



Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
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DENR MIMAROPA
RECORDS SECTION
RECEIVED

FEB 22 2023

☐ INCOMING ☐ OUTGOING
BY: _____ DATE NO. _____

MEMORANDUM

FEB 01 2023

TO : **The Regional Executive Director**
DENR-MIMAROPA Region
1515 DENR by the Bay Bldg., Roxas Boulevard,
Brgy. 668, Ermita, Manila

FROM : **The Undersecretary**
Legal and Administration

SUBJECT : **LEGAL OPINION RE: LETTER DATED 31 AUGUST 2021 FROM NATIONAL COMMISSION ON INDIGENOUS PEOPLES - PALAWAN PROVINCIAL OFFICE CONCERNING THE ISSUED NOTICE TO VACATE DATED 18 AUGUST 2021 TO MR. ISRAEL D. GOMEZ**

This refers to your Memorandum dated 03 June 2022 seeking clarification on the Letter dated 31 August 2021 of Mary Ann L. Delos Santos, Officer-in-Charge, National Commission on Indigenous Peoples (NCIP) - Palawan Provincial Office concerning the Notice to Vacate dated 18 August 2021 issued to Mr. Israel D. Gomez by CENRO Taytay, Palawan in view of the Joint DAR-DENR-LRA-NCIP Administrative Order (JAO) 01-12.¹

In the Letter dated 31 August 2021, Ms. Delos Santos requests that the indigenous people (IP) right of Mr. Gomez over his ancestral land be recognized, viz.:

The Notice gives the addressee 30 days to **vacate his construction in a portion of Obogon cove, Cadlao Island, Bgy. Buena Suerte, El Nido** on the basis that he **violates the Article 51 of PD 1067 and sections 20 (n) and 24 (par. 4) of RA 7586, as amended by 11038.**

Please be informed that **Mr. Gomez is a tagbanua-tandulanen who have an application for issuance of Certificate of Ancestral Land Title** over the subject property. As part of his IP's right as right holder of the ancestral land pursuant to RA 8371 are as follows:

SEC. 3. (b) Ancestral Lands x x x
SEC. 4. Concept of Ancestral Lands/Domains x x x
SEC. 7. (b) Right to Develop Lands and Natural Resources x x x
Rule III, part II, section 2. (paragraph b.3) of IRR of RA 8371 x x x
SEC. 8. Rights to Ancestral Lands x x x

¹ Dated 25 January 2012; Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Land Registration Authority (LRA) and the National Commission on Indigenous Peoples (NCIP) in Order to Address Jurisdictional and Operational Issues Between and Among the Agencies.

The undersigned hopes that the **IP right of Mr. Gomez over his ancestral land will be recognized** by your office. x x x (Emphasis supplied)

The Letter-Reply dated 14 October 2021 of the CENR Officer of Taytay, Palawan provides that:

x x x Republic Act 8371, Republic Act 11038, and Presidential Decree 1067 are parallel in the hierarchy of laws. We shall seek the opinion on this of the Legal Division of this agency. Pending receipt of the advice/instruction, **this management considers the matter a contentious issue under Section 12 of Joint DAR-DENR-LRA-NCIP Administrative Order 01-12 dated January 25, 2012.** Our opinion at the moment, however, is that even if the application of Mr Gomez for issuance of Certification of Ancestral Land Title comes to approval, the **developments in the area, especially infrastructure projects, shall continue to be subject to environmental laws and regulations.** This is consistent with Section 6 of Article XII of the Constitution that the use of property bears a social function to common good. Hence, **either IP/ICC member or not, nobody is exempted in securing necessary clearance and/or permit about the utilization of natural resources which by the procedure itself is a recognition of rights.** (Emphasis supplied)

This Office has the following findings and comments:

1. This Office is in receipt of only the following documents:
 - a. Memorandum² dated 03 June 2022 from the Regional Executive Director, DENR MIMAROPA Region requesting for legal opinion;
 - b. Memorandum dated 18 November 2021 from the Provincial Environment and Natural Resources Officer (PENRO) Palawan;
 - c. Memorandum dated 15 October 2021 from the Community Environment and Natural Resources Officer (CENRO), Taytay, Palawan;
 - d. Memorandum dated 05 October 2021 from the Protected Area Superintendent (PASu), El Nido-Taytay Managed Resource Protected Area;
 - e. Letter³ dated 31 August 2021 from the Officer-In-Charge (OIC), NCIP Palawan; and,
 - f. Letter reply⁴ dated 14 October 2021 of CENRO Taytay, Palawan to the OIC, NCIP Palawan.

