

**“THE INDIGENOUS PEOPLES AND SMALL FISHERS OF
SOUTHERN PALAWAN:
A CASE OF LOCAL COMMUNITIES’ EXCLUSION FROM
THE MANAGEMENT AND UTILIZATION OF
MUNICIPAL FISHERIES AND AQUATIC RESOURCES”**

A Case Study by:

The Palawan NGO Network, Inc.

Atty. Jose Florante M. Pamfilo
Lead Researcher

Victor B. Colili
Elizabeth A. Maclang
Assistant Researchers

July 31, 2006

EXECUTIVE SUMMARY

For over two decades, members of the indigenous Pala'wan and Molbog tribes, as well as long-time resident small fishers, in the areas surrounding Bugsuk Island in the Municipality of Balabac in Southern Palawan have been treated as virtual interlopers in their own land. Barred from their traditional fishing grounds by a multinational pearl farm corporation, they have had to endure harassment and employ clandestine methods to be able to fish and manage to survive.

To make matters worse, in early 2005, the municipal government enacted Municipal Ordinance No. 01-2005 or the Protected Balabac Marine Eco-Region Ordinance. This ordinance constituted the entire municipal waters of Balabac as a protected marine eco-region, and designated the pearl farm concession area as a "core or strict protection zone." In the so-called "core or strict protection zone," all forms of gathering of aquatic resources – with the exception of those resulting from authorized pearl culture or aquaculture – are prohibited.

The case study examines the extent of access to information and opportunities for participation extended to the public (particularly the affected indigenous peoples and small fishers) in the enactment of the ordinance. The study follows The Access Initiative methodology and evaluates access to information and opportunities for participation on the basis of law, effort and effectiveness indicators. Assessment of the legal framework was undertaken through a review of existing laws, rules, regulations, and guidelines issued by the relevant government agencies. On the other hand, effort and effectiveness were assessed on the basis of information gathered through interviews, site visits and review of various documents.

The study concludes that the municipal government of Balabac and the other concerned government agencies barely exerted effort to provide the affected indigenous peoples and small fishers with access to information and opportunities for participation in the enactment of the ordinance. As a result, the indigenous peoples and small fishers have resorted to judicial action to nullify the ordinance, which has unjustly deprived them of their livelihood, and which they perceive was adopted solely to accommodate the pearl farm's interests and to legitimize the prohibition that the latter has foisted upon them for many years without the sanction of law.

However, the resort to judicial action has not proven to be a speedy and adequate remedy. The case remains pending to date as the indigenous peoples and small fishers languish in poverty while they await its resolution. The study concludes that this predicament can be traced to two main factors, namely: (a) gaps in existing laws; and (b) the failure of political will, and the lack of a deep-seated orientation on, and capacity to implement, principles on access to information and opportunities for participation, on the part of the concerned government agencies.

The main gap in the laws consists of the absence of: (a) an established set of procedures governing the creation by a local government unit of a “core or strict protection zone”; (b) an unequivocal mandate for the conduct participatory processes in the enactment of local legislation; (c) sanctions for failure to observe these processes; and (d) administrative remedies against local legislation that violate due process.

On the other hand, failure of political will and the lack of a deep-seated orientation on, and capacity to implement, principles on access to information and opportunities for participation are best exemplified by the failure of certain government agencies tasked with the implementation of specific laws that embody access to information and opportunities for participation to enforce the same.

To address the foregoing, the study recommends that a complement of (a) policy reforms, (b) enforcement actions, and (c) capability building activities be undertaken. It is hoped that the foregoing, if implemented, will prevent other indigenous peoples and fishing communities from being placed in a similar predicament, and render the processes involved less susceptible to manipulation to favor vested interests.

TABLE OF CONTENTS

Introduction	1
Background	2
Methodology	8
Findings	
Access to Information	
Law	10
Effort	13
Effectiveness	15
Opportunities for Participation	
Law	16
Effort and Effectiveness	21
Capacity Building	
Law	24
Effort and Effectiveness	25
Conclusion and Recommendations	26

INTRODUCTION

For over two decades, members of the indigenous Pala'wan and Molbog tribes, as well as long-time resident small fishers, in the areas surrounding Bugsuk Island in the Municipality of Balabac in Southern Palawan have been treated as virtual interlopers in their own land. Barred from their traditional fishing grounds by a multinational pearl farm corporation, they have had to endure harassment and employ clandestine methods to be able to fish and manage to survive. They lived in constant fear and were practically governed by the whims of those associated with the pearl farm. Pleas for the municipal government to intervene and assist in arriving at an arrangement for the peaceful coexistence of the pearl farm and the fishers remained unheeded.

Instead, in early 2005, the municipal government enacted Municipal Ordinance No. 01-2005 or the Protected Balabac Marine Eco-Region Ordinance (subsequently, the "Subject Municipal Ordinance"). This ordinance constituted the entire municipal waters of Balabac as a protected marine eco-region, and designated the pearl farm concession area as a "core or strict protection zone." In the so-called "core or strict protection zone," all forms of gathering of aquatic resources – with the exception of those resulting from authorized pearl culture or aquaculture – are prohibited. (Subsequently, the designation of the pearl farm concession area as a core or strict protection zone shall be referred to as the "Subject Policy".)

The Subject Municipal Ordinance was enacted without the benefit of consultations with communities directly affected thereby. Likewise, the municipal government has not disclosed the basis for the Subject Policy apart from the assertion that the marine biodiversity in the pearl farm concession area remains intact.

The foregoing came to pass notwithstanding the constitutional mandate of substantive and procedural due process, and the provisions of various statutes guaranteeing citizen's right to informed and meaningful participation in the formulation of policies concerning the management and conservation of their community's natural resources. These guarantees include: provisions on Free and Prior Informed Consent ("FPIC") under Republic Act No. 8371 or the Indigenous Peoples' Rights Act of 1997 (subsequently, the "IPRA"); fisherfolk representation in the local Fisheries and Aquatic Resources Management Council ("FARMC") under Republic Act No. 8550 or the Philippine Fisheries Code of 1998 (subsequently, the "Fisheries Code"); and provisions on "Social Acceptability" under Republic Act No. 7611 or the Strategic Environmental Plan (SEP) for Palawan Act (subsequently, the "SEP Law").

