, is also protected.

The Iraya have their own system of medicine, the study of which is referred to as ethno-pharmacology. Trees and plants, whose roots and leaves or bark are useful, are not cut down and are preserved because of their medicinal properties.

The Irayas recognize the need to maintain trees and plants along streams and rivers to preserve water supply and the edible aquatic life. They also categorize certain trees as water bearing, e.g., wild banana, abaca, wild pine tree, rattan, *balite* and bamboo.<sup>6</sup>

#### H. Hunting and Gathering

The Iraya have a conservation approach, which recognizes sanctuaries for animals where hunting and trapping is strictly prohibited. There are also restrictions against killing immature wildlife or pregnant deer. They hunt only during the appropriate season. This is a form of temporal manipulation whereby the culture has learned to utilize the resource without depleting it. For instance, the Iraya, when hunting, use the *balatik* or *bitag* and not guns. The signs or *paturo* are replaced. They also use the

6. The Iraya are keenly aware of tree properties. They know which trees are unsuitable for high elevations. They also know which fruit trees combine well with forest species or associated with dry streambeds. As such, the Iraya have always resisted introduction of exotic or inappropriate species within their domains.

*binilo* for the dogs and the *binulawi* during the rainy season. Hunting is only done in the months of February through May. When fishing, they use merely their hands, which they call the *paninima*. Sometimes, they use the bow and arrow. The same is done only during high tide. When they catch small fishes, they return the same to the water so that the same is not wasted.

Hunting is part of the culture of shifting cultivation. The cultivated and fallow fields attract game. The fields usually attract and support more game than would otherwise occur in other areas. It might be said that the small dispersed fields act as a natural corridor in the forest that serve as a reservoir for flora and fauna species.

#### I. Swidden Farming

The Iraya has a swidden-based culture showing their intricate knowledge of the tropical ecosystem. Rather than work against their environment, they manipulate it through natural processes that enable them to produce maximum benefit with the fields reverting back to forests.

In choosing their fields, they consider the floral composition of the site to determine soil properties. They avoid the headwaters of streams to protect the water source. In the *kaingin*, a fireline is made so that the fire will not spread. Instead of starting from the lower portion, the burning is started from the top. Then, the lower portion is burned. In such case, the fire could not spread upward, preventing the other areas from getting burned. Before, there was no necessity to make a fireline in the *kaingin* because of the abundance of trees. Now that the trees are getting depleted, the elders encouraged the community to use a fireline to protect the forest.

Big trees are covered with *saha ng saging* (banana trunks) so that heat will not destroy them if the same is within the *Kaingin* area. They also do not use explosives and high-powered inflammable substances. During the early times, they use stones and/or bamboos rubbed against each other to create fire. Lately, they resorted to the use of matches.

The Iraya maintain small swiddens that are surrounded by forest vegetation. The swidden fields also imitate the natural biodiversity of the forest whereby different crops are planted and harvested at different times. The planted crops vary in terms of root lengths and canopy layers. The fields are small and are less vulnerable to soil erosion. Coppicing tree stumps left in the field and seed dispersal from the forest adjacent to the plot assist rapid forest regeneration during the fallow period.

All the above examples of perceptions of wildlife and resource management practices suggest a tradition of careful manipulation of the environment. It presents a learned manner of manipulating spatiotemporal

factors in order to balance resource extraction demands with conservation and maintenance of the sustainability of the ecosystem.

#### J. Challenges to Ancestral Domains Management

Life for the Iraya was peaceful until the 1950s. Loggers, cattle raisers and those engaged in widespread *kaingin* (the slash and burn type), however, started to invade their areas in the uplands.

Due to the invasion of lowlanders, food became scarce for the Irayas. Lowlanders killed the plants; if not, their cattle would eat them. The potable water in the river was also polluted. Shrimps and eels in the river were electrocuted. The *Tagbari* also used dynamite for fishing in the big rivers and seas, which destroyed the marine life. Further, cogon grass was burned for the purpose of cattle raising.

At present, the Iraya face obstacles and challenges in the protection and management of the environment. The government, particularly the Department of Environment and Natural Resources, or DENR, erroneously contend that ancestral domains are public lands and refuse to recognize the right of the Iraya. Certain projects have effectively decreased the scope and extent of their ancestral domains because the portion intended for reforestation was recommended by the government to be excluded from their ancestral domain.

The exposure to 'cash economy' has affected the Iraya culture, particularly that of the *Saknungan* or *Bayanihan* (voluntary work for free). However, due to the influence of the *Tagbari*, this tradition waned in existence.

Many lowlanders are engaged in indiscriminate *kaingin* practices without protecting the environment. In the same vein, illegal loggers use chainsaws. Surprisingly, some government officials tolerate illegal logging activities in the area. Some of them even force and intimidate the community to facilitate the illegal logging activities. These officials get fat earnings and commissions in the process. Moreover, rebel groups who occupy a part of the mountains and partake of the natural resources therein adversely affect the Iraya's protection of the environment.

The types and nature of projects introduced, in fact forced, upon the Iraya are critical challenges to the Iraya management of their domains. These projects impact upon their tenure and ownership of the domain including the Integrated Social Forestry (ISF), Certificates of Land Ownership (CLOA), Free Patents and Land Titling. Other projects impinge on resource management including the Tamaraw reservation, the Community Based Forest Management Agreement. Others infringes upon their livelihood such as Agroforestry, Animal Dispersal, Farming, Capital Loans and the Low Income Upland Communities Project (LIUCP).