Per the foregoing, a copy of the Notice to Vacate was not included in the documents submitted. Further, while it is noted that in the documents above mentioned that the Notice to Vacate was as issued for violations of Article 51 of Presidential Decree (PD) 1067⁵ and Sections 20 (n) and 24 (par. 4) of Republic Act

² Copy attached as ANNEX "A".

³ Copy attached as ANNEX "B".

⁴ Copy attached as ANNEX "C".

⁵ Water Code of the Philippines, Presidential Decree No. 1067, December 31, 1976.

(RA) 7586,⁶ as amended by RA 11038⁷, and the PASu of El Nido - Taytay, Palawan has endorsed the Letter of the NCIP Palawan, there was no categorical mention that the subject area is within the said Protected Area. It is suggested that DENR MIMAROPA Region would undertake verification of these facts as it is material in this instance. Furthermore, this Office would appreciate a complete submission of documents for requests for legal opinion in the future.

2. Be that as it may, this Office renders this legal opinion considering that the Notice to Vacate issued to Mr. Gomez was based on violations of PD 1067, and RA 7586, as amended by RA 11038 for occupying the area within a protected area.

Article 51 of PD 1067 states:

ARTICLE 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind.

While the relevant provisions of RA 7586, as amended by RA 11038 state:

SEC. 20. *Prohibited Acts.* — Except as may be allowed by the nature of their categories and pursuant to rules and regulations governing the same, the following acts are prohibited within protected areas:

x x x

(n) **Occupying or dwelling in any public land within the protected area without clearance from the PAMB;**

x x x

SEC. 24. *Existing Facilities within the Protected Area.* — Within sixty (60) days from the effectivity of this Act, an inventory of all existing facilities such as roads, buildings and structures, water systems, transmission lines, communication facilities, heavy equipment, and irrigation facilities, among others, within the protected area shall be conducted.

The DENR Regional Director shall submit the inventory of facilities with corresponding descriptions and an assessment report containing the appropriate recommendations to the DENR Secretary through the BMB.

The PAMB, with the assistance of the DENR, may impose conditions for the continuous operation of a facility found to be detrimental to the protected area until its eventual relocation. If the conditions are violated, the owner of the facility shall be made liable pursuant to Section 21(d) hereof.

⁶ National Integrated Protected Areas System Act of 1992, Republic Act No. 7586, June 1, 1992.

⁷ Expanded National Integrated Protected Areas System Act of 2018, Republic Act No. 11038, June 22, 2018.

Existing facilities allowed to remain within the protected area shall be charged a reasonable fee by the PAMB based on existing guidelines. Structures found within the forty (40)-meter easement shall be demolished unless proven necessary to protect the shoreline and mitigate habitat destruction. The PAMB shall levy a reasonable fee for the use of such easement for their continued operations. Wharves shall be kept accessible to the public. (Emphasis supplied)

On the other hand, Section 12 of JAO 01-12 provides the contentious areas/issues governed by said JAO, to wit:

SECTION 12. Contentious Areas/Issues Defined. – Contentious Areas/Issues are those areas/issues which am (sic) the subject of operational issues and conflicting claims between and amongst the DAR, DENR and NCIP, to wit:

- a. Untitled lands being claimed by the ICCs/IPs to be part of their AD/AL which are covered by approved survey plans and also being claimed by DAR and/or DENR.
- b. Titled lands with registered CLOAs, EPs and Patents within CADT/CALT/CADC/CALC.
- c. Resource access/development instruments issued by the DENR over lands within Ancestral Land/Domain Claims such as, but not limited to, Community Based Forest Management Agreement (CBFMA), Integrated Forest Management Agreement (IFMA), Socialized Forest Management Agreement (SIFMA), Protected Area Community-Based Resources Management Agreement (PACBRMA), Forest Land Grazing Management Agreement (FLGMA), Co-Management Agreement, Certificate of Stewardship Contract (CSC), Certificate of Forest Stewardship Agreement (CFSA), Wood Processing Plant Permit (WPPP), Special Land Use Permit (SLUP), Private Land Timber Permit (PLTP), Special Private Land Timber Permit (SPLTP) and Foreshore Lease Agreement/Permit (FLA/FLP).
- d. Exploration Permit (EP), Financial or Technical Assistance Agreement (FTAA); Mineral Agreement (either Production Sharing, Co-Production or Joint Venture) issued within CARP covered areas.
- e. **Reservations, proclamations and other special law-declared areas a portion or the entirety of which is subsequently issued a CADT/CALT.**
- f. Areas with existing and/or vested rights after the registration of the CADTs/CALTs but for any reason not segregated/excluded.
- g. Other jurisdictional and operational issues that may arise between and amongst DAR, DENR and NCIP as may be determined by the National/Regional/Provincial Joint Committees, as created under Section 19 hereof.