Considering the foregoing, an examination of the following is critical: (a) the existence of appropriate checks-and-balances on the exercise of local legislative power under the Local Government Code (Republic Act No. 7160); (b) the ability of national and sub-national agencies tasked with the enforcement of specific laws (*i.e.*, the National Commission on Indigenous Peoples or "NCIP" with respect to the IPRA, the Bureau of Fisheries and Aquatic Resources or "BFAR" with respect to the Fisheries Code, and the Palawan Council for Sustainable Development or "PCSD" with respect to the SEP Law)

to exact compliance with statutory provisions on access to information and public participation, from local government units (“LGUs”); and (c) the existence of adequate remedies and reliefs against non-compliance with those provisions.

In doing so, the case study follows the methodology of The Access Initiative (the “TAI Methodology”). The study focuses on (a) public access to information on the grounds for the Subject Policy, and (b) the opportunities for participation extended to the public in the enactment of the Subject Municipal Ordinance. Evaluation of access to information and opportunities for participation was done on the basis of law, effort and effectiveness indicators. Primarily, the actions of two government agencies – the LGU of Balabac and the Sangguniang Panlalawigan (Provincial Board) of Palawan, which reviewed and approved the Subject Municipal Ordinance – were evaluated. A total of 43 indicators (20 for access to information and 23 for opportunities for participation) were examined.

BACKGROUND

The Municipality of Balabac is the last municipality of the Province of Palawan on its southwestern tip. It is approximately 150 nautical miles from the provincial capital of Puerto Princesa, and 514 nautical miles from Manila. The municipality is composed of 31 islands and is bounded by the Balabac North Channel and the Palawan mainland on the north, the Balabac South Channel and Borneo on the south, the Sulu Sea on the east and South China Sea on the west. It is in fact closer to Borneo than to Puerto Princesa City.¹

Located at the juncture of the Sulu and South China Seas, the waters of Balabac are a significant center of marine biodiversity. Found therein are about 24 true mangrove species with at least 12 mangrove-associated flora and 19 mangrove-associated fauna; eight species of seagrasses and 16 seagrass-associated algal species; relatively fair live coral cover with about 30 coral species; 220 reef fish species; at least two species of sea turtles; and at least two species of dolphins. Sadly, they face major threats from the following: over-harvesting of reef-associated species; reef destruction due to high sedimentation rate and destructive fishing methods through dynamite or cyanide; illegal cutting of mangroves and “tan barking” or bark removal; egg collection, slaughter and destruction of the habitat of sea turtles; and increased incidence of illegal fishing by foreign fishing vessels.²

Balabac is the home of two indigenous peoples (“IPs”) communities, the Pala’wans and Molbogs. Among the places inhabited by them are the islands of Bugsuk, Pandanan and Marihangin, situated in the northern part, close to the Palawan mainland. Traditionally, the IPs subsisted on slash-and-burn farming (“pagkakaingin”), hunting (“pangangaso”), gathering of fish and seashells during low tide (“pangangatihan”) and

¹ Balabac Municipal Profile, Palawan Provincial Planning and Development Office, 2005.

² Conservation International, Joint Proposal for an Integrated Conservation and Development Strategy for the Municipality of Balabac, citing Exercise Luzon Sea Phase I Palawan Expedition, 2005.

hook-and-line fishing (“pangangawil”). Their catch and produce, however, were never commercially sold but were only for household consumption.³ The shallow waters in and around Bugsuk and Pandanan Islands are their traditional fishing grounds.⁴

Sometime in the 1940s, Cagayanens from the island of Cagayancillo in northeastern part of Palawan arrived in Bugsuk Island. They were soon followed by other non-indigenous peoples from the Visayas and other parts of the country.⁵ The non-IPs were warmly received by the IPs, and together they lived in an atmosphere of harmony and mutual assistance. In the words of Upo Gariba Santican, an elder of the Pala’wan tribe:

“Ang unang pangalan ng Bugsuk ay Apu, na ang kahulugan ay kaninunu-nunuan * * * Dahil sa paniniwala ng mga Palawano na ang isang isda ay pinahahati sa lahat, ng dumating ang mga Cagayancillo, tinanggap naming sila, ng dumating ang mga Kristiyano, tinanggap naming sila, ng dumating si Co[j]juangco ay; Pinaalis kaming lahat. Masakit ang nangyari!”⁶

“Cojuangco” is Eduardo Cojuangco, Jr., one of the most influential cronies of former dictator Ferdinand Marcos. He took interest in Bugsuk sometime in the early 1970s. In 1974, with the aid of the military, he forced the inhabitants of Bugsuk and Pandanan, to leave their lands and farms under an unjust land swap agreement. People were made to sign blank pieces of paper, threatened to accept payments for their standing crops and were made to realize that whether or not they accepted the payments they would still be forced to leave the islands.⁷

In the name of various corporations, Cojuangco set up a seedling nursery for hybrid coconut trees. Entry in the islands was very much restricted for they were heavily-guarded by military men. Five years later, in 1979, Cojuangco partnered with a Frenchman, Jacques Branellec, and set up Jewelmer International Corporation (“Jewelmer”), which then established a pearl farm on the waters between the islands. Jewelmer soon became one of the world’s largest south sea pearl producers.⁸

Initially, the pearl farm occupied an area of 20 hectares.⁹ Eventually, however, it began to creep up in size.¹⁰ Soon enough, Jewelmer and its joint venture partner, Ecofarm

³ Affidavit of Tiahangin Bahangin dated February 12, 2005.

⁴ Affidavit of Vicente Gabong dated, Febraury 12, 2005.

⁵ Petition entitled “*Jomlee Callon, et al. v. Municipality of Balabac*,” docketed as Special Civil Action No. 4138 in the Regional Trial Court of Palawan, Branch 48, dated August 18, 2005, at page 8.

⁶ Hon. Ana Theresia Hontiveros-Baraquel, Privilege Speech: A Pearl of Great Price, November 8, 2004.

