

**PHILIPPINES POVERTY-ENVIRONMENT INITIATIVE (PPEI)  
PHASE 2 YEAR 1**

**BRIEFER:** Integrating Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) into Local Development Plans to Promote Environment Sustainability and Poverty Reduction

“It is the political process that determines what economic institutions people live under, and it is the political institutions that determines how this process works.”

- DaronAcemoglu and James Robinson in  
*Why Nations Fail*

## A Brief Look at Democracy and Policies in the Country

The return of democracy in 1986 has been a turning point not only in Philippine politics but also in Philippine Public administration. The Local Government Code (LGC), enacted in 1991 after considerable political negotiations where national government agencies and national political figures went to keep authority at the central level. The Indigenous Peoples' Rights Act (IPRA) on the other hand was passed in 1997, and the impetus is the same, that is to establish a more democratic society.

Two (2) decades have passed and these two landmark legislations have not merited a look by the policy makers for reforms and essentially harmonization. The statements of principles of both laws promises a lot, in fact suggests a perfect setup for governance where the rights of the stakeholders are protected and at the same time, development at the local level is made more possible with a more proactive local government units (LGUs). Unfortunately, the limitations of the operational provisions of the laws, LGUs and Indigenous Peoples (IPs) and or Indigenous Cultural Communities (ICCs) have yet to truly enjoy the intent of the laws, the concepts and principles established by these policies. These limitations include the difficulty of implementing key provisions due largely to intergovernmental relations that remain dominated by the central level and the conflicting provisions of the laws. While this project covers the LGC and IPRA, there is a need to look at the significance of other laws that prevent the realization of these policies novel provisions. Hopefully, this project will lead to more initiatives towards the end of harmonizing important state policies and programs and lead to better governance.

## Project Introduction

The Philippine Poverty-Environment Initiative (PPEI) aims to promote sustainable and equitable development through responsible resource and asset management in order to contribute to the improvement of the lives of the poor and the marginalized. The adoption of a decentralized framework has led to expectations of better fight against poverty due to the supposed improved delivery of basic services. However, despite the laudable efforts exerted by the government and some non-state actors, majority of the population continues to be marginalized. Undertaken democratic reforms proved to be either incomplete or empty declarations of policies.

With goals of creating and strengthening capable and accountable democratic institutions responsive to the needs and aspirations of its citizens, this project attempts to help mainstream the participation of the indigenous people in governance processes. The task at hand is considerably daunting, given that problematic

### What Do We Intend to Accomplish with the October 9 -11 FGD?

1. Verify the issues and concerns identified in the Briefer
2. Draft A JMC for DILG-NAPC-NCIP based from the acquired critical insights on the situation on the ground in terms of IP inclusion in governance processes and protection of their rights
3. Formulate further policy and program recommendations and possible approaches for goal achievement

institutional arrangements between and among the national and local governments continue to plague the country as a fundamental structural concern.

## The Great Disconnect

- Despite the recent remarkable economic growth, inequality in the redistribution of wealth, along with lack of access to public services characterize the difficult living conditions experienced by the poor and the marginalized IPs. As rightly identified in the EC-Philippines Strategy Paper 2007- 2013, IP communities suffer from lack of basic services, health, and education, primarily due to the lack of culturally-sensitive approach in service delivery of the government. This could also be owed to the low prioritization of IP communities in terms of basic service provision. In addition, IPs in general resist projects and programs that are externally determined and those that threaten their ancestral domain and cultural heritage, thus there is a need to strengthen mechanisms for meaningful participation of the IPs, including their capacity for self-governance. Representation of IPs in local development councils, including their participation in the local planning processes, needs to be enhanced. It should also be noted that the functionality of the local development councils and local special bodies – platforms where IPs can participate for development
- Their lack of participation in the political decision-making process only exacerbates this condition as their participation is highly important for the better targeting of poverty problems by local development strategies and plans, the organization of inclusive service provision and the strengthening the culture of inclusive-participative-transparent-accountable governance

