
Philippines: Indigenous Peoples and the Convention on Biological Diversity

The Philippine archipelago is extremely rich in both biological and cultural diversity. It is one of the world's 12 biologically mega-diverse countries and hosts about 127 main cultural groups. Biodiversity, however, has been decreasing dramatically and the country is considered one of the most important hotspots (where conservation measures are urgently needed) on the planet. As such, the Convention on Biological Diversity (CBD) is quite relevant to the country and vice-versa. Indigenous organisations have been asserting that the history of biodiversity erosion in indigenous peoples' lands is linked to the conversion of lands into mining and logging concessions offered through political patronage, and inappropriate large-scale "development" projects like dams, plantations, etc. The CBD's provisions most relevant to Philippine Indigenous Peoples are those being discussed and advanced under the Ad-Hoc Open-Ended Inter-Sessional Working Group on the Implementation of Art. 8(j) and related provisions. At the last two CBD's Conferences of the Parties (COP5 in 2000 and COP6 in 2002) much of the work developed by the 8(j) Working Group has been adopted as official CBD resolutions. One aspect of this work that is particularly important for the theme being discussed here is the call for effective participation of local and indigenous communities in biodiversity management and policy-making at the local, national, regional and international level.

The CBD, however, might not be completely open to giving full recognition of indigenous peoples' rights although there is increasing realisation that environment and human rights should be dealt in an integrated rather than sectoral manner. As Vicky Tauli Corpuz --Executive Director of the Baguio-based Tebtebba Foundation (Indigenous Peoples' International Centre for policy Research and Education)-- put it "While it has established the rights of the nation-state over genetic resources, the CBD only acknowledged the need to respect, preserve, and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles. The right of indigenous peoples and local communities to have control over their genetic resources is not even included. With the sustained lobbying of indigenous peoples, however, together with NGOs and sympathetic governments, the elaboration of Article 8j has opened the space for the contracting parties to consider the links between respect of knowledge, innovations and practices and the rights of indigenous peoples over their territories and genetic resources".

The Philippines has been regarded as one of the most active and progressive countries in Asia (and possibly in the world) in terms of recognising the rights of indigenous peoples and developing legislation to implement some of the recommendations stemming from the Convention on Biological Diversity (CBD) in relation to bioprospecting. These were developed prior to the setting up of the Art. 8(j) Working Group in the CBD. In May 1995, President Ramos signed Executive Order 247 (EO247), Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources Their By-products and Derivatives, for Scientific and Commercial Purposes and for Other Purposes. Among the provisions referring to indigenous cultural communities (ICCs), EO247 states that the Inter-Agency Committee on Biological and Genetic Resources (IACBGR) --which it set up-- is mandated --under Section 7 (e)-- to "Ensure that the rights of indigenous and local communities wherein the collection or researches being conducted are protected, ...The Inter-Agency Committee, after consultations with affected sectors, shall formulate and issue guidelines

implementing the provisions on prior informed consent." In recent months, a new Wildlife Act that will have an impact on the scope and implementation of EO 247 has been adopted. The implementing rules and regulations (IRR) have yet to be finalized and the Act itself has not been put into action, but it is expected that these will impact on the definition and process of bioprospecting.

On October 29, 1997, the President signed Republic Act 8371, An Act to Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefore and For Other Purposes. This is commonly known as the "Indigenous Peoples Rights Act (IPRA) of 1997". Since 1997, many of the IPRA's strong points as well as weaknesses have been highlighted, to the point that while many indigenous groups still think that it can be used in a beneficial way, some others have called for the repeal of the law. Apart from the theoretical and practical ambiguities of the law --especially related to the confusing presence of ancestral domains and ancestral lands, the latter being individual claim, which opened the door to manipulation and commercialisation of indigenous lands-- one main criticism was that the National Commission on Indigenous Peoples (NCIP) does not represent the Indigenous Peoples as the Commissioners were mostly appointed by the President without proper consultation and --especially under the Estrada administration-- were either corrupt or inefficient, or both. The NCIP underwent radical restructuring during 2001 and a new set of Commissioners elected through a more participatory process at the provincial, regional and national levels, was instituted in mid-2001. There seems now to be more trust that the NCIP will truly work in the interest of indigenous peoples.