⁷ “*Basal Banar: The Sacred Ritual of Truth*,” a film by Auraeus Solito.

⁸ Task Force Bugsuk, Situationer: Sambilog, Jewelmer and the Municipality of Balabac, January 30, 2006.

⁹ Pearl Farm Lease Agreement between the Ministry of Agriculture and Food and Jewelmer dated June 18, 1985.

¹⁰ Jewelmer and its joint venture partner subsequently entered into two contracts, a Contract of Lease and a Marine Lease Contract, with the Municipality of Balabac. However, the size and the metes and bounds of the additional areas being leased are not indicated in the lease contracts.

Systems and Resources, Inc., enjoyed the use of such portions of the sea as they pleased since the boundaries of their concession area was never demarcated on the ground.¹¹ Moreover, in its effort to protect its business, Jewelmer deprived the surrounding communities of their primary means of livelihood. The traditional fishing grounds of indigenous and non-indigenous fisherfolk as well as the usual navigational route to the town proper of Balabac became prohibited areas that were closely guarded by Jewelmer's private security personnel.¹²

Indigenous and non-indigenous fisherfolk from the surrounding communities caught fishing within the perimeter of the pearl farm were harassed, shot at, ill-treated and illegally detained. Thus, the fishers had to endure harassment and employ clandestine methods just to be able to fish and manage to survive. Poverty in the outlying communities worsened and became more widespread.¹³

Bound by this common plight, the Palawans, Molbogs and the non-IP fishers from the following villages formed "Sambilog (Samahan ng mga Katutubo at Maliit na Mangingisda sa Dulong Timog Palawan)" or the Association of Indigenous Peoples and Small Fishers from the Southernmost Tip of Palawan: (a) Sitio Marihangin in Marihangin Island; (b) Barangay Sibaring, which lies on a portion of Bugsuk Island not acquired by Cojuangco. This where many of the IPs and Cagayanens fled when the former acquired most of Bugsuk Island; (c) Barangays Puring, Tagnato and Buliluyan on the southern tip of the Palawan mainland. Politically, Puring, Tagnato and Buliluyan form part of the Municipality of Bataraza but are so close to Bugsuk that the IPs in those villages likewise consider the waters around Bugsuk as their ancestral waters and traditional fishing grounds.¹⁴ (Subsequently, the communities comprising Sambilog shall be referred to as the "Affected Communities".)

In the Pala'wan dialect, Sambilog means "One".¹⁵ Since its inception in 2000, the group has taken various initiatives in an attempt to regain access to the indigenous and non-indigenous fisherfolk's traditional fishing grounds, and to obtain recognition for the Pala'wans' and Molbogs' title over their ancestral domain. These include the filing by the Pala'wans and Molbogs of an application for a Certificate of Ancestral Domain Title ("CADT") with the NCIP, holding of a dialogue with the LGU of Balabac and the conduct of mobilizations and symposia.

However, its efforts were met with stiff resistance. After one dialogue in Malacañang Palace in July 2003, Jewelmer and the LGU refused to sit down again.¹⁶ Worse, in early 2005, the latter enacted the Subject Municipal Ordinance (a copy of which is attached hereto as **Exhibit A**). The ordinance declared the entire municipal

¹¹ Arthur Palatino, Back to Office Report Regarding the Peoples Festival of Samahang Tribo sa Dulong Timog Palawan (Sambilog) last October 16, 2004 at Bowen Island (Marihangin/Local Name), Bugsuk, Balabac, Palawan, October 19, 2004.

¹² "Pagbabalik Sa Tribo," a film by Howie Severino.

¹³ Task Force Bugsuk, *supra*.

¹⁴ Affidavits of Rudencio Rampang, Tarsan Siong and Arisin Jakia, all dated February 12, 2005.

¹⁵ Task Force Bugsuk, *supra*.

¹⁶ Task Force Bugsuk, *supra*.

waters of Balabac as a protected marine eco-region, to be zoned into core or strict protection zones, multiple use zones and such other zones as may be found appropriate.¹⁷ Furthermore, it designated Jewelmer's pearl concession area as a "core or strict protection zone"¹⁸ where all forms of gathering of aquatic resources, except those resulting from authorized pearl culture and aquaculture, is absolutely prohibited.¹⁹ A location map of the so-called "core or strict protection zone" relative to the Affected Communities and the area covered by the IPs' CADT claim is attached hereto as **Exhibit B**,²⁰ while pictures of the site are attached as **Exhibits B-1 to B-6**.

Invoking the Fisheries Code and the SEP Law, the Subject Municipal Ordinance proclaims that it is intended to "promote the conservation of marine resources and to ensure the sustainable and equitable utilization of coastal areas" "for the benefit of the people of Balabac in particular, and in general, for the Filipino people and of the generations of Filipinos yet to come."²¹

The adoption of the Subject Policy took the Affected Communities completely by surprise. They only learned about it on October 28, 2004, the day Municipal Ordinance No. 04-2004 (subsequently the "Original Ordinance") was passed. Mr. Victor Colili, community organizer of the Palawan NGO Network, Inc. ("PNNI", one of the organizations supporting Sambilog) received a text message from an official of the Municipality of Balabac informing the former that the Sangguniang Bayan (Municipal Council) of Balabac had enacted the Original Ordinance.²² The Original Ordinance (a copy of which is attached hereto as **Exhibit C**) is the predecessor of the Subject Municipal Ordinance, whose provisions are substantially the same as the latter.

Upon learning the basic contents of the Original Ordinance (still through the exchange of text messages with the aforementioned municipal official), the Affected Communities immediately prepared petitions to the Sangguniang Panlalawigan (Provincial Board) of Palawan asking the latter to refrain from approving the Original Ordinance. (Under section 56 of Republic Act No. 7160 or the Local Government Code, municipal ordinances are subject to the mandatory review of the Sangguniang Panlalawigan of the province where the municipality belongs.) The petitions stated:

Sapagkat kaming mga mamamayan ng [Sitio Marihangin, Barangay Bugusk/Barangay Sibaring] ang karamihan sa aming hanapbuhay ay pangingsda lamang na gamit ay mga bangkang maliliit na walang kakayahang maglaot sa malalim na bahagi ng karagatan kagaya ng China Sea lalung-lalo na sa panahon malakas ang hanging Amihan o Habagat man.