Infrastructure projects likewise have an adverse consequence on the way the resources are managed such as water systems, service centers, parks and schools. The other projects directly affect culture such as para-teachers and traditional medicine.

#### IV. LAWS AND GOVERNMENT PROJECTS THAT IMPACT UPON THE IRAYA

A number of laws and government projects as well as privately supported projects affect the Irayas' economic, cultural, social, political and environmental way of life.

##### A. Projects

Aside from NIPAS, the DENR implements the Tamaraw Conservation Project (TCP),<sup>7</sup> Integrated Forestry Management Program (IFMP),<sup>8</sup> and the Community Based Forestry Management Program (CBFM),<sup>9</sup> and Low Income Upland Communities Project (LIUCP).<sup>10</sup>

Other agencies and organizations introduce a number of projects covering livelihood, land tenure, resource management, social development, infrastructure and environment. Among these groups are the Mangyan Mission otherwise known as the Vicariate Apostolate for Indigenous Peoples (VIPACO) which is based in San Jose, Occidental Mindoro, but which has several persons assigned in different areas of Occidental Mindoro. The Bethany, which is a religious group, the Catholic Church, the International Labor Organization (ILO) and the non-government organization such as PANLIPI, a non-government organization which engages in development work in the area through its lawyer and para-legals.

These groups have extended various assistance to the Iraya, such as the giving of orientations and seminars on the laws affecting them like the IPRA, assistance for their legal and medical needs, orientation as to moral

7. Protected Areas and Wildlife Bureau, Tamaraw Conservation Project, available at <http://www.pawb.gov.ph/progs/tamaraw.htm> (last accessed December 27, 2002)
8. Department of Environment and Natural Resources Administrative Order 99-53, Adopting the Integrated Forestry Management Program (1999).
9. Executive Order 263, Adopting Community-Based Forest Management as the National Strategy to Ensure the Sustainable Development of the Country's Forest Lands Resources and Providing Mechanisms for its Implementation (1995).
10. Department of Environment and Natural Resources Administrative Order 92-35, Prescribing the Guidelines for Community Reforestation Contract Under the Low Income Upland Communities Project (1992).

values. These groups have also given them medicines, relief goods, toilet, irrigation projects, mill and thresher, scholarship programs, carabao dispersal projects, water system, palay and seedlings. Medical missions were also conducted for their benefit. A health center was also constructed in their area.

Government projects in the specific municipalities of Sta. Cruz, Paluan, Mamburao and Abra, have also been implemented. These projects are classified according to nature and type such as land tenure, ancestral domain management/environment, livelihood, infrastructure development and socio-cultural.

#### B. Laws

##### 1. The Indigenous Peoples Rights Act

Enacted in 1997, the IPRA recognizes, protects, and promotes the rights of IPs to their ancestral land and domains,<sup>11</sup> cultural integrity,<sup>12</sup> self-governance<sup>13</sup> and empowerment,<sup>14</sup> to human rights and basic social services,<sup>15</sup> and creates the National Commission on Indigenous Peoples (NCIP)<sup>16</sup> to oversee the proper implementation of the law.<sup>17</sup> IPRA carries out the declared policy of the state to protect the rights of IPs.<sup>18</sup>

IPRA provides that ancestral domains shall be composed of all areas belonging to indigenous peoples, comprising lands, inland waters, coastal seas, and natural resources found therein held under a claim of ownership, occupied and possessed by the Indigenous Cultural Communities or Indigenous Peoples (ICCs/IPs), by themselves or through their ancestors, communally or individually since time immemorial, and which are necessary to ensure their economic, social and cultural welfare.<sup>19</sup> Ancestral domains shall include ancestral lands, forests, pasture, residential, agricultural and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other resources, and land which may no

11. R.A. 8371, §§ 2(b) & 7.

12. *Id.* §§ 2(e), & 29-37.

13. *Id.* §§ 13-18.

14. *Id.* §§ 19-20.

15. *Id.* §§ 21 & 25.

16. *Id.* § 38.

17. *Id.* § 39 & 44(a).

18. *Id.* § 2.

19. *See id.* § 3(a).

longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and /or are shifting cultivators.<sup>20</sup>

Ancestral lands differ from ancestral domains in terms of ownership. While ancestral domains belong collectively to the concerned indigenous peoples, ancestral lands are owned individually and generally belong to families, clans or groups of families or clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors in interest, under claims of individual or traditional group ownership, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/ corporations, including but not limited to residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.<sup>21</sup>

The law explicitly provides the rights of IPs to their ancestral domains.<sup>22</sup> It states that the rights of ICCs/IPs to their ancestral land/domains by virtue of Native Title shall be recognized and respected and shall be embodied in a Certificate of Ancestral Domain Title (CADT) or Certificate of Ancestral Land Title (CALT), as the case maybe.<sup>23</sup> In addition, the following rights are acknowledged:

1. The right to claim ownership over land, bodies of water traditionally and actually occupied, sacred places, traditional hunting and fishing grounds and all improvements made by them at any time within the domains;<sup>24</sup>
2. The right to develop land and natural resources, control and use lands and territories, manage and conserve natural resources within the territories, benefit from and share the profits from the allocation and utilization of natural resources, negotiate the terms and conditions of their exploitation, right to informed and intelligent participation in the formulation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project and the right to effective measures by

20. *Id.*

21. *Id.* § 3(b).

22. *Id.* § 7.