Contested areas/issues contemplate, likewise, formal complaints filed by concerned ICCs/IPs or by the NCIP in behalf of the ICCs/IPs over those identified titled areas found within the AD/AL. (Emphasis supplied)

Although based on the Letter dated 31 August 2021 of Ms. Delos Santos, Mr. Gomez only has a pending application for issuance of Certificate of Ancestral Land Title (CALT), this Office opines that the matter may be considered a contentious issue under Section 12 of JAO 01-12. Particularly, it is submitted that the subject property, which appears to be a protected area, with pending application for CALT may fall under contentious issue in Section 12 (e) of JAO 01-12.

However, considering NCIP's withdrawal of its participation from JAO 01-12, it is submitted that the mechanisms provided in JAO 01-12 and Joint DAR-DENR-LRA-NCIP Memorandum Circular (JMC) No. 08,⁸ s. 2012 to address said contentious issue may not be available to the concerned offices.

Nonetheless, please be informed that there is an ongoing coordination between the DENR and NCIP for the proposed creation of Joint Administrative Order (JAO) or necessary issuance concerning the said Offices.

3. On the enforceability of Article 51 of PD 1067 and Sections 20 (n) and 24 (par. 4) of RA 7586, as amended against Mr. Gomez, an IP with a pending application for CALT on the subject property, it is submitted that the said laws may still be enforced considering the given circumstances.

Noteworthy is the case of *Sama y Hinupas v. People*⁹ which involves an appeal on the decision and resolution of the Court of Appeals affirming the conviction of petitioners for violation of Sec. 77 of PD 705,¹⁰ as amended, for cutting a *dita* tree without any authority. In the case, the Supreme Court held that: (1) petitioners are Iraya-Mangyan IPs who are a publicly known ICC inhabiting areas within Oriental Mindoro; and (2) the prosecution was not able to prove the guilt of petitioners for violation of Sec. 77 of PD 705, as amended beyond reasonable doubt, considering that there is reasonable doubt that the *dita* tree was cut and collected without any authority granted by the State/reasonable doubt as to the existence of petitioners' IP right to log the *dita* tree for the construction of a communal toilet for the Iraya-Mangyan ICC. Thus, the petitioners were acquitted.

Although the petitioners were acquitted, the Supreme Court in the said Decision thoroughly discussed the elements of violation of Sec. 77 of PD 705, as amended relative to the alleged violations of petitioners and their exercise of their IP rights. Also, said acquittal is due to the reasonable doubt on the third element of violation of Sec. 77 of PD 705, as amended, *i.e.*, reasonable doubt as to the existence of petitioners' IP right to log the *dita* tree for the construction of a communal toilet for the Iraya-Mangyan ICC. Thus, the Supreme Court held that:

⁸ Implementing Rules of Procedure of the Joint DAR-DENR-LRA-NCIP Administrative Order No. 1, Series of 2012 Entitled, "Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of the DAR, DENR, LRA and the NCIP in Order to Address Jurisdictional and Operational Issues Between and Among the Agencies.

⁹ *Sama y Hinupas v. People*, G.R. No. 224469, January 5, 2021.

¹⁰ Revised Forestry Code of the Philippines.

Objectively, their reliance **cannot be faulted** because IP rights have long been **recognized** at **different levels** of our legal system – the *Constitution*, the **statutes** like *IPRA* and a host of others like the ones mentioned by Justice Leonen in his *Opinion*, the sundry **administrative regulations** (one of which Chief Justice Peralta and Justice Caguioa have taken pains to outline) which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' *sui generis* ownership of ancestral domains and lands, the **international covenants** like the *United Nations Declaration on the Rights of Indigenous Peoples*, of which our country is a signatory, and **Philippine and international jurisprudence** which identifies the forms and contents of IP rights.

We hasten to add though that this **recognition** has **not** transformed into a **definitive** and **categorical** rule of law on its **impact** as a **defense** in criminal cases against IPs arising from the exercise of their IP rights. The ensuing **unfortunate confusion** as to true and inescapable merits of these rights in criminal cases **justifies** the claim that petitioners' guilt for this *malum prohibitum* offense is **reasonably doubtful**.

As succinctly tackled by Justice Caguioa in his opinion: "In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not the petitioners were well-within their rights when they cut the *dita* tree, such doubt must be resolved to stay the Court's hand from affirming their conviction." He further opines that the invocation of IP rights in the case at bar has "risen to the heights of contested constitutional interpretations. . . ." While we do not share Justice Caguioa's opinion in full, we agree with him at least that there is **reasonable doubt** as regards the accused' guilt of the offense charged. xxx

To be precise, the **IP rights** we are alluding to are the rights to maintain their **cultural integrity** and to benefit from the **economic benefits** of their ancestral domains and lands, **provided the exercise of these rights is consistent with protecting and promoting equal rights of the future generations** of IPs. To stress, it is the **confusion** arising from the **novelty** of the **content, reach, and limitation** of the **exercise of these rights** by the **accused in criminal cases** which **justifies** their acquittal for their **otherwise prohibited act**. (Underscoring supplied)

Considering the foregoing, it is submitted that said environmental laws may still be enforced against an IP with a pending application for CALT.