¹⁷ Municipal Ordinance No. 01-2005, sections 3(10) and 4.

¹⁸ *Id.*, at section 4.

¹⁹ *Id.*, at section 5.

²⁰ Courtesy of Conservation International.

²¹ *Id.*, at section 2(c) and (d).

²² Interview with Mr. Victor Colili, July 18, 2006.

Sapagkat ang nasabing Ordinance ay labis na maaapektuhan ang hanapbuhay naming maliliit na mangingisda dahil ang mga lugar na tradisyunal naming pinangingisdaan ay laan na nilang ipagbawal.

Sapagkat ang nasabing Ordinance ay hindi dumaaan sa tamang proseso ng konsultasyon sa mga mamamayan na siyang labis na maaapektuhan.²³

In due course, the Sangguniang Panlalawigan, through its Committees on Laws and Rules, and Environmental Protection and Natural Resources, conducted review proceedings. The aforesaid Committees conducted joint meetings in Puerto Princesa City on November 11, 2004 and December 15, 2005. During both meetings, NGOs from Puerto Princesa (namely, PNNI and Environmental Legal Assistance Center), and the Park Manager of Tubbataha Marine Park, Ms. Angelique Songco, were invited as resource persons.²⁴ At the second meeting, representatives of the affected communities, namely Mr. Oscar Pelayo of Sitio Marihangin and Messrs. Juanito Robea, Vicente Robea and Agripino Geroso of Brgy. Sibaring, were able to attend through the efforts of PNNI.²⁵

After the second meeting, the Committees resolved to return the Original Ordinance to the Sangguniang Bayan of Balabac for further study. Among others, the Committees recommended that the Sangguniang Bayan conduct public consultations with all fishermen and constituents (including IPs) of all barangays directly affected, and that the endorsement of the appropriate FARMC be obtained, as required under the Fisheries Code.²⁶ In the meantime, members of the Affected Communities continued to fish and resisted efforts by Jewelmer's guards to prohibit them from fishing, as they knew that the Original Ordinance had been sent back to the Sangguniang Bayan for revision.²⁷

However, still without conducting the necessary consultations with the Affected Communities and without having introduced any substantial changes to the Original Ordinance, the Sangguniang Bayan enacted the Subject Municipal Ordinance on February 24, 2005. The Subject Municipal Ordinance purports to amend the Original Ordinance but in reality only made superficial changes thereon (such as the deletion of a specific reference to Jewelmer in designating the location of the "core or strict protection zone," and the inclusion of a section on definition of terms). More importantly, it still failed to address the Affected Communities' substantive concerns. Having learned of this, the Affected Communities sent another petition to the Sangguniang Panlalawigan. This second petition states:

²³ Petitions of Sitio Marihangin and Brgy. Sibaring, copies of which are attached as **Exhibits D** and **E**, respectively.

²⁴ Minutes of the Joint Committee Meeting of the Committees on Environmental Protection and Natural Resources and Rules and Laws dated November 11, 2004 and December 15, 2004, copies of which are attached as **Exhibits F** and **G**, respectively.

²⁵ Interviews with Messrs. Oscar Pelayo and Juanito Robea, July 1, 2006.

²⁶ Minutes of the Joint Committee Meeting of the Committees on Environmental Protection and Natural Resources and Rules and Laws on December 15, 2004.

²⁷ Interview with Mr. Victor Colili, July 18, 2006.

Sapagkat ang nasabing Ordinance ay isa lamang pag-uulit ng dating Municipal Ordinance #04-2004 maliban sa idinagdag na ilang definition of terms at Municipal waters technical description (sec. 3). Gayunpaman ang nasabing amended Ordinance ay hindi pa rin dumaan sa tamang proseso at pangunahing pangangailangan sa pag-apruba ng isang ordinansa ***;

Sapagkat mapapansin sa ordinansang ito na ang Municipal Gov't of Balabac ay hindi talaga seryosong i-preserve, i-conserve at protektahan ang municipal waters of Balabac bagkus ang tanging layunin lamang nila ay protektahan ang pangunahing interes ng isang kompanya sa dahilang halos lahat ng probisyon sa nasabing ordinansa ay pumapanig sa JIC [Jewelmer].²⁸

The Affected Communities waited for the Sangguniang Panlalawigan to conduct further proceedings. Unknown to them, however, the Sangguniang Panlalawigan approved the Subject Municipal Ordinance on March 29, 2005.²⁹ They only found out about this during a Congressional Inquiry held in Puerto Princesa City in April 2005 when a member of the Sangguniang Panlalawigan disclosed that the Subject Municipal Ordinance had been approved.³⁰

Unable to obtain redress, members of the Affected Communities filed a suit in court seeking the nullification of the Subject Municipal Ordinance. The suit, entitled "*Jomlee Callon, et. al. v. Municipality of Balabac,*" is docketed as Special Civil Action No. 4138 before the Regional Trial Court of Palawan, Branch 48.³¹

Furthermore, to call attention to their plight, Sambilog undertook a "Solidarity Caravan-March" from October 12-17, 2005 where thirty of its members marched from the southern tip of the Palawan mainland to the provincial capital of Puerto Princesa, which spans a distance of approximately 250 kms. Timed with the celebration of the Indigenous Peoples' Month, the caravan passed through five Southern Palawan municipalities where the marchers were received by, and had the chance to exchange grievances with, other IP communities, NGOs and multi-sectoral organizations. By the time the caravan arrived in Puerto Princesa, the number of the marchers had more than doubled, with concerned citizens joining in to express their solidarity.³²

Upon reaching the capital, the marchers formally brought their grievance before the Provincial Government. The latter responded by calling a dialogue, to be mediated by the Sangguniang Panlalawigan, between Sambilog, on one hand, and the Municipality of

²⁸ Second petition from residents of Sitio Marihangin, Barangay Bugsuk, a copy of which is attached as **Exhibit H**.