The Philippines can be considered an interesting testing ground for participatory and rights-based approaches to biodiversity management. This is illustrated by the National Integrated Protected Areas System (NIPAS) Act 1992, and by the use of the IPRA law. The NIPAS Act was introduced with the objective of developing a comprehensive protected areas system and integrate the participation of local communities in protected areas management and decision-making. The participatory approach is supposed to happen mostly through the Protected Area Management Board (PAMB), which is composed of government officers, NGOs, and local community representatives. Several NGOs and Community-Based Organisations, however, point out that in many cases the PAMB has not been functioning effectively due to a number of limitations varying from lack of documents in local languages and resources for meetings and workshops, to the fact that the PAMB's chairperson is a government officer and that local people are usually shy to voice their concerns in the presence of government officials. So, at the end, the decision-making power still remains firmly in the government's hands.

Due to the fear of losing control over their resources and destiny, some indigenous groups therefore opt to use the IPRA law to guarantee their rights over land, resources, culture and life rather than rely on externally-proposed participatory mechanisms. An illustrative case is that of the Calamian Tagbanwa of Coron Island, Calamianes Islands, North Palawan. The Tagbanwa of Coron Island have been living on a stunningly beautiful limestone island surrounded by water once rich in marine resources, their main source of livelihood. By the mid-1980s, not having secure legal tenure over these environments, the increasing encroachment by migrant fishers, tourism entrepreneurs, politicians seeking land deals, and government agencies interested in controlling various resources of the island, meant that they were fast losing control over their terrestrial and marine resources to the point that they were facing food shortages. They reacted by setting up the Tagbanwa Foundation of Coron Island (TFCI) in 1985 and applying for a Community Forest Stewardship Agreement (CFSA). They were awarded a CFSA covering the whole island and neighbouring, small, Delian Island, (for a total of 7,748 hectares) in 1990. Soon after they realised that their main source of livelihood, the marine waters surrounding the island were being degraded at an alarming rate by dynamite, cyanide

and other illegal and destructive fishing. Through the use of an Executive Order passed in 1993 that allowed the Department of Environment and Natural Resources (DENR) to issue Certificates of Ancestral Domain Claims (CADC), and the help of a national NGO (PAFID), in 1998 they managed to obtain the first CADC in the country that included both land and marine waters, for a total of 22,284 hectares. They produced high quality mapping of their territories, an Ancestral Domain Sustainable Management Plan, and followed up the development of the IPRA law, successfully using it to obtain a Certificate of Ancestral Domain Title (CADT) in early 2001. The title implies that the Tagbanwa are now in control of decision-making concerning the use and sustainable management of the island's resources. As TFCI Chairman Aguilar puts it "we are a living example of how IPRA can be used successfully by indigenous peoples". The CADC and CADT were put to prompt use when Coron Island was selected as one of the 8 sites under a DENR (EU-funded) national programme called the National Integrated Protected Areas Programme (NIPAP), 1996-2001. The ultimate intention of the DENR was (and still is) to gazette the whole island as a Protected Area, but this has so far not materialised because the Tagbanwa fear that they would once more lose control over the island, although they were promised majority participation in the PAMB. Having gained a CADT over the island they prefer to stick to their right-based approach to resource management rather than accepting an uncertain participatory approach through the PAMB. Several other indigenous communities in other parts of the country are looking at CADT over land and water as a tool to secure their rights.

The cases above suggest that the CBD can become a useful convention to the Philippine Indigenous Peoples only if it contributes to the development of participatory processes that genuinely confer a certain degree of Indigenous Peoples' control over decision-making, and --even more importantly-- openly recognizes and supports a stronger link between biodiversity, indigenous culture and knowledge and rights over territories and resources, thereby accepting right-based approaches to biodiversity sustainable management and conservation.

Despite these positive and interesting developments in participatory and rights-based approaches in the country, in the wider framework of development and environment policy, it should be noted that the economic growth paradigm of the Philippine government and its commitment to the globalisation agenda of the WTO, the International Monetary Fund, and the World Bank, is pushing for the further conversion of land into industrial uses (the Mining Act of 1995 being a notorious case), which will inevitably lead to more biodiversity and cultural diversity loss. How these tensions will play out and which priorities will prevail will deeply influence the future of biodiversity and indigenous peoples in the country.

By: Maurizio Farhan Ferrari, Forest Peoples Programme, e-mail: mfferrari@pd.jaring.my