Governance Issues and the NCIP

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ABSTRACT

The National Commission on Indigenous Peoples' (NCIP) implementation of the Indigenous Peoples' Rights Act (IPRA) has been the subject of a number of evaluative studies which, despite differences in focus, scope, and quality, have resulted in the general finding that the NCIP's performance has been dismal. Still, it would be unfair to put all the blame on the NCIP for the poor implementation of the IPRA. This paper attempts a nuanced evaluation of the NCIP which takes into account the broader historical, institutional, social, and political contexts within which the NCIP pursues its mandate. The assessment entailed the examination of secondary data, mostly news reports about the NCIP, complemented by data obtained from other published sources. The study finds that the NCIP's institutional behavior and performance have been greatly affected by a) presidential leadership and commitment to specific policy options; b) the nature of the agency's relationship with other relevant governmental bodies; and c) the susceptibility or vulnerability of governmental bodies and decision-makers to external pressures from interest groups and other political actors.

Keywords: National Commission on Indigenous Peoples, Indigenous Peoples' Rights Act, Indigenous Cultural Communities, indigenous people, governance, Philippine mining.

Introduction

On October 29, 1997, then Philippine President Fidel V. Ramos signed into law Republic Act No. 8371, more commonly known as the Indigenous Peoples' Rights Act (IPRA) which provided for the recognition of the entitlement of Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs) to ancestral domains, self-governance and empowerment, social justice and human rights, and cultural integrity. The IPRA also stipulated the merger of two old agencies—the Office for Northern Cultural Communities (ONCC) and the Office for Southern Cultural Communities (OSCC)—to create a new governmental body, the National Commission on Indigenous

Peoples (NCIP), which was to serve as the lead implementer of the said law. For Senator Juan Flavier, one of its principal sponsors in Congress, the IPRA was "primarily a social justice measure legislated with the perspective of ensuring protection for a group of people who have long been denied their rightful place in history" (PANLIPI 2007, 15). RA 8371 was enacted to rectify historical injustices committed against ICCs/IPs in the Philippines.

This essay offers a reappraisal of the NCIP's performance as the lead governing body on matters pertaining to ICCs/IPs in the Philippines. If "governance" is broadly understood as "the way those with power use that power" (McCawley 2005, 2), the enactment of the IPRA may be seen as providing the NCIP with the power to protect and uphold the rights of ICCs/IPs, i.e., the power to "govern" themselves in matters pertaining to their welfare. The author concedes that since its inception in 1997, the NCIP and its implementation of the IPRA has been the subject of a number of evaluative studies which differed in focus, scope, and quality. Yet, despite such differences, these assessments are in common agreement that the NCIP's performance or "governance" has been generally dismal. The paper basically agrees that the general assessment of dismal performance seems correct albeit incomplete. It would be unfair, on the basis of factors that will be discussed below, to put all the blame on the NCIP for the poor implementation of the IPRA.

The reappraisal of the NCIP's implementation of the IPRA being proposed here is premised on the recognition that governmental agencies do not exist in a vacuum—bureaucratic performance is shaped by the historical, institutional, social, and political contexts within which bureaucracies operate. In addition to factors internal to a governmental agency, bureaucratic performance is also shaped by external factors. Notable among these, particularly in a separation-of-powers system of government, are the agency's interaction with the executive, legislative, and judicial branches; its relationship with other agencies of the executive branch; and its susceptibility or imperviousness to pressures from competing interests in society, including those emanating from international actors or bodies. These factors constitute the paper's framework of analysis which seems consistent with Meier and Krause's (2006) position that analysis of bureaucracies ought to consider the **environment** within which bureaucracies operate, their **intrainstitutional** activities, their **interinstitutional** relationships, and **their interaction with the public.**

Note that the NCIP was assessed in previous studies mainly in terms of its capacity and/or its level of success in carrying out its mandated functions as stipulated in the IPRA. A review and critique of these evaluative studies is offered here with the intention of giving the reader a richer appreciation of NCIP's dismal record as implementer

of the IPRA. Meanwhile, the NCIP's performance under different presidential administrations is discussed in the subsequent pages to highlight the finding that presidential support bears significantly on the agency's performance.

The paper continues with a quick review and critique of past NCIP evaluation studies. The essay then proceeds to a nuanced account of the NCIP's implementation of the IPRA since the Ramos presidency up to the waning years of the Arroyo administration. This account is nuanced to the extent that it takes the form of a narrative highlighting the interaction of the NCIP, as an institution, with the president, other governmental bodies, and non-governmental entities.

Review of past studies

Garilao et al. (2002) offers what is perhaps the most comprehensive organizational assessment of the NCIP as implementer of the IPRA. Completed in 2002, the Garilao Report evaluated the NCIP's performance during its formative years. In light of its comprehensiveness, the Garilao Report may be seen as providing a template for subsequent organizational estimates of the NCIP.

The Garilao Report studied the NCIP in terms of a) **strategy**—the ability of the organization to translate "strategic directions into well formulated programs"; b) **structure**—the extent to which staff and line functions are clearly delineated, and regional and field offices are empowered to perform their functions vis-à-vis those of the central office; c) **systems and processes**—the existence of established operating policies, programs, and projects in addition to standardized methods of measuring performance; d) **staff**—the implementation of human resource development interventions to enhance internal competencies and motivate personnel; e) **program management** and finance—the "enhancement of resource management and mobilization systems;" f) **client focus**—the extent to which an organization's programs and projects are relevant to its intended clientele; and g) **leadership**—the ability to harness the resources of the bureaucracy to achieve targets and objectives.

Employing a combination of data-gathering methods, e.g., surveys, key informant interviews, and consultation workshops, Garilao et al. arrived at the following findings: 1) the NCIP's "strategic directions are not clearly defined and communicated to all units concerned" (2002, 21); 2) decision-making is too centralized and there is no clear delineation between staff and line functions; 3) regional and field offices lack organization and resources to meet the needs of their intended clientele; 4) operating policies, plans, and systems are not fully developed to support management directions; 5) operations

monitoring and control systems are weak; 6) the human resources development (HRD) function and systems are undeveloped; and 7) budgetary support for programs and operations is inadequate.

To address the inadequacies of the NCIP, Garilao et al. recommended, among others, the following: 1) the synchronization of plans and programs to be pursued by staff officers with goals and strategies set by top management; 2) the adoption of decentralization as management strategy in addition to the clear delineation of the functions and responsibilities of concerned offices; 3) the empowerment of regional and field offices; 4) the "manualization" of operating policies; 5) the formulation and development of human resources development policies; and 6) the adoption of an output-oriented mindset in program planning and budgeting.