Notwithstanding the foregoing, the concerned Office should also take into consideration Section 13 of RA 7586, as amended, *viz.*:

SEC. 13. *Ancestral Domains and Customary Rights.* – Ancestral domains and customary rights shall be accorded due recognition.

As part of heritage preservation and pursuant to the need to conserve biologically significant areas, the territories and areas occupied and conserved for and by IPs and communities shall be recognized, respected, developed, and promoted.

The ICCs and IPs concerned shall have the responsibility to govern, maintain, develop, protect, and conserve such areas, in accordance with their indigenous knowledge systems and practices and customary law, with full and effective assistance from the NCIP, DENR and other concerned government agencies.

A mechanism for coordination and complementation between the indigenous traditional leadership and governance structures and the NCIP, DENR, government agencies, concerned LGUs and civil society organizations shall be created.

In addition RA 8371¹¹ specifies environmental considerations in application of the IP rights, to wit:

SECTION 58. Environmental Considerations. — **Ancestral domains or portions thereof**, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, **protected areas**, forest cover, or reforestation **as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes.** The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent. (Emphasis supplied)

Notwithstanding the foregoing, the concerned Office should also take into consideration Section 13 of RA 7586, as amended on Ancestral Domains and Customary Rights, and Section 58 of RA 8371 on Environmental Considerations.

This Office reiterates that there is an ongoing coordination between the DENR and NCIP to harmonize overlapping laws, and issues regarding use of natural resources.

Recommendations

1. The DENR-MIMAROPA Region should verify the factual circumstances surrounding the request for legal opinion, i.e. the details of the Notice to Vacate subject of the controversy; and the protected area alleged to be occupied by Mr. Gomez.
2. On the enforceability of Article 51 of PD 1067 and Sections 20 (n) and 24 (par. 4) of RA 7586, as amended against Mr. Gomez, an IP with a pending application for CALT on the subject property, it is submitted that the said laws may still be enforced considering the given circumstances.

¹¹ The Indigenous Peoples' Rights Act of 1997.

3. For the DENR-MIMAROPA Region to consider Section 13 of RA 7586, as amended and Section 58 of RA 8371 in evaluating the next course of action on the Notice to Vacate given by the field office concerned.

It is submitted that this legal opinion is limited to the review of the documents presented and relevant laws and rules mentioned.

For your consideration.


ATTY. ERNESTO D. ADOBO, JR., CESO I

ANNEXES

A	Memorandum dated 03 June 2022 of RED, DENR-MIMAROPA Region;
B	Letter dated 31 August 2021 of Mary Ann L. Delos Santos, Officer-in-Charge, NCIP - Palawan Provincial Office; and
C	Letter-Reply dated 14 October 2021 of the CENR Officer of Taytay, Palawan.

Copy furnished:

The Undersecretary
Field Operations - Mindanao

The OIC, Director
Biodiversity Management Bureau



19 JAN 2023

MEMORANDUM

FOR : The Undersecretary
Legal, Administration, and Legislative Affairs

THROUGH : The Assistant Secretary
Legal Affairs *pcdgo*

FROM : The Director
Legal Affairs Service

SUBJECT : LETTER DATED 31 AUGUST 2021 FROM NATIONAL
COMMISSION ON INDIGENOUS PEOPLES - PALAWAN
PROVINCIAL OFFICE CONCERNING THE ISSUED NOTICE
TO VACATE DATED 18 AUGUST 2021 TO MR. ISRAEL D.
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Palawan has endorsed the Letter of the NCIP Palawan, there was no categorical mention that the subject area is within the said Protected Area. It is suggested that DENR MIMAROPA Region would undertake verification of these facts as it is material in this instance. Furthermore, this Office would appreciate a complete submission of documents for requests for legal opinion in the future.

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Considering the foregoing, it is submitted that said environmental laws may still be enforced against an IP with a pending application for CALT.

In addition RA 8371⁸ specifies environmental considerations in application of the IP rights, to wit:

SECTION 58. Environmental Considerations. — **Ancestral domains or portions thereof**, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, **protected areas**, forest cover, or reforestation **as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes.** The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

Notwithstanding the foregoing, the concerned Office should also take into consideration Section 13 of RA 7586, as amended on Ancestral Domains and Customary Rights, and Section 58 of RA 8371 on Environmental Considerations.