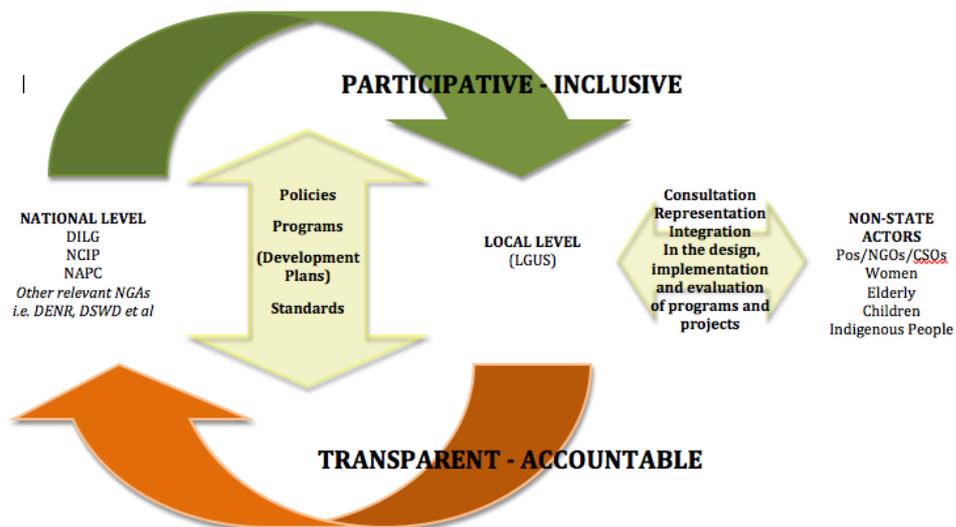


Figure 1: Bridging the Gap in Governance

- However, despite the introduction of decentralization in the country in 1991, the envisioned bottoms-up approach in planning that starts with the barangay has yet to be realized. Local and National development plans and approaches are hardly consistent since little consultation and coordination between the two levels of government are conducted. It should also be noted that ADSDPP and Certificate of Ancestral Domain

Titles are actually processed by the NCIP and thus are beyond the realm of the local government units

- Changes in the existing system would only be possible if the implementation of reform interventions is carefully coordinated and synchronized to include all stakeholders. This means that systems and process change must not only be confined in the local level but must be equally reflected and institutionalized in national policies and programs.

It is in this light that the PPEI, along with the National Anti-Poverty Commission (NAPC), the Department of the Interior and Local Government (DILG) and the National Commission on Indigenous People (NCIP) converged to open possible avenues to address the said systems gaps. To start, they endeavor to draft a Joint Memorandum Circular that will primarily harmonize the conflicting provisions of the Indigenous People's Right Act (IPRA) and the Local Government Code of 1991 (LGC), to integrate the mandate of the local governments and the protection of the rights of the indigenous peoples in the sustainable utilization of natural resources and environmental management. Consultations with relevant stakeholders will furthermore enable the consultants gain important input in formulating program and policy recommendations in support of the stated goals.

The PPEI is the product of a joint agreement between the Government of the Philippines (GoP) and the United Nations Development Programme-United Nations Environment Programme (UNDP-UNEP) implemented in 2011. The principal objective is the GoP's vision promoting sustainable development and utilization of natural resources (NR) for economic growth, environmental protection, social equity, especially to benefit the poor communities in the rural areas. The Bureau of Local Government Development-Department of the Interior and Local Government (BLGD-DILG) is the project holder while the Department of Environment and Natural Resources (DENR), Department of Finance (DOF), Department of Budget and Management (DBM), and the National Anti-Poverty Commission (NAPC), are the responsible partners.

Taking note of the GoP's vision, the question now is how to ensure its realization. Considering the key democratic principles established in the 1987 Constitution, and most significant of which is decentralization, it is best implemented with the LGUs. On the other hand, the IPs and ICCs' rights were also firmly recognized by the constitution.

Both principles are concretized by the LGC and the IPRA, and while each law are considered as victories for each stakeholder, the limitations of the laws and conflicting provisions prevent the realization of the ultimate objective of development. One key difficulty is the harmonization of the conflicting mandates of the LGUs and the IPs, which prevent the implementation of the ADSDPP, which require its integration in the formulation of the Comprehensive Land Use Plan (CLUP) and the Comprehensive Development Plans (CDP) of the LGUs. Ultimately, there has to be a way to ensure that the functions of the LGUs and the rights and work of the IPs and ICCs coincide despite overlapping interests.