An Asian Development Bank (ADB)-funded study by Rovillos and Morales (2005) echoed the assessment of Garilao et al. They shared the view that the NCIP suffered from 1) lack of leadership resulting in the NCIP's failure to perform its policymaking and adjudication functions and/or in an inability to coordinate the delivery of basic services to IPs; 2) organizational and staffing problems which hampered the institution's execution of its functions; 3) the deployment of officials who, by and large, were not qualified or equipped with the necessary skills to perform tasks mandated by the IPRA; and 4) the implementation of past policies and decisions detrimental to the operations of the NCIP. For Rovillos and Morales, the NCIP "has been unable to perform its tasks well" (2005, 15). They argued that the slow pace of processing and approval of Certificate of Ancestral Domain Title (CADT)/Certificate of Ancestral Land Title (CALT) applications was a clear indication of the NCIP's failure to perform its mandate.

Unlike the Garilao Report, however, Rovillos and Morales also paid attention to the impact of IPRA on Philippine society. The enactment of the IPRA has certainly increased public awareness about the issues and concerns of indigenous peoples. It has also prompted the emergence of several new indigenous peoples' organizations (IPOs) and national federations or alliances. The passage of the IPRA has encouraged IPs to organize at the community level and fostered community solidarities as by-products of community efforts to delineate ancestral domains and ancestral lands. Yet, the IPRA has, by the same token, also engendered disunities among the indigenous peoples and an increase in community-level boundary disputes. Some enterprising individuals and communities were induced by it to "invent" ethnic identities, ancestral domains, oral histories, etc.

In 2007, the Tanggapang Panligal ng Katutubong Pilipino/Legal Assistance Center for Indigenous Filipinos (PANLIPI) published its Initial Assessment of the Extent and Impact of the Implementation of

IPRA, covering the period 2002-2005. The study aimed to 1) determine the extent of the IPRA's implementation; 2) gather information about IP's perceptions of the IPRA; and 3) formulate recommendations for improving the IPRA's implementation.

The study specifically focused on the implementation of projects in connection with the five (5) major provisions or core components of the IPRA, namely: a) recognition of ancestral domain rights; b) protection and promotion of the right to cultural integrity; c) enforcement of basic human rights and engendering human development; d) supporting self-governance and empowerment; and e) strengthening the NCIP as an institution. One should note that the PANLIPI study did not regard the implementation of the IPRA as the sole responsibility of the NCIP. PANLIPI also looked into projects, programs, activities, etc. carried out by other departments and agencies of government which, directly or indirectly, affected IPs. PANLIPI also inquired into projects carried out by civil society organizations, NGOs, and indigenous peoples' organizations (IPOs) which had bearing on IPs and ICCs. What was laudable and unique about the PANLIPI study was the holistic and pluralist approach it adopted in assessing the implementation of the IPRA.

In determining the extent of the IPRA's implementation, PANLIPI sought to produce an inventory of activities carried out by governmental and non-governmental entities in each of the five core components of the IPRA. When the list was long in one component, the extent of the IPRA's implementation in relation to that particular component was considered to be great. Arguably, the practice of measuring the "extent of implementation" in terms of an "enumeration of projects or activities" can be problematic because it tends to create the impression that a single activity (like awarding a Certificate of Ancestral Domain Title [CADT]) would be comparable to or have the same weight as any other activity (like completing an area survey).

In any case, with regard to the first two key questions of the study, PANLIPI arrived at the following conclusion: "While the IPs appreciated the efforts of government at implementing the law, they emphasized the need for the NCIP to improve on the delivery of services. NCIP's services are not as efficient as they should be" (PANLIPI 2007, 83). Quite significantly, PANLIPI added that "the work of NGOs and IPOs in the implementation of the IPRA had been substantial, greater even than the interventions provided by government" (PANLIPI 2007, 64). Stated differently, one can notice significant progress in the fight for advancing IP rights and interests in the Philippines, but the campaign is spearheaded by NGOs and IPOs and not by government. The general perception among IPs then

is that NGOs and IPOs, and not the NCIP or any other governmental agency, are the actual principal implementers of the IPRA.

The PANLIPI study also revealed that the NCIP gave more importance to the delivery of social services than to the exercise of its other core functions. From its inception up to 2003, the NCIP focused more on social services. "Only a small number of programs and activities were geared towards legal protection and promotion of IP rights, suggesting low priority for this agenda" (PANLIPI 2007, 32). For PANLIPI, the priority given to social services was merely reflective of the NCIP's institutional origins. The result of the merger of the defunct Office for Northern Cultural Communities (ONCC) and Office for Southern Cultural Communities (OSCC), which in practice were more oriented toward giving IPs access to social services and scholarship grants, the NCIP, especially from 1997 to 2001, appeared, merely, to continue the work of its predecessors (PANLIPI 2007, 91).

The PANLIPI study also noted that while the promotion of IP rights is not the responsibility of one governmental agency alone, it nonetheless acknowledged that "most government agencies implement their programs, projects and activities in accordance with the development agenda of the national government" (PANLIPI 2007, 90). Since every national administration has its own development agenda, the level of attention and emphasis given to the programs and projects on IPs also changes, depending on a given president's vision for them. The priorities and agenda of presidents bear significantly on the implementation of policies like those affecting IPs.

Among the recommendations offered by PANLIPI, the following may be highlighted: 1) NCIP personnel need to adopt a mindset which regards IPs as empowered actors and participants in development; 2) the NCIP needs to seriously address problems involving its credibility; 3) the Philippine government as a whole needs to adopt a more coordinated, strategic, and programmatic approach to the promotion of IP rights; 4) government projects must be sensitive to differences among IP communities and responsive to their needs; 5) government needs to review and harmonize those policies and programs which affect IPs; and 6) government must allow greater IP participation in the formulation of policies, plans, and programs (PANLIPI 2007, 94-96).

In 2007 the World Bank (WB) conducted a study assessing the adequacy of existing legal and institutional frameworks in protecting the interests and rights of indigenous peoples in the Philippines. The study found that there is an adequate legal framework for the protection of IP rights in the country with the Constitution, the IPRA, and other Philippine laws and directives (e.g., the National Integrated Protected Areas System [NIPAS] Act, the Philippine Mining Act, the

Organic Act of Muslim Mindanao, the Philippine Environmental Impact Statement [EIS] System, and the administrative orders of the NCIP and the Department of Environment and Natural Resources [DENR]) contributing to the protection of IP rights. Still, the WB study acknowledged that "there are conflicting provisions of these various legal instruments and their implementing rules and regulations, including substantive, jurisdictional and procedural issues that are affecting the implementation of the IPRA" (WB 2007, 1).