This Office reiterates that there is an ongoing coordination between the DENR and NCIP to harmonize overlapping laws, and issues regarding use of natural resources.

Recommendations


1. The DENR-MIMAROPA Region should verify the factual circumstances surrounding the request for legal opinion, i.e. the details of the Notice to Vacate subject of the controversy; and the protected area alleged to be occupied by Mr. Gomez.
2. On the enforceability of Article 51 of PD 1067 and Sections 20 (n) and 24 (par. 4) of RA 7586, as amended against Mr. Gomez, an IP with a pending application for CALT on the subject property, it is submitted that the said laws may still be enforced considering the given circumstances.
3. For the DENR MIMAROPA Region to consider Sections 13 of RA 7586, as amended and Section 58 of RA 8371 in evaluating the next course of action on the Notice to Vacate given by the field office concerned.

⁸ The Indigenous Peoples' Rights Act of 1997.

If the Undersecretary would concur, this Office has prepared the attached **draft Memorandum for the RED**⁹ providing the foregoing comments.

It is submitted that this legal opinion is limited to the review of the documents presented and relevant laws and rules mentioned.

For your consideration.


NORLITO A. ENERAN, LL.M., CESO III

⁹ Copy attached as APPENDIX "A".



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region

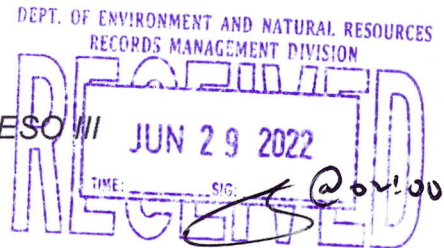
MEMORANDUM

FOR : ATTY. NORLITO A. ENERAN, LLM, CESO III
Director
Legal Affairs Service

FROM : THE REGIONAL EXECUTIVE DIRECTOR

SUBJECT : CLARIFICATION/REQUEST FOR LEGAL OPINION

DATE : JUN 3 2022



This refers to the letter of Ms. Mary Ann L. Delos Santos, NCIP Palawan Officer-In-Charge concerning the Notice to Vacate dated August 18, 2021 issued to Mr. Israel D. Gomez, which states that:

"The notice gives the addressee 30 days to vacate his construction in a portion of Obogon Cove, Cadlao Island, Bgy. Buena Suerte, El Nido on the basis that he violates the Article 51 of PD 1067 and Sections 20 (n) and 24 (par. 4) of RA 7589, as amended by 11038.

Please be informed that Mr. Gomez is a tagbanua-tandulanen who have an application for issuance of Certificate of Ancestral Land Title over the subject property. xxx"

Per Memorandum dated October 05, 2021 of the In-Charge, ENTMRPA-PAMO, the said letter was referred to CENRO Taytay, Palawan. Attached is the letter-reply dated October 14, 2021 of the CENR Officer, Taytay, Palawan, wherein he stated that:

"References in your letter were Sections 3.(b), 4, 7(b), 8 of Republic Act 8371, and Rule III, Part II, Section 2 (paragraph b.(3) of the IRR of the same law. Hence, you hope that the IP right of Mr. Gomez, a tagbanua-tandulanen, be recognized by this Office.

With due respect, Republic Act 8371, Republic Act 11038, and Presidential Decree are parallel in the hierarchy of laws. We shall seek the opinion on this of the Legal Division of this agency. Pending receipt of the advice/instruction, this management considers the matter a contentious issue under Section 12 of Joint DAR-DENR-LRA-NCIP Administrative Order 01-12 dated January 25, 2012. Our opinion at the moment, however, is that even if the application of Mr. Gomez for issuance of Certification of Ancestral Land Title comes to approval, the developments in the area, especially infrastructure projects, shall continue to be subject to environmental laws and regulations. This is consistent with Section 6 of Article XII of the Constitution that the use of property bears a social function to the common good. Hence, either, IP/ICC member or not, nobody is

exempted in securing necessary clearance and/or permit about the utilization of natural resources which by the procedure itself is a recognition of rights."

Per attached Memorandum dated October 15, 2021 of the CENR Officer, Taytay, Palawan, to the PENRO Palawan, he stated that:

"The matter is a contentious issue pursuant to Section 13 of DAR-DENR-LRA-NCIP Administrative Order 01-12 dated January 25, 2012 hence this jurisdiction feels reserved to insist dealing with the NCIP Provincial Office. It is requested that the same be afforded with legal opinion and/or consider it for harmonization between the Regional Offices of the agencies. Another reference on the matter is Joint DENR-NCIP Memorandum Circular No. 2007-01 for Management of Overlapping protected Areas and/or their Buffer Zones and Ancestral Domains/Lands."