23. *Id.* § 11 & 52(k).

24. *Id.* § 7(a).



government to prevent any interference with, alienation or encroachment upon these rights;<sup>25</sup>

3. The right to stay in territories and not be removed therefrom. And when relocation is considered necessary as an exception measure, relocation shall take place only with the free and prior informed consent of the ICCs/IPs, and whenever possible they shall be guaranteed the right to return to their ancestral domains as soon as the grounds for relocation cease to exist;<sup>26</sup>
4. The right to return to their former lands which were vacated due to natural catastrophes and inappropriate land yield when normalcy and safety is restored;<sup>27</sup>
5. The right to regulate the entry of migrant settlers and organizations into the domains in accordance with law;<sup>28</sup>
6. The right to have access to integrated systems for the management of their inland waters and airspace;<sup>29</sup>
7. The right to claim parts of reservations and ancestral domains that have been reserved for various purposes, except those intended for common and public welfare and service;<sup>30</sup>
8. The right to resolve conflict in accordance with customary laws of the area where the land is located;<sup>31</sup>
9. The right to transfer rights over ancestral land, subject to customary laws and the principle of the right of redemption in cases where transfers are characterized by vitiated consent of the IP-transferor;<sup>32</sup>
10. The right to apply title over their ancestral land under the provisions of Commonwealth Act 141.<sup>33</sup> For this purpose, individually owned ancestral agricultural lands, that are directly used for agriculture, residential, pasture and tree farming purposes, including those with a slope of 18 degrees or more are classified as alienable and disposable public lands.

The IPRA likewise provides that:

25. *Id.* §§ 7(b) & 56.

26. *Id.* § 7(c).

27. *Id.* § 7(d).

28. *Id.* § 7(e).

29. *Id.* § 7(f).

30. *Id.* § 7(g).

31. *Id.* § 7(h).

32. *Id.* § 8(a).

33. *Id.* § 12.

1. IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period not exceeding 25 years renewable for not more than 25 years, provided, that a formal and written agreement is entered into with the ICCs/IPs concerned of that the community, pursuant to its own decision making process, has agreed to allow such operation, provided finally, that the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of ICCs/IPs under the same contract;<sup>34</sup>
2. 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 participation of the ICCs/IPs concerned shall be maintained, managed and developed for that purpose by the ICCs/IPs concerned with the full and effective assistance of government agencies;<sup>35</sup>
3. Indigenous peoples may transfer responsibilities over the area only with the free and prior informed and written consent of the IPs concerned, provided that the transfer shall be temporary, no displacement of IPs shall occur and a program of technology transfer shall be undertaken;<sup>36</sup>
4. All government agencies are 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, or while there is a pending application for CADT. Such certification shall be issued only after a field-based investigation and only with the free and prior informed consent of the IPs concerned. Any project that has not satisfied the consultation process may be stopped or suspended.<sup>37</sup>

With respect to their ancestral lands, IPs are mandated by the law to maintain ecological balance in the ancestral domains by protecting the flora, fauna, watershed areas and other reserves, restore denuded areas subject to just and reasonable compensation, and to observe the laws.

The IPRA likewise respect indigenous peoples' rights to self-governance, social justice, human rights and cultural integrity. It mandates the recognition of the following rights:

34. *Id.* § 57.

35. *Id.* § 58.

36. *Id.*

37. *Id.* § 59.

1. The right to participate fully, if they so choose, at all levels of decision making in matters which may affect their rights, lives and destinies, through procedures determined by them, to maintain and develop their own indigenous political structures and to be given mandatory representation in policy making bodies and other local legislative councils;<sup>38</sup>
2. The right to full ownership, control, and protection of their cultural and intellectual rights, rights to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources and their derivatives;<sup>39</sup>
3. Access to indigenous knowledge related to conservation, utilization and enhancement of these resources shall be allowed only with the free and prior informed consent of such communities, obtained in accordance with the customary law of the concerned community.<sup>40</sup>

## 2. National Integrated Protected Areas Systems Act

The National Integrated Protected Areas Systems (NIPAS) Act, was enacted into law on June 16, 1992.<sup>41</sup> The NIPAS Act provides for the classification of protected areas according to eight categories indicated therein,<sup>42</sup> so as to maintain their natural conditions, as much as possible. Among the first ten privatized protected areas under the NIPAS is the Mangyan Heritage National Park, which is located in the island of Mindoro.

The NIPAS is under the control, administration and implementation of the DENR.<sup>43</sup> To carry out its mandate, the DENR has issued

38. *Id.* § 16.

39. *Id.* § 34

40. *Id.* § 35.

41. R.A. 7586.

42. *Id.* § 3. The eight categories are:

- a. Strict nature reserve;
- b. Natural park;
- c. Natural monument;
- d. Wildlife sanctuary;
- e. Protected landscapes and seascapes;
- f. Resource reserve;
- g. Natural biotic areas; and,
- h. Other categories established by law, conventions or international agreements which the Philippine Government is a signatory.