As to institutional arrangements, the study pronounced an adequate institutional framework for the implementation of the IPRA despite the fact that "inadequate human, logistics and financial resources" have prevented the NCIP from effectively carrying out its mandate (WB 2007, 2). Major problems for the organization included the heavy workload of the NCIP vis-à-vis the lack of skilled personnel. The WB study cited the case of the NCIP's Ancestral Domain Office (ADO) which is tasked with the processing of Certification Precondition (CP)/Free and Prior Informed Consent (FPIC) applications, in addition to delineating ancestral domain areas, and issuing CADTs and CALTs. The NCIP also faced the difficult tasks of identifying and profiling IPs, and documenting customary laws and decision-making processes. To aggravate matters, the NCIP "does not have trained anthropologists to undertake ethnographic research and analyze and respond to cross-cultural problems" (WB 2007, 2). The WB study acknowledged that, given its huge mandate, the NCIP needs a bigger budget to allow additional plantilla positions.

The WB study considers the implementation of the FPIC provision of the IPRA as the NCIP's biggest challenge. The NCIP was a relatively young agency with meager resources, and inefficiencies were noted in how it operationalized the Certification Precondition/Free and Prior Informed Consent. These inefficiencies are mostly attributable to defects in the NCIP's structure and processes. The study reported that 1) the NCIP does not have a system of prioritizing projects in the processing the CP/FPIC applications; 2) it does not make use of existing knowledge on the general location of tribal populations; 3) there appears to be an inequitable distribution of its limited resources among its various offices and mandates, with more appropriated for personnel services and scholarships than to the implementation of programs and projects, including activities related to CP/FPIC and the delineation of ancestral domain; 4) the screening system for the presence of IPs is quite inefficient, resulting in a great number of projects being subjected to field-based investigations even if located far away from or outside of known IP areas; 5) the CP/FPIC process tends to take too long, even in areas outside of ancestral domains; and 6) some projects appear to have uncertain CP/FPIC results with

charges of manipulation against the NCIP being hurled by some interest groups claiming to represent the IPs.

The WB study acknowledged that the IPRA, through the CP/FPIC, has generally enabled the empowerment of IPs. The IPRA's effectiveness is, however, hampered by a number of factors, among them the NCIP's inability to implement the law. The WB study recommended the following to improve the implementation of the IPRA, especially the CP/FPIC process: 1) the harmonization of the IPRA with other existing laws; 2) prioritizing the identification and profiling of IP communities, delineating their territories and documenting their customary laws and decision-making process; 3) prioritizing the organizing of IPs and accrediting IP organizations; 4) pre-screening of municipalities, cities and provinces or areas not subject to the CP/FPIC process; 5) enhancing the NCIP's organizational and technical capacity and building the capacity of IPs; 6) improving the efficiency of the CP/FPIC process while simultaneously strengthening its credibility; and 7) assessment of the long-term impact of the IPRA on the lives of IPs.

For the proponents of the WB study, an estimation of the long-term impact of the IPRA is needed to establish whether the IPRA has, in fact, made a positive difference for IPs in the Philippines. Such a study will require a systematic monitoring of how the IPRA has helped to transform or failed to make a difference in the lives of its intended beneficiaries. It should be noted that the WB study, while reiterating the findings of previous studies, paid greater attention to the NCIP's efficiency in facilitating the FPIC process. It gave little attention to the other functions of the NCIP.

In August 2008, the Asian Indigenous and Tribal Peoples Network (AITPN) released a report, "National Commission on Indigenous Peoples of the Philippines: The Contest for Control," which evaluated the NCIP's performance since its creation in 1997. Unlike most analyses of the NCIP, the AITPN report highlighted the bearing of presidential power on the performance of the NCIP. Among other things, the report drew attention to the discretionary power exercised by the president in the appointment and removal of NCIP commissioners and in the transfer of the NCIP from one executive department to another.

The AITPN observed that rules governing the appointment and removal of NCIP commissioners are rather unclear and have actually allowed the sway of "executive caprice" (AITPN 2008, 16) in such matters. In practice, NCIP commissioners serve at the pleasure of the president, making them extremely vulnerable to presidential influence and political blandishments. Under current rules, the commissioners' independence and commitment to advancing the welfare of IPs are easily compromised and set aside.[1] The rules also

failed to set high standards for the selection of NCIP commissioners. According to the AITPN, the flaw in the appointment process was already evident as early as February 1998 when the first batch of NCIP commissioners was appointed. Some of the commissioners did not belong to ICCs. At least five of the appointees were investigated by the Department of Justice (DOJ) in 1998 for graft (AITPN 2008, 17). The flawed appointment process had produced a commission that lacked credibility and elicited very little respect (AITPN 2008, 15-19).

In September 2004, the NCIP was placed under the Department of Agrarian Reform (DAR) and then transferred to the Department of Environment and Natural Resources (DENR) in May 2008. For the AITPN, moving the NCIP from one department to another "is unlikely to improve (the) functioning of the NCIP" (AITPN 2008, 1). The practice can easily confuse the NCIP personnel as to their chief mandate and chain of command. It also indicates that the president effectively sees the mandate of the NCIP to promote IP rights as subordinate to the mandates of executive departments.

Lusterio-Rico et al. (2009) meanwhile report that, for the most part, the NCIP is ineffective in its implementation of the IPRA, and this can be attributed to a number of factors, including: a) the NCIP's lack of financial resources; b) the lack of qualification (educational, technical, ethnic background, knowledge about the IPRA) of NCIP personnel; c) pro-FPIC processing bias of NCIP personnel vis-à-vis the processing of CADTs/CALTs; d) pro-mining directives issued by the Office of the President at the expense of pro-IPRA issuances; and e) corrupt bureaucratic behavior.

The foregoing discussion raises a number of points. Firstly, there is a common conclusion among previous assessments that the NCIP's implementation of the IPRA has been less than satisfactory. The NCIP's poor implementation of the IPRA was generally attributed to certain internal inadequacies in financial, logistical, and human resources. These inadequacies have been compounded by inefficient organizational arrangements, flawed rules governing appointments and removals, shortcomings in leadership (or managerial skills), in addition to a debilitating mind-set among NCIP personnel and other government officials characterized by a seeming lack of appreciation of the NCIP's important mission.

Secondly, despite differences in focus, the studies cited here seem to complement each other especially in their assessment of the NCIP's organizational structures and operation. Rovillos and Morales and the WB study, however, have raised the important point that there is a need to look beyond the NCIP and to consider the long-term impact of the IPRA on Philippine society itself. But apart from looking into the impact of IPRA on society, one ought to have a reciprocal consideration of how society affects the NCIP and its implementation of the IPRA.

Instead of studying the NCIP as a decontextualized entity, one might find it more fruitful to look at the NCIP as an "organism" that exists and operates within a social, political, and historical context. Any thorough assessment of the NCIP should also take into account the external context of its behavior.