The best way is to adopt a conceptual approach. The letters of the laws are well-meaning but because there is a lack or absence of operative mechanism the concepts remain concepts and therefore at best motherhood statements.

## Defining Development

The United Nations defined the term “sustainable development” as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Ignoring one of the following aspects can threaten economic growth as well as the entire development process. To say that development is sustainable is to ensure that the pursuit of it is geared towards development’s distinct objectives with three major aspects:



Using this as a take off point, the Consultants would like to emphasize that development within the context of this discussion should be understood beyond economic gains. Development, especially for IPs, is not interpreted as simply changing their way of living in order to conform with modern standards. Rather, it is envisioned as the state where they are empowered to make, define and take pride in their own journey to self-determination while being afforded widened avenues for meaningful participation in political and economic processes.

The following were identified as key considerations that should be explored to accomplish the set goals:

- Assistance to IP communities in the formulation and implementation of their ADSDPP utilizing the sustainable, targeted and area-based development (SIAD) framework
- Harmonization and integration of ADSDPP with local development plans
- Enhancement of the capacities of IP communities and LGUs in terms of participatory and strategic planning with particular care in preserving indigenous knowledge, systems and practices
- Strengthening platforms of interaction among IP communities. LGUs and NGAs for synchronized and coordinated effort

## Policy and Program Context: The Urgent Need to Actualize Blueprints

The Philippines has enough laws that extol democratic principles such as decentralization, inclusive-participative governance, transparency and accountability. It also promotes visions of sustainable development, economic growth, environmental protection and social equity.

For members of the IP community, the State has provided them the IPRA law that defined and declared the following concepts:

<b>Concepts</b>	<b>Brief Definition as provided in the law</b>
<b>Ancestral Domain<sup>1</sup></b>	<p>Territory or the natural habitat of ICCs/IPs since time immemorial</p> <p>Total environment including the spiritual and cultural bonds to the areas which ICCs/IPs possess, occupy and use and to which they have claims of ownership</p> <p>Coverage: lands, inland waters, coastal areas (including natural resources therein), mangroves, forests, minerals, pasture lands, agricultural, residential, hunting grounds, burial and worship areas, air space etc.</p> <p>IPRA also provided accompanying rights to the ICCs/IPs which are the ff: ownerships,</p>
<b>Ancestral Lands</b>	Land occupied, possessed and utilized by members of ICCs/IPs since time immemorial through themselves or their predecessor's interest
<b>Indigenous Concept of Ownership<sup>2</sup></b>	Sustains the view that ancestral domains & all resourced found therein are the material bases of the cultural integrity of ICCs/IPs and that it is their private but community property belonging to all generations, therefore it cannot be sold, disposed or destroyed
<b>Self-governance and empowerment</b> <b>Right to practice customary laws</b>	This particular right is recognized by the State (through the IPRA) and respects the integrity of the values, practices and institutions of the ICCs/IPs. The State also guarantees their right to freely pursue their economic, social and cultural development <sup>3</sup> . The State also awarded them with the right to use their own justice system, conflict resolution institutions, and peace building process as well as the right to participate in decision-making <sup>4</sup> .
<b>Consent over development interventions</b>	The ICCs/IPs are also given by the State the right to determine and decide priorities for development affecting their lives, beliefs, institutions, spiritual wellbeing, and the lands they own, occupy or use. They are also expected to participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development directly affecting them <sup>5</sup> .
<b>Self-determination</b>	The exercise of the IP's rights and freedom to pursue or determine

<sup>1</sup> Definition sourced from RA No. 8371 otherwise known as "The Indigenous Peoples Rights Act" (IPRA)

<sup>2</sup> Chapter III Section 5 of The Indigenous Peoples Rights Act (IPRA)

<sup>3</sup> Chapter IV Section 13 of The Indigenous Peoples Rights Act (IPRA)

<sup>4</sup> World Bank Discussion Paper "The Indigenous Peoples Rights Act: Legal & Institutional Frameworks, Implementation and Challenges" published on June 2007

<sup>5</sup> Chapter IV Section 17 of The Indigenous Peoples Rights Act (IPRA)

	social, political, religious, educational, economic, and cultural development. More than a combined community effort free from external influence, it is the assertion of the IP's identity and willingness to accept responsibility, innovativeness and make decisions on their own <sup>6</sup> .
<b>CP/FPIC</b>	CP/FPIC is the regulatory instrument of NCIP which is used in issuing clearances to projects indicating two things: one, that the FPIC has been given by the community; two, that the clearance is given to express non-coverage, which means a particular project is outside the ancestral domain <sup>7</sup> . This is also regarded by some as a safeguard system for the rights of the IPs.