43. *Id.* § 10. This section provides:

The National Integrated Protected Areas System is hereby placed under the control and administration of the Department of Environment and Natural Resources. For this purpose, there is hereby created a division in the regional offices of the Department to be called the Protected Areas and Wildlife Division in regions where protected areas have been established, which shall be under the supervision of a Regional Technical Director, and shall include subordinate officers, clerks and employees as may be proposed by the Secretary, duly approved by the Department of Budget and Management, and appropriated for by Congress. The Service thus established shall manage protected areas and promote the permanent preservation, to the greatest extent possible of their natural conditions. To carry out the mandate of this Act, the Secretary of the DENR is empowered to perform any and all of the following acts:

- a. To conduct studies in various characteristics features and conditions of the different protected areas, using commonalities in their characteristics, classify and define them into categories and prescribe permissible or prohibited human activities in each category in the System;
- b. To adopt and enforce a land-use scheme and zoning plan in adjoining areas for the preservation and control of activities that may be threaten the ecological balance in the protected areas;
- c. To cause the preparation of and exercise the power to review all plans and proposals for the management of protected areas;
- d. To promulgate rules and regulations necessary to carry out the provisions of this Act;
- e. To deputize field officers and delegate any of his powers under this Act and other laws to expedite its implementation and enforcement;
- f. To fix and prescribe reasonable NIPAS fees to be collected from government agencies or any person, firm or corporation deriving benefits from the protected areas;
- g. To extract administrative fees and fines as authorized in Section 21 for violations of guidelines, rules and regulations of this Act as would endanger the viability of protected areas;
- h. To enter into contracts and / or agreements with private entities or public agencies as may be necessary to carry out the purposes of this Act;
- i. To accept in the name of the Philippine Government and in behalf of NIPAS funds, gifts or bequests of money for immediate disbursements or other property in the interest of the NIPAS, its activities, or its services;
- j. To call on any agency or instrumentality of the Government as well as academic institutions, non-government organizations and the private sector as may be necessary to accomplish the objectives and activities of the System;
- k. To submit an annual report to the President of the Philippines and to Congress on the status of protected areas in the country;

Administrative Order No. 25, Series of 1992, setting for the rules and regulations governing its implementation.<sup>44</sup> The Secretary of the DENR, the Undersecretary and the PAWB constitute the central-based management and administration level of the NIPAS.

The law explicitly states that the ancestral land and customary rights and interests of indigenous peoples shall be accorded due recognition.<sup>45</sup> It provides that DENR shall have no power to evict indigenous communities from their present occupancy or resettle them to another area without their consent.<sup>46</sup> It further provides that the rules and regulations whether adversely affecting the communities or not, shall be subjected to notice and hearing to be participated in by the members of the concerned communities.<sup>47</sup>

Among the activities prohibited in the NIPAS areas are the following:

- l. To establish a uniform matter for the System, including an appropriate and distinctive symbol for each category in the System, in consultation with appropriate government agencies and public and private organizations;
- m. To determine the specification of the class, type and style of buildings and other structures to be constructed in protected areas and the materials to be used;
- n. Control the construction, operation and maintenance of roads, trails, water works, sewerage fire protection and sanitation systems and other public utilities with the protected areas;
- o. Control occupancy of suitable portions of the protected areas and resettle outside of said area forest occupants therein, with the extraction of the members of the indigenous communities area; and
- p. To perform such other functions as may be directed by the President of the Philippines, and to do such acts as may be necessary or incidental to the accomplishment of the purpose and objectives of the System.

44. Department of Environment and Natural Resources Administrative Order 25, National Integrated Protected Areas Systems Implementing Rules and Regulations (1992).

45. R.A. 7586, § 13. It states:

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 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.

46. *Id.*

47. *Id.*

- a. Hunting, destroying, disturbing or simply dispossession of any plants, animals, or products from the area without permit from the PAMB;
- b. Dumping of any waste product harmful to the area, to the plants or to animals;
- c. Using any motorized equipment without permit from the PAMB;
- d. Mutilating or destroying objects of natural beauty or objects of interest to communities within the area;
- e. Damaging and leaving roads and trails in damaged condition;
- f. Squatting, locating for minerals or occupying any piece of land within the area;
- g. Building or maintaining any structure or fence;
- h. Conducting any business without permit from the PAMB.<sup>48</sup>

### 3. Comprehensive Agrarian Reform Law<sup>49</sup>

The amendatory laws to the Comprehensive Agrarian Reform Law of 1988 contain, among others, the principles of agrarian reform, including those on subsistence fishermen and the more explicit definitions of agrarian reform, agriculture, agricultural activities and agricultural enterprise.

The coverage of agrarian reform includes all public and private agricultural lands as provided in Proclamation 131<sup>50</sup> and Executive Order 229<sup>51</sup> regardless of tenurial arrangement and commodity produced. More specifically, it shall include:

1. All lands of the public domains in excess of the specific limits as determined by Congress in a subsequent Act.
2. All lands owned by the Government devoted to or suitable for agriculture.
3. All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or can be raised thereon.<sup>52</sup>

Lands exempted from the coverage of agrarian reform include the following:

48. *Id.* § 20.

49. Republic Act 6657, Comprehensive Agrarian Reform Law (1988).

50. Proclamation 131, Instituting a Comprehensive Agrarian Reform Program (1987)

51. Executive Order 229, Implementing a Comprehensive Agrarian Reform Program (1987).

52. R.A. 6657, § 4 (as amended by Republic Act 7881).

1. Lands actually, directly and exclusively used for parks, wildlife sanctuaries, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves.<sup>53</sup>
2. Private lands, actually, directly and exclusively used for prawn farms and fishponds except those already distributed.<sup>54</sup>
3. Lands actually, directly and exclusively used and found necessary for national defense, school sites and by public and private schools for education purposes, seeds and seedling research and pilot production center, church sites and convents appurtenant thereto, mosque site and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by inmates, government and private research and quarantine centers and all lands with 18% in slope and over except those already developed.<sup>55</sup>
4. Ancestral lands of indigenous peoples defined as all lands in the actual, continuous and open possession and occupation of the community and its members.<sup>56</sup>

The distribution of all lands covered by the Act shall be implemented immediately and completed within ten years from the effectivity thereof. Land grants under the law is formalized through the Certificate of Land Ownership Award (CLOA).<sup>57</sup>

53. *Id.* § 10(a). In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farm workers shall no longer be necessary, however, the provision of Section 32-A hereof on incentives shall apply.