Thirdly, the Garilao Report provides comprehensive data against which the findings of the present study can be compared. Indeed, the Garilao Report can function as a template for subsequent assessments. Future evaluative studies should consider replicating the pertinent elements of the Garilao Report so as to produce findings that are comparable to the results generated almost a decade ago. There is also the need to validate findings, particularly of more recent studies, on matters like the pro-FPIC processing bias of NCIP personnel and the pro-mining directives from the Office of the President. These aspects should be addressed by future studies. In the conduct of the present study, the Garilao Report's nuanced approach to the examination of the NCIP, for instance, distinguishing between NCIP central and NCIP field office tended to yield a thicker, more textured assessment of the organization as a whole.

It was the aspiration of the present study to produce a more nuanced evaluation of the NCIP, one which takes into account the historical, institutional, social, and political contexts within which the NCIP performed its mandate. Secondary data, mostly from news reports about the NCIP were culled from *BusinessWorld* coverage containing the identifying terms "NCIP" or "National Commission on Indigenous Peoples" and "Indigenous Peoples" for the period from November 1996 to June 2010. Complementary data obtained from other published materials rounded off the research database for this assessment. In conducting the study, the author sought to identify the factors that bore significantly on the NCIP's performance.

The following were identified as having considerable influence on the NCIP's institutional behavior and performance: a) presidential leadership and commitment to specific policy options; b) the nature of the agency's relationship with other relevant governmental bodies; and c) the susceptibility or vulnerability of governmental bodies and decision-makers to external pressures from interest groups and other sources.

Historical narrative of NCIP performance

The following section offers a historical narrative of NCIP's institutional behavior vis-a-vis the presidential administrations of Fidel Ramos, Joseph Estrada, and Gloria Macapagal-Arroyo. In

it the author argues that the three (3) aforementioned factors bore significantly on the NCIP's performance as implementer of the IPRA.

Fidel Ramos (1992-1998)

The IPRA, the legal basis for the creation of the NCIP, was enacted during the presidency of Fidel V. Ramos who pursued the promotion of indigenous peoples' rights as part of his Social Reform Agenda (SRA). Pres. Ramos essentially saw the advancement of IP rights and the resolution of IP issues, including the recognition of ancestral domains, as a precondition to the attainment of "peace" in the Philippines (Lusterio-Rico 2006, 160). Interestingly, Pres. Ramos also supported the revitalization of Philippine mining by signing into law R.A. 7942, or the Philippine Mining Act, on March 3, 1995. The passage of the Mining Act of 1995 was a component of his administration's Medium-Term Philippine Development Plan (MTPDP), popularly known as Pres. Ramos' vision of "Philippines 2000"—the country's attainment of newly industrialized country (NIC) status by the year 2000.

It is important to stress that for many advocates and activists the promotion of mining and the advancement of IP rights are diametrically opposed policies. On the other hand, Pres. Ramos' broad support for IP rights and the revival of Philippine mining suggests that, from his perspective, the two policy positions are reconcilable. In any event, Pres. Ramos publicly articulated a vision of development that was premised on the liberalization of the economy, including the mining industry, and the resolution of social conflicts, including IP issues. As to his approach to policy-making, Ramos encouraged multisectoral consultations and dialogues, and the participation of civil society organizations.

Occuring in March 1996, between the passage of the Mining Act of 1995 and the IPRA of 1997, was the Marcopper mining disaster which saw the spillage of more than a million cubic meters of mine tailings into Marinduque's Boac River. The incident stirred anti-mining sentiment in the country and contributed to the polarization of Philippine society on the issue of mining. The Marcopper tragedy provided a rallying point for people who saw mining as a threat to society and ecology. These included the environmentalists, who oppose mining primarily on ecological grounds; the IP rights advocates, who basically see mining as threatening the rights of indigenous peoples to their ancestral domains; the leftists, who see mining as a manifestation of capitalist exploitation; and the church-based anti-mining groups who regard mining as a threat to spiritual well-being and/or as detrimental to poor communities. Note that the groupings are not mutually exclusive.

Unlike Pres. Ramos who regarded the revival of Philippine mining and the promotion of IP rights as reconcilable policy positions, pro-mining advocates, led by the Chamber of Mines of the Philippines (CMP), saw the passage of the IPRA and the creation of the NCIP as threats to the promotion of Philippine mining. Only a few days after the enactment of the IPRA, *BusinessWorld* reported on November 10, 1997 that mining executives were worried that the IPRA's proposed Implementing Rules and Regulations (IRR) might "unduly jeopardize" existing mining rights and projects. On June 28, 1998, just a few months after IPRA's enactment, and only a few days after the end of Ramos' term, *BusinessWorld* reported that the Chamber of Mines was already contemplating the filing of a case before the Supreme Court seeking to invalidate the IPRA.

IPRA's enactment in 1997 was indeed a milestone in the struggle for the recognition of indigenous peoples' rights in the Philippines. It can be seen as a result of IP efforts more than a decade earlier to lobby for a delegate to the 1986 Constitutional Commission from the IP sector. Those initiatives resulted in the inclusion of pro-IP provisions in the 1987 Constitution which, in turn, prompted the drafting of an enabling law for advancing IP rights in the Philippines, the IPRA. IPRA's passage brought to the surface long-concealed tensions between indigenous peoples and mining interests in the Philippines. Inasmuch as mineral deposits are often found in areas inhabited and claimed by IPs as part of their ancestral domain, the IPRA's recognition of indigenous peoples' rights to ancestral domains is predictably seen by many pro-mining advocates as a troubling development. In effect, IPRA's enactment formalized the often contentious relationship between IPs and mining interests over ancestral lands/mining areas. Early initiatives aimed at prompting formal state recognition of IP rights soon gave way to vigilant and sustained efforts directed at securing the gains of the IP movement. Quite significantly, these efforts are manifested at various levels (community, national, and international) of political interactions. The response of IPs to mining firms can vary from opposition, accommodation, or negotiation. In any case, the IPRA bolstered the status of IPs as significant political actors in the eyes of pro-mining advocates. From the enactment of the IPRA up to the present, the IP sector in the Philippines has been active in opposing the entry or continuation of mining operations in certain communities; negotiating greater benefits in communities where firms are allowed to operate; lobbying for more IP-friendly policies; lobbying for a more responsive NCIP; organizing, mobilizing, and empowering IPs, etc. Clearly, the IP sector in the Philippines has taken advantage of the democratic space that came into view after the collapse of Marcos dictatorship and has, since then, established itself as a significant voice in Philippine politics, a force which business firms and the Philippine

government have to contend with. Still, despite the huge progress of the IP movement in the Philippines, mining interests are also deeply entrenched in Philippine social, economic and political life that, as suggested by Joji Cariño (2010), proponents of Philippine mining and advocates of IP rights seem to be in state of "stalemate." The IPRA's passage has compelled the mining sector to rely on its influence and resources to match the vigor and vigilance of IP movement in the Philippines. As will be discussed below, presidential administrations after Cory Aquino have often found themselves swaying between these two rival positions, apparently seeking some workable balance between advancing IP rights and promoting mining.