However, it should be noted that despite the impressive declaration of support to the IPs by the National Government, the lack of implementing mechanisms in place has prevented the realization of all these as it has remained concepts and therefore mere motherhood statements. As has been shown in the table, the “rights granted to IPs include territorial domain, self-determination and the right to practice their customary laws, cultural integrity and property, and consent over development interventions in their community” (World Bank 2007). All of these require a mechanism, an office that has the mandate and authority to fully implement said objectives. At best, the law only provides the process of Certification Precondition/Free and Prior Informed Consent (CP/FPIC) that is administered by the NCIP's Ancestral Domains Office (ADO). Apart from the lack of political and administrative authority, considering especially that it is administered centrally thru National Commission on Indigenous Peoples (NCIP), the technical, resource and administrative capacity are likewise considerably wanting.

NCIP, the primary government agency for the formulation and implementation of policies, plans and programs to promote and protect the rights and well being of the IPs and their ancestral domains, is characterized by inadequate human resources and technical skills of staff and limited funds for land delineation and other necessary activities. This plan embodies, among others, the goals, policies, and strategies of IPs for the management and sustainable development of resources in their ADs, including the human and cultural resources such as their Indigenous Knowledge, Systems, and Practices (IKSPs). Moreover, one of the recommendations of a study conducted by the World Bank is for NCIP to tap the expertise of non-government organizations (NGOs) and academe in participatory research and planning methods.

The existing decentralized framework could have served as a perfect complement to the mentioned gaps. In specific reference to the Articles 4 and 6 of the Local Government Code, it promotes the following:

- Participative-inclusive brand of governance – Local Sectoral Representation (LSR) System ensures citizen participation as a critical component of the decision-making process
- More efficient and strategic use of resources – Programs, policies and projects created reflects and addresses the concerns of the marginalized
- Leveled engagement between the government and the CSO - the institutionalization of the Local Sectoral Council would have made the sectoral representatives decision-

<sup>6</sup> Primer on Ancestral Domain Sustainable Development & Protection Plan by NCIP

<sup>7</sup> World Bank Discussion Paper “The Indigenous Peoples Rights Act: Legal & Institutional Frameworks, Implementation and Challenges” published on June 2007, p. 23.

makers rather than mere recommendatory bodies as they will be treated as co-equals of the local Sanggunian members

Unfortunately, LSR remains largely unimplemented and has led stakeholders to insist on the need for a legislation that will require its implementation. On the other hand, LGUs can in fact already implement this provision, especially if the presence of IPs is significant in their locality.

If we are to compare relevant Laws (and provisions) that are crucial to both decentralization and the recognition of the rights of IPs and ICCs, the following will provide us a good glimpse.

#### Comparative Laws on Local Governments and Indigenous Peoples

Local Governments	Indigenous Peoples
1987 Philippine Constitution	
<p>Art. II. Sec. 25. The State shall ensure the autonomy of local governments.</p> <p>Art. X. LOCAL GOVERNMENT</p> <p>(Key mechanism for implementation absent in the case of IPs. What is left open is the case of the regions of the Cordilleras and Muslim Mindanao)</p> <p>Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.</p>	<p>Art. II, Sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.</p> <p>Art. XII, Sec. 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.</p> <p>The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.</p>
LGC	IPRA
<p>Chapter II. General Powers and Attributes of Local Government Units</p> <p>Section 15. <i>Political and Corporate Nature of Local Government Units.</i> - Every local government unit created or recognized under this Code is a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it shall exercise powers as a political subdivision of the national government and as a corporate entity representing the inhabitants of its territory.</p> <p>Section 16. <i>General Welfare.</i> - Every local government unit shall exercise the powers expressly granted, those necessarily implied</p>	<p>Chapter III. Rights to Ancestral Domains</p> <p>SEC. 4. <i>Concept of Ancestral Lands/ Domains.</i> - Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.</p> <p>SEC. 5. <i>Indigenous Concept of Ownership.</i> - Indigenous concept of ownership sustains the view that</p>

therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

*Section 18. Power to Generate and Apply Resources.* - Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of any further action; to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits; to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals.

ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICCs/IPs private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

*SEC. 7. Rights to Ancestral Domains.*  
- The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

(a) *Right of Ownership* - The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains.

(b) *Right to Develop Lands and Natural Resources* - Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation 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 the government

	<p>to prevent any interference with, alienation and encroachment upon these rights.</p> <p>Chapter IV. Right to Self-Governance and Empowerment          Sec. 13 Self-Governance          Sec. 14 Support for Autonomous Region          Sec. 15. Justice System, Conflict Resolution Institutions, and Peace Building Processes          Sec. 16 Right to Participate in Decision Making          Sec. 17 Right To Determine and Decide Priorities for Development          Sec. 18. Tribal Barangays (counterpart is Sec. 386 (a) Book III, Title I, Chapter I of the LGC)</p>
<p>Note: What distinguishes local governments and IPs with respect to the implementation of related laws is the use of the “operative” terms “power” and “right to”. In essence, this emphasizes that the only way for IPs rights (self-determination, enjoyment of natural resources and territory etc) to be respected is to work with respective local government units.</p>	

What can be gleaned from the foregoing is there are two possible ways to ensure the recognition of IP rights as provided for by law.

1. In the case of regions (or provinces and even municipalities), where particular IPs are dominant, the formation of an autonomous region (e.g. Cordillera) should be facilitated as provided by law, while the formation of other local government units for the same purpose should be supported by the national government. This will provide IPs a real mechanism to ensure the enjoyment of the rights recognized by law.
2. IP representation in LGUs where they reside should be made mandatory including their participation in the formulation of development and land use plans. There should be a mechanism where the LGU, the IPs and the greater community are able to coordinate and participate in governance. Under existing laws, this seems to be the only available means.

Ultimately, much remains to be done to realize any of these options. For one, there is a fundamental need to have a complete mapping of the country that shows natural resources and the areas where IPs reside. Law provides this in the first place; but whether or not it is not expressly provided, it goes without saying that it is a requisite if the enjoyment of the essential rights of IPs is to be realized. There had been several initiatives in the DENR and NAMRIA since 1992 to undertake a complete mapping of the country. There should be an inventory so that relevant maps for LGUs and IPs are made available.

What is needed is best determined only with a complete understanding of what ADSDPP is, and is aptly provided in the NCIP primer. It “embodies the goals and objectives, policies and strategies of ICCs/IPs for the sustainable management and development of their ancestral domain and all resources therein including the human and cultural resources as their IKSPs”. This means that the fundamental need of a map, and therefore mapping itself require “local” understanding or familiarity. Expertise in mapping should be complemented by

anthropology, providing the needed understanding of particular IPs. This is the same with the LGUs. One reason why it has been taking so much time to have a complete map of the country is the failure of the national government to work with LGUs in mapping.

In essence, a joint memorandum circular (JMC) should lead to concrete actions by concerned agencies to ensure IP participation in governance, particularly in the formulation of ADSDPPs and its integration to local development and land use plans. There should however be a long term plan to fully integrate the rights of the IPs recognized by the state, to the operation of public institutions in the country, which is possible only with a comprehensive inventory of existing relevant laws and subsequently, introducing reforms to make all these a reality.

#### References:

Indigenous Peoples' Rights Act of 1997 (RA 8371)

Josefo B. Tuyor, et al. 2007. Indigenous Peoples Rights Act: Legal and Institutional Frameworks, Implementation and Challenges in the Philippines. Discussion paper, East Asia and Pacific Region. Social Development, and Rural Development, Natural Resources and Environment Sectors. Washington DC: World Bank.

Local Government Code of 1991 (RA 7160)

NCIP Administrative Order No. 1 Series 2004