54. *Id.* § 10(b).

55. *Id.* § 10(c).

56. *Id.* § 9.

57. *Id.* § 24. This section states:

The rights and responsibilities of the beneficiary shall commence from the time the DAR makes an award of the land to him, which award shall be completed within one hundred eighty (180) days from the time the DAR takes actual possession of the land. Ownership of the beneficiary shall be evidenced by a Certificate of Land Ownership Award, which shall contain the

#### 4. Integrated Forestry Management Program<sup>58</sup>

The DENR issued Administrative Order No. 99-53 for the purpose of implementing the Integrated Forestry Management Program (IFMP).<sup>59</sup> Under the IFMP, a product-sharing contract called Integrated Forest Management Agreement (IFMA) is entered to by and between the DENR and a qualified applicant. Under the contract, the DENR grants to the latter the exclusive right to develop, manage, protect and utilize a specified area of forestland and forest resource therein for a period of twenty five (25) years, subject to renewal for another 25 years. The Contract is premised on the principle of sustainable development and is carried out in accordance with an approved Comprehensive Development and Management Plan (CDMP). Under said plan, the DENR and the grantee share in the produce from the development of the land.

This program covers all lands of the public domain under the jurisdiction of the DENR. It is worthy to note that specific exceptions are given in the cases of national parks and ancestral domains of the IPs, as follows:

- a. Areas or lands of the public domain under the NIPAs under the National Park classification;
- b. Areas or lands subject of CADC/CALC or any other tenurial instruments issued by the DENR under the ISF, Community Forestry Program and other people-oriented forestry program, unless with prior consent from the holder.
- c. Those areas with pending applications CADC/CALC or those areas verified by the DENR to be actually occupied by indigenous cultural communities under a claim of immemorial possession unless after due notice and hearing in accordance with existing rules and regulations same shall be denied or rejected.

#### 5. Community Based Forest Management Program (CBFMP)<sup>60</sup>

The Community Based Forest Management Program of the DENR took effect by virtue of Executive Order No. 263 issued, on July 19, 1995, by then President Fidel V. Ramos.<sup>61</sup> This was implemented through DENR's Administrative Order 96-29. This program integrates all of DENR implemented programs considered as people-oriented forestry programs,

restrictions and conditions provided for in this Act, and shall be recorded in the Register of Deeds concerned and annotated on the Certificate of Title.

58. DENR A.O. 99-53.

59. *Id.*

60. E.O. 263.

61. *Id.*

which include, among others, the Low Income Upland Communities Project (LIUCP) or DENR A.O. 35, SERIES, OF 1992, which seeks to restore and sustainably manage the country upland forest resources and alleviate poverty in rural communities, and the Integrated Social Forestry Program (ISFP).

The CBFMP, subject to prior vested rights, shall apply to all areas classified as forestlands including allowable zones within protected areas. ICCs/IPs whose claims to ancestral domains/lands have been recognized through CADCs or CALCs, or whose domains are recognized by themselves and neighboring communities, may, at their option, participate in the CBFMP through the preparation and implementation of Ancestral Domain Management Plans (ADMPs). An ADMP shall be considered the equivalent of a Community Resource Management Framework (CRMF). The latter is a document defining the terms and procedures for access, use, and protection of natural resources within the CBMFA area, which shall, in all cases, be consistent with overall management strategy of the entire watershed area where the CBFM are is located. Unless otherwise provided by subsequent issuances, a CBMFA shall then be issued over portions of the CADC or CALC which are within classified forest lands. The CBMFA is a production sharing agreement entered into between a community and the government, to develop, utilize, manage and conserve, a specific portion of the forestland, consistent with the principles of sustainable development and pursuant to a CRMF.

#### V. ANALYSIS OF SOURCES OF CONFLICT

A number of factors contribute to resource utilization conflicts in the Iraya ancestral domains. Some sources of conflict include: unlawful intrusion or encroachment by the *Tagbaris*; non-recognition of ancestral domain rights arising from misinterpretation of laws and policies; non-recognition of ancestral domain rights arising from implementation of programs and projects contradicting customary beliefs of the Iraya; non-recognition of ancestral domain rights arising from voluntary dealings involving the domains without the consent of the IPs concerned; and unclear community roles and responsibilities.

##### A. Unlawful intrusion or encroachment

As earlier stated, non-Mangyans or *tagbari*, generally by stealth, threat, intimidation or fraudulent dealings in land have managed to drive away the Iraya from their lowland occupations into the interior recesses of the forest. In terms of resource use and development, the *tagbaris* also engage in activities that are contrary to the more sustainable practices of the Iraya and are therefore the major causes of environmental destruction within the domains. The *tagbari* activities give way to the conversion of the forests to

other uses causing its degradation. For example, the Biodiversity Conservation and National Integrated Protected Areas Technical Assistance Program of the Philippines, found that Mt. Halcon, and Mt. Iglit Baco are "extensively degraded with loss of considerable natural forest cover by poaching, cattle ranching and other forms of forest conversion."<sup>62</sup> The study found that degradation likewise result from seasonal burning for *kaingin* and pasture leases issued by DENR with the forested areas.<sup>63</sup>

##### B. Non-Recognition of Ancestral Domain Right: Arising from Misinterpretation of Laws

In 1992, PANLIPI was commissioned by the World Bank to do the community consultations on the Integrated Protected Areas System (IPAS). The overall conclusion of the consultations showed that the IPAS was overwhelmingly rejected by tribal representatives on the grounds of perceived dislocation from and loss of control over their ancestral land.

