

Draft DENR-NCIP Guidelines in Processing Patent and CADT/CALT Applications and Issuance of Certificate of Non-Overlap

I. Rationale

Section 56 of Republic Act No. 8731 (Indigenous Peoples Rights Act) states that *“property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.”* The Department of Environment and Natural Resources (DENR) and the National Commission on Indigenous Peoples (NCIP) have different interpretations of vested rights as they both base their definitions on the nature of the land.

The basis of all policies of the DENR on land disposition is Commonwealth Act No. 141 (Public Land Act). For agricultural lands to be disposed of under the provisions of Chapter VI (Free Patent) of CA 141, as amended, now RA 11573, vested right sets in upon compliance by the occupants of the required period of possession of 30 years, now reduced to 20 years.

It has been ruled in the case of the Director of Lands, petitioner, versus the Court of Appeals and Gloria Cabral Franco, respondents^[1], citing the case of Medina vs. Pineda Vda. de Souza, et al.^[2], the Supreme Court held that “where all the necessary requirements for a grant by the government are complied with, the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts.

Also, the Supreme Court stated that *“A vested right is some right or interest in property that has become fixed and established and is no longer open to doubt or controversy. Rights are vested when the right to enjoyment present or prospective, has become the property of some person as present interest”*.

On the other hand, subject to Section 56 of the IPRA law, ancestral domains refer to *“lands, inland waters, coastal areas and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial”*. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's **PRIVATE but community property which belongs to all generations and therefore cannot be sold, disposed, or destroyed**. It likewise covers sustainable traditional resource rights. Thus, the ICCs/IPs have been entitled with a Native Title. The Native Title refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been **held under a claim of private ownership by ICCs/IPs**, have never been public lands and are thus **indisputably presumed to have been held that way since before the Spanish Conquest**.

[1] G.R. No. L-52491, January 29, 1990

[2] L-14722, May 25, 1960

In *Benguet Consolidated Mining Co. v. Pineda* ^[3], this Court explained that a vested right is *"some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy"; it is an "immediate fixed right of present and future enjoyment"; it is to be contradistinguished from a right that is "expectant or contingent."* The Benguet case continued on to quote from 16 C.J.S. 214-215, as follows:

"Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. **The right must be absolute, complete and unconditional, independent of a contingency, and a mere expectancy of future benefit,** or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested."

The premise of CA 141, as amended, is that the subject land is a public land while Native Titles presumes that the land claimed by the ICCs/IPs is a private land. This is where the interpretation and definition of vested rights of DENR and NCIP diverge.

II. Existing Situation

Given the mandates of both agencies in providing tenure securities to Filipinos, DENR continued to issue patents (agricultural, homestead, residential) and approve surveys in Agricultural A&D lands, awaiting submission of surveys by the NCIP.

The NCIP on the other hand experienced delays in the delineation of the IP claims due to budget availability issues. They have identified 966 ancestral domains/ancestral lands nationwide, of which, only 59 CADTs/CALTs have been approved and registered while 198 were delineated and issued CADTs/CALTs but are still pending for registration by the Registry of Deeds. Another major challenge for NCIP is the registration of their CADTs and CALTs. DENR, DAR, and LRA did not fully implement and comply with the provision of JAO 2012-01 on the issuance of Certificate of Non-Overlap (CNO). The delayed or non-issuance of CNO from the three agencies caused the non-registration of many approved CADTs and CALTs. This is one of the many reasons of their withdrawal from the JAO 2012-01 and the Joint National Committee.