Please be informed that this is a recurring matter in Palawan. Considering that the signatories of the Joint DAR-DENR-LRA-NCIP Administrative Order 01-12 are the respective secretaries of the concerned agencies, may we refer this matter for clarification/legal opinion.

For further instruction, please.



LORMELYN E. CLAUDIO, CESO IV



CC:

PENRO Palawan

CENRO Taytay, Palawan



Department of Environment
and Natural Resources
MIMAROPA Region



Doc ID: 75584



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE
Bgy. Sta. Monica, Puerto Princesa City, Palawan
Telfax No. (048) 434 - 8791
Email Add: penropalawan@denr.gov.ph

DENR MIMAROPA RECORDS SECTION
RECEIVED
24 NOV 2021
☐ INCOMING ☐ OUTGOING
DATE NO.

November 18, 2021

MEMORANDUM

FOR : The Regional Executive Director
DENR-R4, MIMAROPA, 1515 L&S Building
Roxas, Blvd., Ermita, Manila

ATTENTION: *The Chief, Legal Division*

FROM : The Provincial Environment and
Natural Resources Officer

SUBJECT : **LETTER OF MS. MARY ANN L. DELOS SANTOS, OFFICER-
IN-CHARGE OF NCIP PALAWAN PROVINCIAL OFFICE**

DENR MIMAROPA REGION
LEGAL DIVISION
RECEIVED
BY: *Chieff* 11-29-21
DATE/TIME: 8:46 AM

Forwarded is the Memorandum from CENRO Taytay, Palawan dated October 15, 2021 forwarding the letter of Ms. Mary Ann L. Delos Santos, Officer-in-Charge of NCIP Palawan Provincial Office relative to the Notice to Vacate issued to Mr. Israel D. Gomez in violation of Art. 51 of PD 1067 and Sec. 20(n) and 24 of RA 7586, as amended by RA 11038 in Obogon Cove, Cadlao Island, Barangay Buena Suerte, El Nido, Palawan, seeking your expert opinion and legal advice on the matter.

For information, record and further instruction.

For the PENR Officer:

[Signature]
FRANKLIN G. HERNANDEZ
Chief, Management Services Division
In-Charge, Office of the PENRO

Cc:

CENRO – Taytay, Palawan

TSD/File *kkva
Doc. Ref. No. 2021-10547

**DENR PENRO
PALAWAN RECORDS
RELEASED**

BY: *[Signature]*
DATE: NOV 19 2021 21-2744



Republic of the Philippines
OFFICE OF THE PRESIDENT
NATIONAL COMMISSION ON INDIGENOUS PEOPLES
PALAWAN PROVINCIAL OFFICE

Beside Barangay Hall, Santa Monica Heights, Puerto Princesa City
Email Address: ncippalawanoffice@gmail.com
Telephone No. (048) 433-0490



August 31, 2021

MR. ALEXANDER E. MANCIO
SEMS/Chief, RPS
In Charge, Office of the CENRO
Taytay, Palawan

Dear Sir Mancio:

Greeting from the Commission (NCIP)

We write concerning the notice to vacate dated August 18, 2021 and addressed to Mr. Israel Gomez residing in *Sitio* Tawa-tawa, Barangay Corong-Corong, El Nido, Palawan. Mr. Gomez referred the notice to this office.

The notice gives the addressee 30 days to vacate his construction in a portion of Obogon cove, Cadlao Island, Bgy. Buena Suerte, El Nido on the basis that he violates the Article 51 of PD 1067 and sections 20 (n) and 24 (par. 4) of RA 7586, as amended by 11038.

Please be informed that Mr. Gomez is a tagbanua-tandulanen who have an application for issuance of Certificate of Ancestral Land Title over the subject property. As part of his IP's right as right holder of the ancestral land pursuant to RA 8371 are as follows:

SEC. 3. (b) Ancestral Lands - Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;

SEC. 4. Concept of Ancestral Lands/Domains. - 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.

SEC. 7. (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

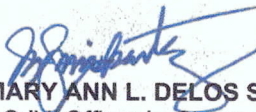
formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

Rule III, part II, section 2. (paragraph b.3) of IRR of RA 8271, states - The right of ICCs/IPs to protect, conserve and manage portions of the ancestral domains/lands which they find necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover or reforestation, with the full and effective technical and financial support of concerned government agencies or other legal entities;

SEC. 8. Rights to Ancestral Lands. - The right of ownership and possession of the ICCs /IPs to their ancestral lands shall be recognized and protected.

The undersigned hopes that the IP right of Mr. Gomez over his ancestral land will be recognized by your office. Thank you.