²⁹ Copies of the Committee Report recommending the approval of the Subject Municipal Ordinance, and the minutes of the session of the Sangguniang Panlalawigan where the Subject Municipal Ordinance was approved are attached hereto as **Exhibits I** and **J**, respectively.

³⁰ Interview with Mr. Victor Colili, July 18, 2006.

³¹ This case has been superseded by the suit entitled "*Jilmani Naseron, et al. v. Municipality of Balabac, et al.*" docketed as Special Civil Action No. 4232 filed on September 14, 2006.

³² See "*Indigenous Palawenos Stage Historic March,*" Bandillo ng Palawan, October 17-23, 2005.

Balabac and Jewelmer, on the other. The dialogue was scheduled on November 8, 2005, or more than three weeks after the marchers arrived in Puerto Princesa City. In the meantime, the marchers, reinforced by more Sambilog members, decided to stay camped outside the Provincial Capitol until their problem had been concretely addressed.³³

During the November 8, 2005 dialogue, the defects of the ordinance in terms of substance (*e.g.*, it violated provisions of the IPRA and the Fisheries Code as it unduly deprived the IPs and small fishers of access to their fishing grounds; it violated the SEP Law as it allowed pearl farming within a core or strict protection zone) and as regards the process it underwent (*e.g.*, the affected communities were never consulted; no FARMC had been constituted) were extensively discussed. It was also noted that the Sangguniang Bayan failed to comply with many of the recommendations made by the Sangguniang Panlalawigan. However, the Municipality of Balabac and Jewelmer maintained a hard-line stance and refused to even consider a review and suspension of the implementation of the ordinance.³⁴ In the aftermath, the Sangguniang Panlalawigan created an Ad Hoc Committee to study the Sangguniang Panlalawigan's possible courses of action.³⁵

Sambilog's efforts, however, were all for naught. Despite earlier public pronouncements by Palawan Vice Governor David Ponce de Leon (who is the Presiding Officer of the Sangguniang Panlalawigan) acknowledging the Subject Municipal Ordinance's defects, and his promises to exert earnest efforts to find a solution to the problem,³⁶ the Sangguniang Panlalawigan eventually opted to distance itself from the issue. On December 5, 2006, it resolved to simply leave the matter for the court to decide, essentially washing the problem off its hands.³⁷

METHODOLOGY

As stated at the outset, the study focuses on (a) public access to information on the grounds for the Subject Policy. This would include information on the substantive basis for such policy, and records of the processes undertaken in connection thereto; and (b) the opportunities for participation extended to the public in the enactment of the Subject Municipal Ordinance.

The study follows the TAI methodology and evaluates access to information and opportunities for participation on the basis of law, effort and effectiveness indicators. Assessment of the legal framework was undertaken through a review of existing laws, rules, regulations, and guidelines issued by the relevant government agencies. On the

³³ See "*Camp Out at the Capitol*," Bandillo ng Palawan, October 24-30, 2005.

³⁴ See Stenographic Notes Taken During the 67th Regular Session of the 38th Sangguniang Panlalawigan held at the Sangguniang Panlalawigan Session Hall on November 8, 2005, City of Puerto Princesa.

³⁵ See "*Indigenous Protesters Fail to Reclaim Fishing Rights*," Bandillo ng Palawan, November 14-20, 2005.

³⁶ See "*Sambilog Resumes Protest*," Bandillo ng Palawan, December 12-18, 2005.

³⁷ Report of the Special/Ad Hoc Committee on the Sambilog Petition; Minutes of the Session of the Sangguniang Panlalawigan held on December 5, 2006.

other hand, effort and effectiveness were assessed on the basis of information gathered through interviews, site visits and review of various documents.

For both access to information and opportunities for participation, the following laws were examined:

- (a) the Local Government Code, which grants and regulates the exercise of legislative powers by LGUs,³⁸ because the policy concerned is in the form of a municipal ordinance;
- (b) the Fisheries Code, which vests jurisdiction over municipal waters, and the power to enact fisheries ordinances and to create fish refuge and sanctuaries on municipal governments;³⁹
- (c) the SEP Law, because the Subject Municipal Ordinance creates zones with various grades of protection. Under the SEP Law, a graded system of protection and development control known as the Environmentally Critical Areas Network or “ECAN” is established over all of Palawan, including both terrestrial and marine areas;⁴⁰ and
- (d) IPRA because the Subject Policy impacts on IP communities and their ancestral domain. Under Section 58 of the IPRA, environmental policies which have the effect of depriving IPs of their ancestral domains must have the concerned IPs’ FPIC.

In addition, for access to information, Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) was also examined.

Apart from the foregoing laws, the following rules, regulations and guidelines were also reviewed:

- (a) Internal Rules of Procedure for the Sangguniang Bayan of Balabac;
- (b) Provincial Administrative Code of Palawan (Provincial Ordinance No. 269-A, series of 1997). Under the Local Government Code, local legislative bodies are empowered to adopt their own rules of procedure on the legislative process;⁴¹
- (c) PCSD Resolution No. 05-250, which contains the rules for the implementation of the ECAN (subsequently, the “ECAN Guidelines”);
- (d) NCIP Administrative Order (“AO”) No. 03, series of 2002, which governs the process for obtaining FPIC (subsequently, the “FPIC Guidelines”);
- (e) the Implementing Rules and Regulations of the IPRA; and
- (f) the Implementing Rules and Regulations of Republic Act No. 6713.

Interviews were sought and conducted with officials of the Municipality of Balabac, the Sangguniang Panlalawigan of Palawan, the BFAR, the PCSD and the NCIP, residents of the Affected Communities (including both IPs and non-IP fishers), and NGOs. A list of these individuals, their affiliation/position and the reasons for selecting them is attached hereto as **Appendix A**, while their respective documentations are

³⁸ See Local Government Code, sections 16, 48 to 59, and 447.

³⁹ See Fisheries Code, sections 16 and 81

⁴⁰ See SEP Law, section 7.

⁴¹ See Local Government Code, section 50(b)(3).

attached as **Appendices A-1 to A-18**. On the other hand, the list of the sites visited is attached hereto as **Appendix B**, and pictures of these sites as **Appendices B-1 to B-5**.