In 1997, five years after the above consultations, another project funded by Asian Development Bank (ADB) on buffer zone management centered on Mt. Iglit Baco as a pilot and again the report found resistance, mainly of the Mangyans and IP advocates to the NIPAS.

The Iraya members of the research team expressed vehement objections against the NIPAS because during the delineation of their ancestral domains, a large portion, allegedly falling under the protected area, was carved out of their ancestral domains. While this case is still under protest with the NCIP, the act of unilaterally carving out areas of land from the ancestral domains by DENR only goes to prove that the implementation of the NIPAS does not respect ancestral domain rights. Likewise, the concerned IP representatives in the PAMB are realizing that their participation in the board is, at best, nominal. Finally, the Tamaraw Gene Pool is the worst example of a NIPAS operated area where the indigenous peoples are barred from entering the area. It may be the worst example of protection and conservation, because the Mangyans claim that hunters still pursue the tamaraw, and the rangers just turn their heads the other way every time it happens. It is worth to echo the last findings of the ADB-commissioned study which reveals the Iraya's plea: that the DENR first settle tenure and ownership rights to their ancestral domains and establish the protected areas in Mindoro before discussing the NIPAS Act.

62. DENR-PAWB, FINAL REPORT: BIODIVERSITY CONSERVATION AND NATIONAL INTEGRATED PROTECTED AREAS TECHNICAL ASSISTANCE PROGRAM 5 (1997).

63. *Id.*

### C. Ancestral Domain Rights and CARP

Rights to lands distributed under the Agrarian Reform law are embodied and granted by the state in a Certificate of Land Ownership Award or CLOA. This is a form of title that can be equated with a Patent, which eventually may be registered under the Torrens system. The representative of the Department of Agrarian Reform (DAR) in the focus group discussions held with government agencies, in connection with the study, shared that there are 300 IP agrarian reform beneficiaries in Abra de Ilog. These are Iraya Mangyan beneficiaries of CLOAs.

While, as in any government project, the objective of the issuance of CLOA is laudable, the Iraya perceive it as a strategy to dispossess them of their lands. For one, many of the Iraya participants complained that their rights under Section 9 of the CARP<sup>64</sup> was not explained to them, nor the fact that they have an option to file for Ancestral Land Title disclosed. The CLOA is also used against them, because many portions of their lands are distributed to other lowland farmers. Many IP farmers complained that they had to pay for land that they already owned. Hence, the Iraya have a two-faceted conundrum: first, of losing portions of their lands beyond the limit imposed in the law; and second, losing their right to enforce traditional property relations involving the land, as prescribed in Section 9 of the CARL.

### D. Non recognition of ancestral domain rights arising from implementation of programs and projects contradicting customary beliefs of the Iraya

Another major source of resource use conflict in the Iraya ancestral domain is the non-recognition of ancestral domain rights arising from the

64. The text of Sec. 9 states:

For purpose of this Act, ancestral lands of each indigenous cultural community shall include, but not be limited to, lands in the actual, continuous and open possession and occupation of the community and its members: Provided, That the Torrens System shall be respected.

The right of these communities to their ancestral lands shall be protected to ensure their economic, social and cultural well-being. In line with the other principles of self-determination and autonomy, the systems of land ownership, land use, and the modes of settling land disputes of all these communities must be recognized and respected.

Any provision of law to the contrary notwithstanding, the PARC may suspend the implementation of this Act with respect to ancestral lands for the purpose of identifying and delineating such lands: Provided, That in the autonomous regions, the respective legislature may enact their own laws on ancestral domain subject to the provisions of the Constitution and the principles enunciated in this Act and other national laws.

implementation of programs and projects contradictory with the customary beliefs and practices of the Iraya. A case in point is the Low Income Upland Communities Project (LIUCP) of the DENR which was funded by the ADB. Although the project had laudable objectives, its design and implementation did not take into consideration the cultural impacts of the project on the IPs.

Florante Gayadan, an Iraya leader based in Sitio Mamara, Barangay Tubili, Palauan, Occidental Mindoro expressed his concern about the LIUCP project. According to him, the LIUCP was implemented in their area, the purpose of which was for reforestation. In their contract with the government, the Irayas were made to plant Mahogany and Gemelina species of trees, which are not native to Mindoro. These trees are not fruit-bearing trees, and as such, cannot be a source of food for the Irayas.

At the outset of the program, the Irayas were tasked to clear the area to be covered by the project. This task would include cutting grass and other big plants in the area allotted for the project. This task, coupled with the planting of the trees, takes too much of the time of the Irayas such that they have no more time left to till their farmlands, or hunt for food or plant their traditional food such as *nami*, ube, camote and other root crops. They had to look for other food sources because the trees they were ordered to plant were not fruit-bearing trees. Nonetheless, they could not plant their traditional food in the same area because they discovered that rootcrops would not thrive in the same area where mahogany and gemelina trees are planted because these trees take up so much water and soil nutrients that there is nothing left to root crops for nourishment.