In service,



MARY ANN L. DELOS SANTOS
AO IV Officer-In-Charge

Copy furnished:

Office of the Punong Barangay of Buena Suerte, El Nido,

DENR-PENRO, Puerto Princesa Cty

Dr. Marie Grace T. Pascua, CESO III,
Regional Director
NCIP MIMAROPA
Calapan City

NCIP Roxas CSC

File



Region

MEMOR.

FOR :

Executive Director

La ... g, 1515 by Roxas Blvd, Ermita, Manila
Atte. please: Legal Division

THRU

The Provincial Environment and Natural Resources Office-Palawan

FROM :

The Community Environment and
Natural Resources Officer

SUBJECT : LETTER OF MS MARY ANN L. DELOS SANTOS, OFFICER-IN-CHARGE OF NCIP PALAWAN PROVINCIAL OFFICE

Respectfully referring is the above subject letter dated August 31, 2021 which refers to the Notice of this Office issued to Mr Israel Gomez for violation of Article 51 of PD 1067 and Sections 20(n) and 24 of Republic Act 7586, as amended by RA 11038 in Obogon Cove, Cadlao Island, Buena suerte, El Nido, Palawan. Attached also is a copy of the response letter of this Office dated October 14, 2021.

The matter is a contentious issue pursuant to Section 13 of DAR-DENR-LRA-NCIP Administrative Order 01-12 dated January 25, 2012 hence this jurisdiction feels reserved to insist dealing with the NCIP Provincial Office. It is requested that the same be afforded with legal opinion and/or consider it for harmonization between the Regional Offices of the agencies. Another reference on the matter is Joint DENR-NCIP Memorandum Circular No. 2007-01 for Management of Overlapping Protected Areas and/or their Buffer Zones and Ancestral Domains/Lands.

Please consider this a priority concern. Thank you.

ALAN E. VALLE

Copy furnished:
PAMO-ENTMRPA

October 15, 2021

DENR-CENRO
TAYTAY, PALAWAN
RELEASED

10.15.2021

3282



Republic of the Philippines
Department of Environment and Natural Resources
Region IV- MIMAROPA

COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE

By the National Highway, Poblacion, Taytay, Palawan, 5312

Mobile Contact Nos. 0926-505-9335, 0912-171-3889

Email: cenrotaytay@denr.gov.ph

DENR PENRO
PALAWAN RECORDS
RECEIVED

October 15, 2021

MEMORANDUM

BY:

DATE: 11-4-2021

DENR PENRO
TAYTAY, PALAWAN
RELEASED

BY:

10.15.2021

CN 3282

FOR : The Regional Executive Director
DENR MIMAROPA
L&S Building, 1515 by Roxas Blvd, Ermita, Manila
Attention please: Legal Division

THRU : The Provincial Environment and Natural Resources Office-Palawan

FROM : The Community Environment and
Natural Resources Officer

SUBJECT : **LETTER OF MS MARY ANN L. DELOS SANTOS, OFFICER-IN-CHARGE OF NCIP PALAWAN PROVINCIAL OFFICE**

Respectfully referring is the above subject letter dated August 31, 2021 which refers to the Notice of this Office issued to Mr Israel Gomez for violation of Article 51 of PD 1067 and Sections 20(n) and 24 of Republic Act 7586, as amended by RA 11038 in Obogon Cove, Cadlao Island, Buena suerte, El Nido, Palawan. Attached also is a copy of the response letter of this Office dated October 14, 2021.

The matter is a contentious issue pursuant to Section 13 of DAR-DENR-LRA-NCIP Administrative Order 01-12 dated January 25, 2012 hence this jurisdiction feels reserved to insist dealing with the NCIP Provincial Office. It is requested that the same be afforded with legal opinion and/or consider it for harmonization between the Regional Offices of the agencies. Another reference on the matter is Joint DENR-NCIP Memorandum Circular No. 2007-01 for Management of Overlapping Protected Areas and/or their Buffer Zones and Ancestral Domains/Lands.

Please consider this a priority concern. Thank you.

ALAN E. VALLE

Copy furnished:
PAMO-ENTMRPA



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
Community Environment and Natural Resources
EL NIDO-TAYTAY MANAGED RESOURCE PROTECTED AREA
Calle Real, Barangay Masagana, El Nido, Palawan, 5313
Contact No. GLOBE (0917-1103-262)
Email: denrpao_elnidopal@yahoo.com / entmrpa@gmail.com

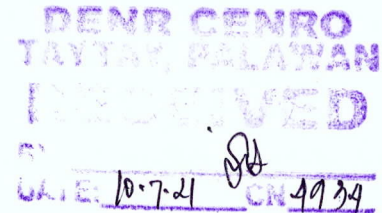
October 5, 2021

MEMORANDUM

FOR : Community Environment and
Natural Resources Officer
Taytay, Palawan

FROM : The Protected Area Superintendent
El Nido-Taytay Managed Resource Protected Area