The passage of the Ramos-supported IPRA would not only pit mining interests against indigenous peoples, it would also lead to inter-agency/inter-department squabbles, most notably between the Department of Environment and Natural Resources (DENR)-Mines and Geosciences Bureau (MGB) and the NCIP, especially in the very early years of the NCIP during the administration of Joseph Estrada, Ramos' successor. One can characterize the NCIP's initial interactions with the DENR and MGB during the latter months of the Ramos presidency and the early part of Estrada's term as mostly contentious, or even adversarial.

A *BusinessWorld* news article which appeared on November 10, 1997 reported that the DENR saw that it should be involved in the drafting of the IPRA's implementing rules and regulations (IRR) mainly because of the time and resources it had already spent, in collaboration with mining executives, in drafting a pro forma Financial and Technical Assistance Agreement (FTAA) contract to jumpstart the sluggish mining industry. The DENR apparently did not want its efforts to go to waste on account of a potentially mining-unfriendly IRR. On June 11, 1998, *BusinessWorld* reported that the MGB submitted to the NCIP "in behalf of mining firms" comments and suggestions on the proposed IPRA IRR. A few weeks after, on June 26, 1998, a *BusinessWorld* news article announced that the NCIP "did not incorporate the suggested revisions."

Among other things, the inter-agency squabbles between the NCIP and the DENR-MGB involved questions of institutional jurisdiction, i.e., which agency has the legal mandate to approve mining permits, FTAAs, etc. (*BusinessWorld*, November 10, 1997; *BusinessWorld*, August 11, 1998). It is noteworthy that by the time the IPRA was enacted, the CMP already enjoyed the support of the Department of Environment and Natural Resources and the Mines and Geosciences Bureau. With IPRA's passage and the creation of the NCIP, the formulation of policies pertaining to indigenous peoples and mining (e.g., the IPRA's Implementing Rules and Regulations [IRR], the delineation of institutional powers and functions of the National

Commission on Indigenous Peoples, Department of Environment and Natural Resources, and the Mines and Geosciences Bureau, etc.) would become the object of intensive lobbying by competing interest groups.

The AITPN (2008) study offers an illustrative account of the intra-governmental wrangling involving the NCIP on issues of jurisdiction. It reports:

> [T]he statement of Ms. Myrna L. Caoagas, Director, Ancestral Domains Office of NCIP at the National Seminar about the problems faced by NCIP while approving survey plans for Certificate of Ancestral Domain Title (CADT) is instructive:
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> > NCIP faced problems for approving survey plans. Other agencies including the Department of Environment and Natural Resources (DENR) questioned the authority to approve the surveys. Therefore, NCIP had to hold several meetings to sort out the differences because according to the DENR, it is the only competent authority to approve surveys. Again when the NCIP registered the CADTs, the Land Registration Authority (LRA under the Department of Agrarian Reform) created problems saying as to how NCIP can register ancestral lands and ancestral waters. They cited the lack of appropriate reference book saying that in the Presidential Decree there is no reference to the Ancestral Domain and Ancestral Land. So, the LRA people would ask what book we are going to refer for registration of Ancestral domains and Ancestral waters. And again, we had to sit down with them to solve the problems through memoranda and agreements. (AITPN 2008, 1)

The AITPN's account suggests that questions over its jurisdiction and mandate have always hounded the NCIP since its inception.

Joseph Estrada (1998-2001)

The populist leader, Joseph Estrada, succeeded Ramos in 1998. Unlike Ramos, Estrada employed a more personalistic approach to decision-making. A cursory appraisal of some of his policy pronouncements would give the impression that he was pro-IP rights and anti-mining. Scrutiny of his actions would, however, suggest otherwise.

On August 2, 1999, *BusinessWorld* reported that he threatened to work for the Mining Act's repeal primarily because it is "disadvantageous to the country's indigenous peoples." Pres. Estrada, however, had appointed in 1998 a non-IP person with "no IP advocacy experience" as Executive Director of the NCIP to the dismay

of the IP sector[2] (*BW*, December 24, 1998). He also appointed as DENR Secretary Antonio Cerilles who was staunchly rejected by advocates of IP rights but openly supported by the CMP (*BW*, August 20, 1999). In 1999, Pres. Estrada stubbornly reappointed Cerilles to the top post of the DENR despite his nominee being bypassed by the Commission on Appointments twice.

Earlier, on September 21, 1998, Pres. Estrada's Executive Secretary, Ronaldo Zamora, issued Memorandum Order No. 21 (MO 21), "Creating an Ad Hoc Committee to study issues relative to the constitution and administrative set up and operation of the national Commission on Indigenous Peoples." The order also instructed the Department of Budget and Management (DBM) to withhold the release of the NCIP's Maintenance and Other Operating Expenses funds pending the result of investigations involving NCIP commissioners. One may see this as the beginning of the emasculation of the NCIP. Reporting on the matter, the AITPN argues:

> During its first three years, the NCIP was virtually crippled down following non-release of operational funds through Memorandum Order (MO 21)… As the Maintenance and Other Operating Expenses funds were not released, almost all programs and projects remained unimplemented and delayed the processes for the review and formulation of new administrative program and policies. No survey or land delineation could be made as well. (AITPN 2008, 19-20)

On September 28, 1998, retired Justice Isagani Cruz[3] filed a case before the Supreme Court challenging the constitutionality of the IPRA (*BW*, September 29, 1998). In 1999, the Department of Budget and Management (DBM) slashed the NCIP's proposed budget from an original budget of PhP 979.963 million to PhP 351.918 million (*BW*, October 20, 1999). Retired Justice Cruz' petition against the IPRA alongside Executive Secretary Zamora's Memorandum No. 21 and other subsequent similar issuances and decisions thwarted the full implementation of the IPRA in its first three years. The NCIP was effectively paralyzed during the Estrada presidency (Bello et al. 2004, 229).

As suggested above, interest group lobbying intensified during Estrada's assumption of the presidency. Earlier, on October 7, 1998, a *BusinessWorld* news article reported that the Estrada government constituted a task force "to harmonize the conflicting provisions" of the Mining Act and the IPRA in light of warnings that mining firms would pull out their investments given the unfavorable policy environment created by the passage of the IPRA.