In addition, there is delay in the payment of funds for the seedlings, as well as funds for the payment of labor fees to the Irayas. As a result, many of the Irayas in the area became indebted to usurers. They had to secure usurious loans to buy food, particularly rice for their family. Consequently, they are already in deep financial debt even before the check intended for the seedlings is released to them. Moreover, when the check is released, the staff in charge of releasing the funds demands for a commission that the Irayas reluctantly give.

Without a doubt, the LIUCP has caused adverse effect on their culture, as cited by the Iraya. For one, they were forced to abandon their swidden farms and many of the practices of swidden farming such as choice of plant species and farming methods. While swidden farming practice employs carefully planned multi-cropping and rotational planning techniques, the introduction of exotic plants and trees caused a great departure from these planting practices in addition to the destruction of stable food sources.

*E. Non-recognition of ancestral domain rights arising from voluntary dealings involving the domains without the consent of the IPs concerned*

Activities conducted within the ancestral domains that affect the land, resources and culture, require the free and prior informed consent of the IPs. This requirement of law<sup>65</sup> is founded on the right to development, which means that the IPs are entitled to change like all other people, if they wish to. It rests upon the principle that the Indigenous Peoples have the right to choose the means to govern themselves. While in most cases they have to adapt to a changing national situation, economy and environment, they retain the right to determine the pace of this self-governed development.

Non-recognition of these rights often becomes a source of conflict between the IPs and the donors or partners. Very often, a number of projects with lofty objectives fail because they do not get the required social acceptability. Some of the projects introduced to the Iraya ancestral domain illustrate this fact.

At the Municipality of Sta. Cruz, a school was built by the Department of Education and Culture (DECS) for the school age children of the Iraya. Non-Iraya teachers were employed by the school. However, the community was not ready to accept the school. For one the school was built in an area that was not the permanent settlement of the Iraya. Likewise, the Iraya language was not used, nor the teaching methods understandable in the context of the Iraya culture. Further, the teachers neither considered the Iraya as indigenous peoples nor understood the meaning of being indigenous; hence, they failed to create among the children identification with the culture. Furthermore, the teachers were not regularly attending classes so the children did not learn much from them. This experience is seen to retard the process of eradicating illiteracy, merely because of the failure to make the project more socially acceptable.

Another project that is considered by the Iraya as adverse to their culture is the introduction of basketball and the building of basketball courtyards in their areas. In mainstream society, basketball is a national favorite. Basketball tournaments are televised and broadcasted by popular radio stations. Giving out basketball paraphernalia, even to indigenous communities is also a favorite among politicians. Politicians assume that every community ought to have a basketball court and so basketball courts were constructed in Iraya villages. The widespread popularity of the game and its novelty vis-à-vis the culture enticed many Iraya youth to try it. However, their parents complain that the game has ushered in adverse changes like the lost of interest in traditional sports. Children would spend all time playing the game, to the point of neglecting regular chores.

65. R.A. 8371, § 46(a).

Ironically, an advantage brought by the cemented courts though, is that they could be used for drying palay.

*F. Failure to Establish Clear Community Roles and Rights*

The Calawagan Mountain Resort, in Paluan, Occidental Mindoro is a nature resort built along the Calawagan River within the Iraya ancestral domain by Irayas who were hired by the municipal government. The resort is operating as one of the more popular tourist spots in Paluan. According to the Mangyans most of them do not derive benefits from the resort, and if at all, only in the form of indirect benefits such as the concrete access roads leading to the tourist spot. A water system that was likewise constructed in Paluan was built with the IPs sharing labour for its construction. However, no system for community involvement and participating in its management was installed. Hence, although a lot of Iraya interviewed said the project was useful, it was short term and not sustainable because of the failure to address management systems. This is in contrast with a thresher contributed by the ILO to the community, wherein established community management systems continue to operate.

A carabao dispersal program was introduced by the Department of Agriculture and the Department of Education, Culture and Sports in some Iraya communities, supposedly to raise funds to buy food supplies for the school children. As in the water system, no social infrastructure was laid for the management of the project, leading to its failure.

Another project failed because it was awarded to only one member of the community.

VI. HARMONIZING AND/OR RECONCILING LAWS, PROGRAMS AND PROJECTS:  
THE IRAYA POINT OF VIEW

The Iraya have suggested several strategies on how to harmonize, and/or reconcile laws, programs and projects with their needs and concerns and thus increase the social acceptability of the projects. Informants suggest that the project:

1. Must clearly show that it will strengthen their rights to their ancestral domains, as in the case of the issuance of CADTs or CALTs to formally recognize their ownership of the domains.
2. Must clearly show that that it will mitigate conflicts over resource use by showing clear community roles and responsibilities and promote community solidarity and cohesiveness as opposed to those that tend to sow discord.
3. Must clearly demonstrate that it will be beneficial to the community in general as opposed to a select family or

- individuals, i.e. projects which ensures food security and related infrastructure such as water systems.
4. Must be geared towards the expressed goals of the community concerned.
  5. Must respect the traditional practices and culture and would not introduce activities that would not alter the culture of the IPs concerned.
  6. Must be implemented together with information campaigns so that the largest possible number of community members are informed, even if the decision making powers are vested in traditional community decision making bodies.