We sought to review the records and files of the Municipality of Balabac but were not given access to the same. Hence, the study relies heavily on the records of the Sangguniang Panlalawigan, the case files of “*Callon, et at. v. Municipality of Balabac*” and the files of PNNI. We likewise conducted a review of back issues of Palawan newspaper publications and an internet search. However, the latter did not yield any information not already available in the files of PNNI.

FINDINGS

Access to Information

Law

The existing legal framework is, on the whole, not very supportive of access to information. As stated above, the information sought in this case are those pertaining to the basis for the adoption of the Subject Policy.

The principal piece of legislation that provides for public access to information is Republic Act No. 6713. While the law is not primarily concerned with information generation and dissemination (as it is in fact a set of rules prescribing a standard of conduct for public officials and employees), public access to information is promoted as a component of accountability and transparency in public service.

Under the law, public officials and employees are mandated to respond to communications sent by the public within 15 days from receipt, and to make public documents accessible to and readily available for inspection by the public within reasonable hours.⁴² The law’s implementing rules and regulations further state that a policy of full public disclosure is adopted with respect to transactions involving public interest, subject to reasonable conditions prescribed by law.⁴³

However, considering the nature of Republic Act No. 6713 as noted above, it is largely inadequate to address the information needs of stakeholders in the present case because:

- (a) it does not provide for a proactive duty on the part of public officials and employees to make information available to the public;
- (b) it does not deal with the specific information that a government agency must generate in support of a proposed policy decision; and
- (c) it does not require the provision and dissemination of information within a given period prior to the adoption of the policy decision.

⁴² Republic Act No. 6713, section 5(a) and (e).

⁴³ Implementing Rules and Regulations of Republic Act No. 6713, Rule IV, section 1.

On the contrary, its implementing rules exempt several categories of information and documents from the information, record or documents that are subject to public inspection, including “drafts of decisions, orders, rulings, policy decisions, memoranda, etc.”⁴⁴

The deficiencies noted above are shared by the specific laws under whose framework the Subject Policy was adopted (*i.e.*, the Local Government Code and the Fisheries Code).

The Local Government Code does not provide for the specific information that an LGU must generate in support of a proposed ordinance nor does it require the latter to actively disseminate information prior to an ordinance’s enactment. In fact, the Local Government Code is silent as to the provision of information prior to the adoption of an ordinance. It only requires the posting and publication of ordinances after their enactment, thus:

- The secretary to the sanggunian concerned shall cause the posting of an ordinance or resolution in the bulletin board at the entrance of the provincial capitol and the city, municipal or barangay hall [as the case may be, and in] at least two (2) conspicuous places in the local government unit concerned not later than five (5) days after approval thereof.

The text of the ordinance or resolution shall be disseminated and posted in Filipino or English and in the language or dialect understood by the majority of the people in the local government unit concerned, and the secretary to the sanggunian shall record such fact in a book kept for the purpose, stating the dates of approval and posting.

- The gist of all ordinances with penal sanctions shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs. In the absence of any newspaper in the province, posting of such ordinances shall be made in all municipalities and cities of the province where the sanggunian of origin is situated.⁴⁵

On the other hand, the Fisheries Code only states that the creation of a fish sanctuary shall be based on “the best available scientific data,”⁴⁶ but creates no obligation to provide and disseminate that data to the relevant public prior to the creation of the fish sanctuary.

It must be noted that, prior to the Fisheries Code, fisheries-related matters were governed by Presidential Decree No. 704 or the Fisheries Decree of 1975. Under the latter, the power to create fish sanctuaries was exercised by the Secretary of the Department of Agriculture (“DA”), upon the recommendation of the Director of the

⁴⁴ *Id.*, at section 3(d).

⁴⁵ Local Government Code, section 59(b) and (c).

⁴⁶ Fisheries Code, section 81.

BFAR.⁴⁷ When the Fisheries Code was enacted in 1998, this power was transferred to LGUs, subject to consultation with the DA and the appropriate FARMC.⁴⁸

Unlike in the present framework, the creation of a fish sanctuary by the DA under the old fisheries law required the generation and/or dissemination of specific information. DA-BFAR General Memorandum Order No. 3, series of 1990 (“GMO No. 3”), which sets the guidelines for the creation of fish sanctuaries, provides that the following information must be generated and/or disseminated to fisherfolk and other concerned citizens in fishing communities:

- (a) the concept of and the need for a fish sanctuary;
- (b) probable sites for fish sanctuaries, using the following criteria: social criteria; economic criteria (importance of species and importance to fisheries); ecological criteria (diversity; naturalness; uniqueness; vulnerability); and pragmatic criteria (size and manageability);
- (c) proposed management plan;⁴⁹
- (d) formal detailed proposal for the selected site in accordance with a prescribed format;⁵⁰
- (e) report of meetings with communities;⁵¹ and
- (f) technical description of the area.⁵²

A copy of GMO No. 3 is attached as **Exhibit K**. However, with the devolution of the power to create of fish sanctuaries to LGUs, the foregoing was rendered inoperative, thus leaving a void as to information generation and dissemination requirements prior to the creation of a fish sanctuary. No parallel rules have been promulgated under the Fisheries Code.

Apart from the Local Government Code and the Fisheries Code, two other laws are relevant considering the nature of the Subject Policy – the SEP Law and the IPRA. While some information dissemination is required under the framework of these two laws, they are likewise inadequate to serve the information needs of the stakeholders in this case given the limitations on the scope of their applicability.

As previously stated, the SEP Law provides for a graded system of protection and development control over Palawan known as the ECAN.⁵³ Under the same, “core zones” are areas of maximum protection that shall be designated free from any human activity.⁵⁴ The rules for the implementation of the ECAN are contained in the ECAN Guidelines, and the latter requires some information dissemination in connection with ECAN zoning, thus:

⁴⁷ Presidential Decree No. 704, as amended, section 32.

⁴⁸ Fisheries Code, section 81.

⁴⁹ GMO No. 3, section 6.1.

⁵⁰ *Id.*, at section 6.2.

⁵¹ *Id.*, at section 6.5.