Succumbing to the pressure exerted by mining interests, the NCIP in the last quarter of 1998 released supplemental guidelines aiming to

reconcile the provisions of the IPRA and the Mining Act. A highlight of the NCIP-released guidelines was the clarification that the DENR will retain the power to issue mining permits (*BW*, October 16, 1998). The NCIP guidelines also stipulated that "all (existing) permits, licenses, and all other contracts" will be recognized (*BW*, October 23, 1998). In what appears to be a concession for IPs, the Estrada government, particularly the Board of Investments (BOI) raised from 1% to 2% the revenue share of communities affected by mining operations.

The Estrada presidency was short-lived but it paved the way for the institutional emasculation of the NCIP. From its initial combative stance during the latter part of the Ramos presidency, the NCIP soon adopted a more compliant or non-combative posture in its dealings with the DENR and MGB. At this point, the pro-mining bloc appeared to have established a foothold in the DENR and MGB. One should also note that during the Estrada presidency the pro-mining bloc had successfully employed the threat of disinvestment to get the attention of government.

Gloria Macapagal-Arroyo (2001-2010)

Arroyo's ascent to the presidency initially gave the impression that her administration intended to continue the legacy of the Ramos presidency of relying upon civil society participation, dialogues, and consultations in the formulation of policies. This would be a short-lived hope. The "people power" coalition that brought her to the presidency eventually became highly critical of her administrative style. A quick assessment of her policy pronouncements would also give the impression that she strongly shared Ramos' view that no contradictions existed between mining interests and IP rights. While Pres. Arroyo paid lip service to advancing IP rights, it soon became very clear that she was more committed to the revival of the Philippine mining industry.

Still, in the earliest days of her presidency, President Arroyo showed keen interest in breathing some life back into the NCIP. On February 20, 2001, she issued Executive Order No. 1 which placed the NCIP under the supervision of the Office of the Presidential Adviser on Indigenous Peoples (OPAIPA). Former Ambassador to the Vatican, Howard Dee, was appointed Presidential Adviser on IP Affairs. The OPAIPA was to exist and operate up to 2002. In 2002 at the end of his term as presidential adviser, Dee submitted to Pres. Arroyo a report which contained the following statements:

> . . . the effective implementation of the IPRA law is the litmus test of the Macapagal-Arroyo administration and the President is relying on the newly constituted NCIP to make good her promise

> of awarding ancestral domain titles to 100 indigenous peoples communities every year for the next three years to complete this process in 2004. (PANLIPI 2007, 37)

At this point it bears noting that Dee's statement had set a closing date—the year 2004—for the issuance of ancestral domain titles.

The OPAIPA reorganized the NCIP with the intention of revitalizing the agency with "motivated and skilled personnel imbued with a new sense of purpose to bring justice and service to IP communities" (PANLIPI 2007, 38). The OPAIPA subjected the NCIP to a performance review and an institutional audit. A new commission was reconstituted after a series of regional consultations. In August 2001, seven (7) commissioners were appointed by the president with Atty. Evelyn Dunuan serving as Chairperson of the Commission.

In one year, the OPAIPA was able to accomplish the following: 1) the drafting of prototype guidelines for the processing of CADTs and the issuance of PICs; 2) the creation of a task force to respond to cases involving allegations of gross injustices to IPs in 2001; 3) greater coordination among governmental agencies in the delivery of services to IP communities; 4) securing Official Development Assistance (ODA) and other external resources to strengthen the NCIP and to help IP communities; 5) recommending the launching of a public awareness campaign to generate greater support for the IPRA and the promotion of IP rights (PANLIPI 2007, 38-40).

The OPAIPA's revitalization of the NCIP seemed to carry over into 2003 when the commission, in collaboration with the ILO, crafted the Medium Term Philippine Development Plan for Indigenous Peoples (2004-2008) whose aim was to further rationalize the implementation of the IPRA. The plan identified specific concrete projects and programs for each of the five key components of the IPRA which the plan regards as constituting the NCIP's sectoral agenda.

But like its predecessor, the Arroyo administration provided little financial support for the NCIP. AITPN (2008, 20) reports:

> Upon assumption of office, the Macapagal administration too neglected and refused to provide adequate funds to the NCIP to fully implement its programs and projects. NCIP's budget for FY 2002 went through a rigorous budget process before the Congress finally approved it. Although, NCIP proposed Pesos 1.03 Billion for FY 2002 to fully implement IPRA but after deliberations in the technical budget review, the Department of Budget and Management (DBM) recommended a Budget ceiling of Pesos 390 Million. Later, the NCIP budget for FY 2002 was approved to Pesos 408,846,000.00 which was almost 60% reduction from the proposed Pesos 1.03 Billion.

On November 13, 2003, Pres. Arroyo announced that her administration's policy "is no longer just mere tolerance but active promotion of sustainable mining" (PGMA, speech during the 50th Anniversary of the Philippine Mines Safety and Environment Association and the Annual National Mines Safety and Environment Conference, November 13, 2003). On January 16, 2004, Pres. Arroyo issued Executive Order No. 270 which sought to streamline mining-related applications and procedures and called for the drafting of a Mineral Action Plan (MAP) (*BW*, January 22, 2004). Additionally, Pres. Arroyo's aggressive promotion of mining would lead the NCIP in 2006 to revise the guidelines governing the processing of Free, Prior and Informed Consent (FPIC) applications, shortening the period for completing the FPIC process from 180 days to 90 days (AITPN 2008, 29).

Arroyo's enthusiasm for the revitalization of the Philippine mining industry would be dampened by the Supreme Court's January 27, 2004 ruling which declared the FTAA provisions of the Mining Act of 1995 unconstitutional.[4] But Pres. Arroyo could not be deterred in her desire to promote the mining industry. She instructed her lawyers to file a motion for reconsideration before the Supreme Court. Government and the pro-mining bloc thus prepared for another legal battle at the Supreme Court.

She also mobilized every possible department of government to engage in activities that were consistent with her policy of actively promoting mining. Given that the Supreme Court's January 2004 ruling on the constitutionality of the Mining Act was not yet final, the DENR, and other pertinent agencies "carried out their business as if provisions of the Mining Act had not been invalidated in January 2004" (Ciencia 2010, 174). In April 2004, the DENR came out with a final draft of the Mineral Action Plan. Earlier in February 2004, the Department of Trade and Industry (DTI) announced its commitment to making mining a priority investment area in the country. In mid-2004, the National Economic Development Authority (NEDA) issued its Medium-Term Philippine Development Plan (MTPDP) declaring its support for the revitalization of Philippine mining. The involvement of the Department of Foreign Affairs (DFA) was enlisted as well. Pres. Arroyo instructed the DFA to "encourage foreign governments and businessmen to invest in mining in the Philippines" (Ciencia 2010, 175). As for the NCIP, news articles in mid-2004 speak of the agency as facilitating the awarding of land to IPs in different parts of the country (*BW*, March 10, 2004; *BW*, April 14, 2004). Given Pres. Arroyo's all-out support for mining, the NCIP played a subordinate and mostly acquiescent role in her government.