On the other hand, the Iraya respondents felt that the following factors adversely affect the acceptability of the projects. They are as follows:

1. Project such as planting exotic species of trees that are not food sources, which have no relation to their needs;
2. Projects which adversely effect the environment and their culture, such as those that induce them to be indebted or induce their children to engage in forms of recreation that are contrary to the Iraya culture.
3. Projects that use them only as cheap labour; and
4. Projects that benefit only particular individuals thus, inducing divisiveness in the community.

The Irayas further recommend that government personnel serving them should be given proper orientation on the laws affecting them such as the IPRA so that that they will know its importance. Moreover, in the case of NCIP, the Irayas expect that the personnel assigned to them should be qualified for the position to better serve their needs. They prefer that an IP staff should be assigned for the position or at least someone who had previous experience working for the interest of the IPs.

The Iraya recommends that there should be an extensive study and examination of the project in order to determine if the project would be acceptable to the community. There should be a determination of whether or not the project: (1) is fit for the environment; (2) in conflict with their rights over their ancestral domains; (3) will be beneficial to them especially in terms of food resources; (4) will strengthen their rights over their ancestral domains and will recognize and respect their culture. Such projects must be directed to benefit the IPs. Such projects should not destroy their environments especially their forest. The project should be geared towards the objectives of the community. It should be in consonance with the goals of the IP community.

Finally, the Iraya communities recommend that the harmonization of projects must be based on securing free and prior informed consent of the IPs and upholding the Iraya's cultural integrity.

The government representatives who were invited to focus group discussion disclosed that there must be a correct understanding among the IPs on the project intentions, goals and objectives and that there must be a widest possible participation by the concerned population to increase the acceptability of projects.

#### VII. CONCLUSION AND RECOMMENDATIONS

The assertion of the Iraya of their rights to their ancestral domains, their experiences in effecting these rights and making it operational within the implementation of projects and programs, policies and laws within their domains show us lessons vital to the formulation and further improvement of the institutional, legal and policy measures concerning indigenous peoples' resource management in ancestral domains. From these lessons, recommendations are drawn for the expansion of opportunities and spaces available for the IPs to take control of their lands and resources. The lessons will underlie:

1. The process for harmonizing conflicting and overlapping resource use rights within ancestral domains in relation to national laws such as the IPRA and NIPAS;
2. The guidelines to rationalize resource use and conservation programs within ancestral domains using the IKSPs as framework;
3. The guidelines for operationalizing sections 52(I),<sup>66</sup> 58<sup>67</sup> and 62<sup>68</sup> of the IPRA; and

66. Section 52(I) states: The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed.

67. Section 58 states: 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 participation 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



4. The models for ensuring adherence to the process of securing Free and Prior Informed Consent of the Indigenous Peoples.

#### A. Documentation of Indigenous Knowledge Systems and Practices

It is known that the Iraya keep an oral tradition pertaining to their Indigenous Knowledge Systems and Practices (IKSP). However, it cannot be denied that due to varying exposure to outside influences and capability to absorb the same, the Iraya are in varying stages of acculturation.

The youth who are supposed to carry on the tradition are losing interest due to outside factors. Ethnographic studies, particularly on the IKSP, come therefore as an important activity in preserving, promoting and protecting the culture. In this light, documentation of IKSPs by the youth themselves will serve two purposes. This endeavor will rekindle in the youth the value of respect and interest to uphold the tradition and will make the information available to both the community and the outsiders as they may see fit.

It is important though that the dissemination of the documents rests fully upon the decision of the IPs. Towards this end, youth groups among the IPs may be trained to gather and document information. Thus, the information and the decision on what and whom to disseminate the information will still rest on the IPs.

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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 under this section without the written consent of the specific persons authorized to give consent.

68. The provision provides: In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

#### B. Ancestral Domains Sustainable Development and Protection Planning

In order to give the IPs the opportunity to implement ecologically sound indigenous land use and environmental protection systems they must have the power to exercise general supervision and control over the management of their respective ancestral domains/lands through their own leadership structures.

All plans, policies, rules and regulations governing resource use within their areas must be formulated and implemented in partnership with the indigenous peoples and subject to their free and prior informed consent.

In ancestral domains encompassed within, encompassing, or completely overlapping protected area, the protected area management plan must be harmonized with the Ancestral Domains Management Plan, the latter being used as the framework. For all projects and programs to be introduced, an environmental/cultural assessment process must be developed using the concepts and standards of the indigenous peoples are parameters for assessment.

#### C. Non-Formal Technology Transfer

The IPs' survival in the mainstream system hinges on continuous operation of their own system. The loss of such system does not only mean the loss of freedom but also of life. The strategies to promote IPs' rights, therefore must not only protect an individual but an entire system.

The continuous operation of such system in a fast changing world is ensured only if the IPs who have been steering it retain their right to self-determination. The right entails not just freedom but also the capability to chart their own fate as they decide among options of change, most of which they never encountered before. Thus, the IPs must also be prepared to handle mainstream systems and look after their own well-being within.

It is important therefore that indigenous peoples also learn from the mainstream. Scientific studies, Sociological Tools, Technological Tools such as GIS, and Management Strategies must likewise be made accessible to the indigenous peoples should they wish to avail of such.

A non formal system of technology transfer must, therefore, be designed so that mutual learning by government technicians and IPs is facilitated.

#### D. Harmonization of Actions toward the Implementation of Laws, Policies, Programs on Resource Management

A great majority of the problematic legalistic issues for implementation are concerned with people, in particular the ICCs and local communities.