SUBJECT : LETTER FROM NATIONAL COMMISSION ON INDIGENOUS
PEOPLE, PALAWAN PROVINCIAL OFFICE DATED AUGUST
31, 2021 CONCERNING THE ISSUED NOTICE TO VACATE
(NTV) TO MR. ISRAEL D. GOMEZ DATED AUGUST 18, 2021



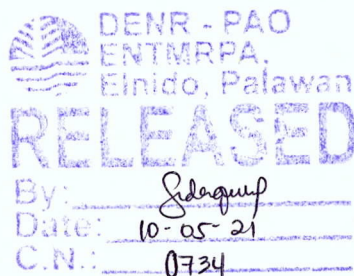
Respectfully forwarded is the letter from National Commission on Indigenous People (NCIP), Palawan Provincial Office dated August 31, 2021 signed by Mary Ann L. Delos Santos, AO IV/Officer-In-Charge.

As stated in the letter, Mr. Israel D. Gomez is a Tagbanua-tandulanen and also have an application for issuance of Certificate of Ancestral Land Title (CALT) located at Obogon Cove, Cadlao Island, Brgy. Buena Suerte, El Nido, Palawan which was the subject of the aforesaid Notice to Vacate. Stated also in the letter are the Indigenous People (IP) rights of Mr. Gomez per Section 3 (b), Section 4, Section 7, Section 8, of RA 8371 also known as "The Indigenous Peoples Rights Act of 1997" and Rule III, part II, Section 2. (Paragraph b.3) of its Implementing Rules and Regulations (IRR).

Further, the Palawan Provincial Office of National Commission on Indigenous People (NCIP) is requesting that the IP rights of Mr. Gomez will be recognize by the CENRO Taytay, Palawan.

For information and further instruction.

For the PASu,



JENUEL P. CASEL
PMF/Asst. PASu
In Charge, ENTMRPA-PAMO



Republic of the Philippines
Department of Environment and Natural Resources
Region IV- MIMAROPA
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
5312 Taytay, Palawan
by the National Highway, Poblacion, Taytay, Palawan
email ad: cenrotaytaypal@yahoo.com.ph
Contact Nos.: 0912-171-3889 (Talk and Text) 0926-505-9335 (TM)

October 14, 2021

MS MARY ANN L. DELOS SANTOS

Administrative Officer IV

Officer-In-Charge, NCIP Palawan Provincial Office

Beside Barangay Hall, Santa Monica Heights, Puerto Princesa City

Email Address: ncippalawanoffice@gmail.com

Telephone no. (048) 433-0490

DENR CENRO
TAYTAY, PALAWAN
RELEASED

BY: g.
DATE: 10.15.2021 NO. 3226

Madam,

Greetings!

We gratefully acknowledge the receipt on October 7 from the Protected Area Management Office of El Nido-Taytay Managed Resource Protected Area (ENTMRPA) a copy of your letter dated August 3, 2021 addressed to Mr Alexander E. Mancio of this Office. It pertains to the Notice issued by this Office to Mr Israel Gomez for violation of Article 51 of PD 1067 and Sections 20(n) and 24(par. 4) of RA 7586, as amended by RA 11038.

References in your letter were Sections 3.(b), 4, 7(b), 8 of Republic Act 8371, and Rule III, Part II, Section 2 (Paragraph b.3) of the IRR of the same law. Hence, you hope that the IP right of Mr Gomez, a tagbanua-tandulanen, be recognized by this Office.

With due respect, Republic Act 8371, Republic Act 11038, and Presidential Decree 1067 are parallel in the hierarchy of laws. We shall seek the opinion on this of the Legal Division of this agency. Pending receipt of the advice/instruction, this management considers the matter a contentious issue under Section 12 of Joint DAR-DENR-LRA-NCIP Administrative Order 01-12 dated January 25, 2012. Our opinion at the moment, however, is that even if the application of Mr Gomez for issuance of Certification of Ancestral Land Title comes to approval, the developments in the area, especially infrastructure projects, shall continue to be subject to environmental laws and regulations. This is consistent with Section 6 of Article XII of the Constitution that the use of property bears a social function to the common good. Hence, either IP/ICC member or not, nobody is exempted in securing necessary clearance and/or permit about the utilization of natural resources which by the procedure itself is a recognition of rights.

We hope to have dealt your concern. Thank you.

Very truly yours,


ALAN L. VALLE

Community Environment and Natural Resources Officer

Copy furnished:

DENR-MIMAROPA Regional Executive Director

PENRO-Palawan

PAMO-ENTMRPA

Office of the Punong Barangay, Buena suerte, El Nido, Palawan