But in late 2003 and early 2004, Philippine society was gripped by claims about an impending "fiscal crisis" (*BW*, December 11, 2003;

BW, January 27, 2004). In her State of the Nation Address in July 2004, Pres. Arroyo admitted that the budget deficit was the country's most urgent problem (PGMA "State of the Nation Address" 2004). In August, Pres. Arroyo would acknowledge that the Philippines was in "fiscal crisis" (*BW*, August 24, 2004).

Quite interestingly, the fiscal crisis of 2004 would become the pro-mining bloc's rallying point for the revitalization of Philippine mining. Some pro-mining advocates actually called on the Supreme Court to reverse its original Mining Act ruling in light of the fiscal crisis. The following news headlines are representative of the pro-mining bloc's press releases:

Publication, Date	Headline
BusinessWorld, Jul 13, 2004	Gov't urged to develop mining sector to help plug deficit
Philippine Daily Inquirer, Sep 11, 2004	Defensor: Mining way out of crisis
Philippine Daily Inquirer, Sep 17, 2004	Foreign ownership way to revive mining industry
Philippine Daily Inquirer, Sep 29, 2004	De Venecia: Mining industry revival to benefit RP
BusinessWorld, Oct 1, 2004	RP may lose $3.5B if High Court rules against Mining Act
Philippine Daily Inquirer, Nov 21, 2004	Gordon: Revived mining industry would boost RP

Table 1. News of mining as answer to the fiscal crisis.

In December 2004, the Philippine Supreme Court reversed its original Mining Act ruling and upheld the constitutionality of the FTAA provisions of the Mining Act. It is certainly debatable whether it was the "fiscal crisis" of 2004 which explains the Court's reversal. In any case, the events of 2004 lend some support to the following observations:

a) Pres. Arroyo was strongly committed to the promotion of mining;
b) Pres. Arroyo actively mobilized her departments to promote mining;
c) Pres. Arroyo was successful in her mobilization efforts;
d) The pro-mining bloc was mobilized to generate support for mining; and
e) The "fiscal crisis" of 2004 provided the pro-mining bloc with an argument for promoting mining.

The Supreme Court's reversal was certainly a major setback for the anti-mining groups, including IP rights advocates, but it did not signal the end of the anti-mining movement. It only signaled the need for a change in strategy. Whereas the object of contestation during the first year of the implementation of the IPRA was the formulation of its IRR, and the object of contestation in 2000 and 2004 was the constitutionality of legislative measures, after the upholding of the Mining Act in December 2004, the object of interest group struggles soon became the process of obtaining the consent of IP communities. Hence, the group which called itself the "Defend Patrimony" Alliance acknowledged that it shifted its focus to "helping local communities resist mining ventures" (*BW*, February 10, 2005). In October 2005, Peter Wallace, a prominent advocate of Philippine mining, admitted that the difficulty in getting the consent of IPs was among those factors which discouraged big mining companies from investing in the country (*BW*, October 13, 2005).

NCIP transferred from one department to another

The Arroyo administration transferred NCIP to the DAR on September 27, 2004, and to the DENR on May 23, 2008. Executive Order No. 364, as amended, justified the move to the DAR on the basis of the need "to consolidate in (the DAR) all concerns regarding asset reform which cover, among others, ancestral domain reform" (EO No. 11 2010). It appears that the transfer was also motivated by the desire to make the registration procedures for ancestral lands and ancestral domains consistent, if not compliant, with those of the Land Registration Authority (LRA) which is under the DAR.

Executive Order No. 726 stipulated that the transfer to the DENR was based on the need to "help preserve the cultural and natural heritage of ICCs/IPs" (EO No. 11 2010). As in the previous case, the transfer to the DENR appears to have been prompted by Pres. Arroyo's desire to make NCIP policies consistent with the pro-mining policy of her administration.

Interestingly, on August 1, 2008, Executive Order No. 746 provided for the temporary transfer of the NCIP to the Office of the President for a period of six (6) months due to "developments in the local and international socio-political landscape at that time which required priority attention from the highest government authorities" (EO No. 11 2010). The author surmises that EO 746 was issued in light of the Memorandum of Agreement on Ancestral Domain (MOA-AD) which was being forged at the time by the Arroyo administration with the Moro Islamic Liberation Front (MILF). In any case, the NCIP would later revert back to the DENR.

On November 2008, by virtue of Executive Order No. 11, the NCIP was again transferred to the Office of the President to "ensure concerted efforts in formulating and implementing policies, programs, and projects geared towards the protection and promotion of the rights and welfare of Indigenous Communities/Indigenous Peoples" (EO No. 11 2010). This brief narration of the NCIP's transfer from one office to another underscores the point that the NCIP is hardly the independent agency described in section 40 of the IPRA.[5]

International financial support and fluctuating government commitment to IP rights

A somewhat unrelated news item which appeared in the last quarter of 2004 reported that the World Bank gave the Philippine government a $1.14 million grant for a project aimed at helping IPs and training NCIP staff (*BW*, 26 October 2004). A similar news report was released in May 2005 which spoke of a $1.45 million development program for IPs to be funded by the United Nations Development Program (UNDP) and the New Zealand Agency for International Development (NZAID) (*BW*, 27 May 2005). These news articles had the effect of foregrounding the question of the Philippine government's insistence on keeping the IPRA and the NCIP when it seemed more interested in the investments that mining would bring. It appears that the existence of pro-IP policies was now also bringing in additional money for the government.

In late 2005, the pro-mining bloc experienced a Marcopper-type setback with the occurrence of the Lafayette cyanide spill in Rapu-Rapu, Albay. In response to the incident, the Philippine government imposed a "moratorium on new mining tenements" which prompted protestations from the Chamber of Mines of the Philippines (CMP) (*BW*, September 12, 2006). The CMP also decried the local government units' imposition of "mining bans" under the Local Government Code, in addition to existing NCIP certification and consent requirements.

The CMP felt that the government had again flip-flopped on its mining policy. The DENR, however, insisted that it "remained committed to promote environmentally sound mining" (*BW*, September 14, 2006). It may be the case that it was not really the mining policy which changed but the government's willingness to implement policy. Still, the CMP's protestations and a review of past actions of government indicate that government, particularly the DENR, is highly sensitive to external pressure from lobby groups, creating the perception that government policy is inconsistent.