⁵² *Id.*, at section 6.8.

⁵³ SEP Law, section 7.

⁵⁴ *Id.*, at sections 8(1) and 10(1).

- The PCSD Staff, in coordination with other agencies and organizations, shall undertake intensive environmental education services to instill full understanding and cooperation among the populace in the implementation of the ECAN. Such shall be implemented by the information and education program of the LGU for their constituents;⁵⁵ and
- After the areas have been delineated and approved, information dissemination campaign shall continue to be undertaken to enlighten the users and the populace of the existing ECAN boundaries and uses of each zone in each municipality or management unit.⁵⁶

However, the foregoing requirements pertain specifically to the conduct of ECAN zoning only. It appears that a municipal government may enact an ordinance designating a core or strict protection zone in marine areas independently of the ECAN zoning process, pursuant to its powers under the Local Government Code and the Fisheries Code.⁵⁷

On the other hand, under the IPRA, environmental policies which have the effect of depriving IPs of their ancestral domains must have the FPIC of the IPs concerned.⁵⁸ The processes for obtaining the FPIC are contained in the FPIC Guidelines, and the latter provides that a project proponent must present and submit to the IP community and the NCIP, in a language understandable to the community, the details of the possible impact of the proposed policy, program, project or activity upon the ecological, economic and social-cultural aspect of the community as a whole. The document must clearly indicate how adverse impacts can be avoided or mitigated.⁵⁹ Likewise, the oppositors to the proposal, if there are any, shall be given equal opportunity to present their side.⁶⁰ In this case, the Municipality of Balabac may be considered as the project proponent inasmuch as it is the proponent of the Subject Policy.

While the information required to be generated and disclosed under the FPIC Guidelines is quite comprehensive, the obligation to disclose these necessarily pertains to IP communities only. No similar obligation is imposed with respect to other interested, but non-indigenous, members of the community.

Effort

The Municipality of Balabac exerted almost no effort to provide the public, particularly members of the Affected Communities, with information on the basis for the adoption of the Subject Policy.

⁵⁵ PCSD Resolution No. 05-250, Title 3, Chapter IV, section 34.

⁵⁶ *Id.*, at Title 3, Chapter I, section 17.

⁵⁷ Interview with Mr. Madrono Cabrestante, July 24, 2006; Interview with Mr. John Pontillas, July 13, 2006.

⁵⁸ IPRA, section 58.

⁵⁹ NCIP AO No. 3, series of 2002, section 28(c).

⁶⁰ *Id.*, at section 14(b).

As related above, the Affected Communities only learned about the Subject Policy on the day the Original Ordinance was enacted. Interviews with community members consistently disclosed that the Municipality did not prepare any information materials nor conduct widespread consultations for the purpose of disseminating information on the same.⁶¹ This was confirmed by interviews with NGOs assisting the Affected Communities,⁶² and one currently engaged in a project in Balabac.⁶³ We have not seen or reviewed any document or records that would indicate the contrary considering that we were not given access to the records of the Municipality of Balabac.

It appears that the Municipality does not have a system for data collection and management. Upon site visit, we were informed that all documents pertaining to the Subject Municipal Ordinance and Subject Policy are under the custody of the Secretary of the Sangguniang Bayan. In his absence, no other municipal official or employee is authorized to permit viewing and inspection. Copies or parallel files are not available in the other municipal offices (*e.g.*, Office of the Vice Mayor, Municipal Planning and Development Office),⁶⁴ or in the Municipality's Extension Office in Puerto Princesa City.⁶⁵ More importantly, it appears that viewing of the documents is subject to prior clearance from the Mayor.⁶⁶ Inasmuch as the Secretary to the Sangguniang Bayan was not present during both times we visited, we were not able to gain access to the Sangguniang Bayan's files. Subsequent attempts to communicate with the Secretary were never responded to.

Some information and documents, however, are available in the Secretariat of the Sangguniang Panlalawigan in Puerto Princesa City. In fact, the Affected Communities were able to first secure copies of the Original Ordinance from the Sangguniang Panlalawigan, through the efforts of PNNI. While the Sangguniang Panlalawigan registry holds mostly documents in connection with the review proceedings conducted by the said body on the Original Ordinance and the Subject Municipal Ordinance, it also contains some documents forwarded to it by the Municipality of Balabac. Nevertheless, none of these documents reveal adequate information about the basis for the Subject Policy. These documents include:

(a) an article entitled "Balabac Protected Eco-Region (On the Need to Declare Its Municipal Waters a Protected Eco-region and Provide for Strict Protection Zones/Marine Sanctuaries pursuant to RA No. 8550)." The article relates the chronology of events that led to the passage of the Subject Municipal Ordinance, and makes references to a scientific study and a multi-stakeholder consultation that were supposedly conducted prior to its enactment. This document, however, did not disclose the details of the scientific study adverted to. Moreover, it was only prepared after the fact, *i.e.*, after

⁶¹ Interviews with Messrs. Oscar Pelayo, Jilmani Naseron, Juanito Robea, Renato Santican and Jonathan Santican, July 1, 2006; Interviews with IPs of Barangay Pandanan, July 3, 2006.

⁶² Interview with Ms. Ma. Cleofe P. Bernardino, July 11, 2006; Interview with Ms. Ma. Cristina Guerrero, July 14, 2006.

⁶³ Interview with Ms. Marivel Dygico, July 25, 2006.

⁶⁴ Interview with Vice Mayor Hadz Ismael Hussin. July 4, 2006.

⁶⁵ Visited on July 13, 2006.

⁶⁶ Interviews with Mr. Emilio Ong and Mr. John Taha, July 4, 2006.

the Subject Municipal Ordinance had been enacted. Hence, it could not have served to inform the Affected Communities of the basis for the Subject Policy prior to its adoption;

(b) transcripts of speeches made by Atty. Tony Oposa, Former Rep. Alfredo Maranon of Negros Occidental (who established the Sagay Marine Reserve in Negros) and former Department of Environment and Natural Resources (“DENR”) Secretary Angel Alcala during the alleged “multi-sectoral/multi-stakeholder meeting” held in Balabac. During this meeting, they supposedly presented their recommendations for the conservation and protection of Balabac’s municipal waters. However, the transcripts reveal that the speeches were limited to a general discussion on the need to protect Balabac’s marine resources. Details of the proposal to constitute the municipal waters of Balabac as a protected eco-region – *e.g.*, the specific activities that will be prohibited, the various zones to be constituted, the location of these zones and the limitations to be imposed therein, the impact of these measures on the environment and on the livelihood of the residents, the options and alternatives available – were never discussed.