[3] 98 Phil. 711, 722, quoting from *Pearsall v. Great Northern R. Co.*, 161 U.S. 646

III. Guidelines on the Management of Issued Patents and Processing of New Public Land Applications within IP Claims.

Upon projection by the DENR Regional offices of the submitted survey plans by the NCIP, the following will govern the action on different scenarios under the DENR land survey and titling activities:

A. For Areas with Registered CALTs/CADTs

- A.1. Patents issued before November 22, 1997 shall be respected and shall be annotated on the registered CADTs/CALTs.
- A.2. Patents issued from November 22, 1997 until the registration of the CADT/CALT shall be respected. These patents shall be annotated on the registered CADTs/CALTs.
- A.3. Patents issued after the registration of CADTs, if any, shall be subject to an arrangement with the NCIP on possessory rights (CALOM).
- A.4. Any new or unprocessed applications identified within the ancestral domain / ancestral land shall be denied and applicants shall be subject to an arrangement with the NCIP on possessory rights (CALOM).
- A.5. All previously approved survey plans projected to be inside the ancestral domain / ancestral land, shall be canceled through a corresponding Order of Cancellation with prior notice to the survey claimant.
- A.6. No new requests for Survey Order/Authority and approval of survey plans shall be accepted and processed.

B. For Areas with Issued CALTs/CADTs but not yet Registered

- B.1. Patents issued before November 22, 1997 shall be respected.
- B.2. Patents issued from November 22, 1997 until the effectivity of these guidelines shall be respected.
- B.3. Upon consultation with the concerned IPs, all A&D lands shall be segregated from the CADT/CALT and shall be correspondingly amended and facilitate the registration thereof. The claim of the IPs within A&D lands shall be applied under CA 141, as amended, and other applicable laws, rules and regulations. (Proposal: DENR to shoulder the survey cost)
- B.4. All pending public land applications upon the effectivity of these guidelines shall be given due course.

B.5. For new applications and surveyed parcels, a notification shall be submitted to NCIP for issuance of an Omnibus Clearance within 60 days (except in NCR, Region 8, and Highly Urbanized Cities), including those potential lots for titling identified under the Rapid Land Tenure Appraisal (RLTA). Otherwise, regular processing of applications by the DENR shall proceed.

B.5.1. In case NCIP issues a clearance, all requests for subsequent surveys shall be given due course.

B.5.2. Otherwise, all new applications shall be put on hold.

C. For Areas with Delineated Claims with Approved Ancestral Domain Survey (ADS)

C.1. The DENR Regional Office shall project the ADS on the Land Classification Map to determine if there are areas within A&D. The result of which shall be immediately submitted to the NCIP for consultation with the concerned IPs on the segregation of A&D lands, if any, and on the option to apply for patents under CA 141, as amended, and other applicable laws, rules and regulations.

C.2. All survey and titling activities shall proceed accordingly.

D. For Unsurveyed/Undelineated Areas with Claims

D.1. The NCIP shall request the DENR Regional Office for copies of the LC maps within the AD/AL claim.

D.2. The DENR Regional Office shall provide the concerned Regional NCIP Office a copy of the Land Classification Map to be used as reference in the segregation of A&D areas in the conduct of survey of the AD/AL, in consultation with the concerned IPs.

D.3. Hence, all new applications shall be processed accordingly including survey activities.

E. For Unsurveyed/Undelineated and Unclaimed Areas

E.1. The DENR shall proceed with its survey and titling activities accordingly without the need to notify the NCIP. The posting of notice of application for titling will suffice.

IV. Transitory Provision

In order to immediately address the above perspectives of both agencies on the provisions of CA 141, as amended and RA 8371, and realities on the ground, an

issuance was signed jointly by the LMB Director and the NCIP Executive Director on the following:

1. The NCIP shall submit their updated dataset, shapefiles of plans of the registered, issued CADTs/CALTs, and survey claims to the concerned DENR Regional Offices, including excel files of areas of claims not yet delineated within _____ days upon effectivity of this guidelines;
2. The DENR shall prioritize the projection of these plans to harmonize with the DCDB cleansing activities;
3. DENR maintains that the best option to facilitate the registration of CADTs/CALTs is to segregate the entire A&D portion within the claim. While this may be practical, NCIP maintains that this should be done in consultation and agreement with the IPs. Hence, at this stage, such consultation may be conducted to avoid the tedious process of identifying patents within the claim and facilitate the registration of CADTs/CALTs. The option for those IPs occupying A&D lands to apply for patents shall be a significant component of the consultation.