News articles from 2006 to 2010 mostly reported on: a) issues related to the procurement of Free Prior and Informed Consent

(FPIC) certificates; b) proposals to obtain additional benefits for IP communities allowing mining operations in their areas on top of the 1% royalty guaranteed; c) the continued opposition of church-based groups to mining; d) the concept of ancestral domains in the Memorandum of Agreement on Ancestral Domains (MOA-AD); and e) World Bank-funded projects for IPs. Such considerable reportage indicates that IP issues are certain to be continually debated and negotiated, and one can expect the government to continue officially advocating the promotion of IP rights.

The news articles also spoke of the NCIP as performing routine duties, e.g., the awarding of land titles to claimants, issuance of certificates of precondition, issuance of clearance, granting of mining tenements, etc. The NCIP's functions, from these accounts, have somehow begun to get normalized after years of institutional uncertainty.

Conclusion

The foregoing discussion raises the important point that a fair assessment of the NCIP's implementation of the IPRA needs to take into account the multiple contexts in which the NCIP functions. Its ability or failure to successfully implement the IPRA and accomplish its mandate is often shaped by factors that are outside its control. As the government agency tasked to implement the IPRA, the NCIP's performance is not only determined by the availability of ample funds, logistical support, qualified personnel, etc. It is also affected by factors like a) the type of leadership provided by the Philippine president who heads the executive branch, and his/her commitment to specific policy options; b) the nature of the agency's relationship with other governmental bodies; and c) the vulnerability of the agency to external pressures from interest groups and other sources.

Fidel Ramos was nearing the end of his presidency when the NCIP was created. He did not have the opportunity to leave a lasting imprint on the NCIP apart from signing into law the bill that created it. Joseph Estrada had the opportunity to interact with the NCIP a little longer than Ramos, but he did not seem really committed to the goal of advancing IP rights. He also seemed to lack the appropriate leadership style required of a chief executive. Gloria Macapagal-Arroyo had a more professional approach to policy-making unlike Estrada and she seemed very committed to her policy positions. Unfortunately, for the IP sector, Arroyo was strongly committed to the promotion of Philippine mining, a policy position that for many people is inconsistent with the promotion of IP rights. Thus, it appears

that the IP sector in the Philippines still has to meet a president who will truly champion the cause of advancing IP rights.

One can speculate that the NCIP's generally dismal performance in implementing the IPRA is in part shaped by the ambivalence, if not, indifference of past presidents toward IP issues. Past evaluations of the NCIP have attributed the NCIP's poor performance mostly to factors like the lack of finances, logistics, qualified personnel, etc. It appears that all these, in turn, are attributable to a deeper and more fundamental reason—lack of presidential commitment to IP concerns.

NCIP evaluation studies must also consider the point that the agency's performance is shaped by its dealings with other relevant governmental bodies, the importance attached by policy-makers to the functions of the agency, and its role in government. The NCIP's relationship with the DENR and MGB during the Ramos presidency may be described as contentious or adversarial. The Estrada presidency emasculated the NCIP by depriving it, among other things, of much needed financial resources. As for the Arroyo presidency, its active promotion of mining had effectively led to the NCIP assuming a subordinate role in the executive branch.

The discussion above also highlighted the point that the NCIP's performance must be assessed vis-à-vis the vulnerability of governmental bodies to external pressures including lobbying groups, and the vulnerability of the NCIP itself to presidential maneuverings. The Philippine government's policy toward IPs and the issue of mining was shown to be highly sensitive to external factors. Environmental disasters alongside the displeasure of church-based groups have impelled the Philippine government to adhere to a strict implementation of environmentally-friendly regulations. Threats of investment withdrawals and warnings about fiscal crisis, meanwhile, have paved the way for more-investor friendly policies. While responsiveness to the needs of the citizenry is praiseworthy, periodic shifts in policy or policy implementation can create the bad impression that government is inconsistent in its policy-making.

The vulnerability of the NCIP to presidential influence also emerges as a determining factor. The NCIP lacks real independence from the executive branch, demonstrated thus far by the exercise of presidential prerogative to transfer the commission from one executive department to another as political exigency dictates. The president's power to appoint and remove commissioners does not also bode well for an independent NCIP that must be wholly committed to the advancement of IP rights.

The role of international funding institutions in advancing IP rights appears to be an interesting area of inquiry. Past administrations have been shown to lack real commitment to IP concerns especially when these are juxtaposed against mining issues, and this begs the question

why the government has not abandoned altogether its support for IP rights. The immediate and obvious answer is that the promotion of IP rights attracts foreign financial assistance. This, however, leads to a disturbing question: Would the government maintain its support for IP rights once foreign assistance stopped coming in?

The previous discussion does not discount the tremendous progress of the IP movement in the Philippines. Surely, the IP movement, as mentioned previously, has successfully established itself as a considerable force in Philippine politics. Still, despite the passage of the IPRA, the Philippine state appears not wholly committed to advancing IP rights, especially when doing so would compete with its desire to attract foreign investments to spur economic growth. This paper suggests that if the IP movement in the Philippines succumbs to complacency, the Philippine state would be more accommodating of mining interests inasmuch as it seems more predisposed towards generating capital as a state goal.

As to the relatively young presidency of Benigno Aquino III, the present paper cannot offer a lengthy appraisal of the IPRA's implementation under his administration. At any rate, it appears that the stalemate between mining interests and pro-IP advocates is still in effect despite interesting developments that suggest a shift from one position to another and vice-versa. Moreover, as long as both the IPRA and the Mining Act of 1995 are recognized as valid and operative statutes in the Philippines, one can expect the Philippine government to play the tricky game of balancing IP rights and mining interests.

The present essay offers a reappraisal of the NCIP implementation of the IPRA based on "institutional footprints" as revealed in news articles and other published documents. While the essay affirms the findings of previous assessments, it nonetheless suggests that the NCIP's dismal performance was quite understandable mostly in light of the non-committal attitude of past administrations.

NOTES

1. The AITPN (2008, 3) report says: "The President can initiate 'removal' procedures against any Commissioner on his (President's) own initiative without ascertaining the allegations. This severely impacts the independence and functioning of the National Commission on Indigenous Peoples."

2. Note here that the IP sector watched with vigilance the appointments to the NCIP.

3. In the absence of evidence to the contrary, the author is inclined to see Isagani Cruz' filing of a case before the Supreme Court as the independent and sincere act of a Filipino citizen, a former Associate Justice at that, who saw the IPRA's provisions on ancestral lands and ancestral domains as violating the 1987 Constitution.

4. Incidentally, among those who filed the petition against the Mining Act were the indigenous peoples' organization directly affected by a foreign-operated mining project and the delegate to the 1986 Constitutional Commission who came from the IP sector. This indicates the vigilance of the IP sector in the Philippines against perceived threats to its welfare.

5. Section 40 of R.A. 8371 states: "The NCIP shall be an independent agency under the Office of the President..."

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