Furthermore, there is no available document that would show the number and the composition of the participants to the aforesaid meeting. In any event, the Affected Communities -- the stakeholders directly affected by the Subject Policy -- were never invited and were not able to attend the same;

(c) a document entitled “Minutes of the Dialogue of Balabac Local Government Officials with the Sambilog and other concerned people regarding the declaration of Waters of Balabac as the Balabac Protected Eco-Region held on October 27, 2004 at 3:00 p.m. at Jesus Aban Hall, Balabac, Palawan.” However, a closer inspection of this document would reveal that the title is actually misleading as the dialogue involved a different, although related, subject matter -- *i.e.*, Sambilog’s complaints against the Jewelmer pearl farm concession, including acts of harassment committed by its personnel. Thus, it seems that the Municipality attempted to manipulate some documents to make it appear that certain participatory processes were conducted prior to the adoption of the Subject Policy.

Copies of the foregoing documents are attached as **Exhibits L, M and N**, respectively.

Effectiveness

It is widely-believed in the Affected Communities that the Subject Policy was motivated not by a genuine desire to conserve and protect the marine resources of Balabac but is only intended to serve and protect Jewelmer’s business interests.⁶⁷ Largely, this view takes its roots from the long history of distrust among the parties – *i.e.*, the long-standing animosity between Jewelemer and the Affected Communities, and the perception that LGU has always been partial to the former. However, the inadequacy of

⁶⁷ See second petition of the residents Sitio Marihangin, Brgy. Bugsuk, Balabac (Exhibit H).

the information generated and disseminated on the Subject Municipal Ordinance and Subject Policy has only served to perpetuate and strengthen this belief.

Opportunities for Participation

Law

The existing legal framework is inadequate to ensure that the relevant public will be given an opportunity to meaningfully participate in the enactment process of a municipal ordinance, in general, and one creating a fish sanctuary or core/strict protection zones in marine areas, in particular.

Again, the principal pieces of legislation involved are the Local Government Code and the Fisheries Code. The former grants LGUs the power to enact ordinance for the general welfare of its constituents, including ordinances for environmental protection,⁶⁸ while the latter vests jurisdiction over municipal waters and the authority to create fish sanctuaries on municipal governments.⁶⁹

The Local Government Code is silent as to the conduct of participatory processes in connection with the enactment of an ordinance, save for the following requirements:

- (a) that all sanggunian sessions shall be open to the public unless a closed-door session is ordered by an affirmative vote of a majority of the members present, there being a quorum, in the public interest or for reasons of security, decency, or morality.⁷⁰ Thus, there is no proactive duty to involve the public in the legislative process; and
- (b) with respect to tax ordinances and revenue measures, public hearings are mandatory prior to their enactment. This, therefore, implies that public hearings may be dispensed with for other types of ordinances.⁷¹

It must be noted that the Local Government Code empowers the Sangguniang Bayan and Sangguniang Panlalawigan to adopt their own rules of procedure for the legislative process.⁷² In this case, however, the respective rules adopted by the Sangguniang Bayan of Balabac and the Sangguniang Panlalawigan of Palawan do not adequately provide for public participation.

Under the Internal Rules of Procedure for the Sangguniang Bayan of Balabac, the following provisions offer venues for public participation:

- All session shall be open to the public unless a closed-door session is ordered by an affirmative vote of a majority of the members there being a quorum in the public interest

⁶⁸ Local Government Code, sections 16 and 447.

⁶⁹ Fisheries Code, section 16 and 81.

⁷⁰ Local Government Code, section 52(c).

⁷¹ *Id.*, at section 187.

⁷² *Id.*, at section 50(b)(3).

or for reasons of security, decency, or for reasons affecting the dignity of the Sanggunian or any of its members, or when confidential matters are being considered;⁷³

- Question Hour is that period of time allotted for members of the Legislative Body to ask questions from both government and private sectors, usually heads of offices, technical men and prominent individuals, primarily intended to seek information from the latter on certain matters that are of public interest. This item in the “Order of Business” if properly utilized also provides the opportunity for legislators particularly the Sanggunian members to interact with different personalities. In doing so, the principle of “citizen participation” is enhanced and institutionalized.⁷⁴
- No tax ordinance or revenue measure shall be enacted by the Sanggunian in the absence of a public hearing duly conducted by the committee concerned.⁷⁵
- For purposes of this internal rules, a committee hearing is an activity of the Sanggunian, thru its committees, wherein the general public particularly those representing different sectors that may be interested or to be affected by a proposed measure are invited to attend to hear and be heard on that matter.⁷⁶

It will be observed that while the foregoing provisions introduce concepts such as the Question Hour and “citizen participation,” the Internal Rules do not equivocally state the circumstances or conditions under which a Question Hour must be called, or what types of issues or matters are required to be the subject of a Question Hour. Thus, it appears that the question of whether a particular policy proposal will be the subject of a Question Hour is largely discretionary upon the Sangguniang Bayan. Moreover, as in the case of the Local Government Code, it appears that the holding of a public or committee hearing is not mandatory, except with respect to tax ordinances or revenue measures.

On the other hand, the Provincial Administrative Code of Palawan (Provincial Ordinance No. 269-A, series of 1997), which prescribes the rules for the Sangguniang Panlalawigan, provides limited opportunities for public participation, thus:

- The Provincial Board shall have regular or standing committees with power to invite concerned public officials/employees/authorities and conduct queries on matters and other subjects referred to it for proper consideration and disposition, hold public hearings or otherwise take action on matters within the scope of its functions;⁷⁷
- The committee may call on any person or persons to appear before such committee and request his opinions, views or comments on the matter under consideration;⁷⁸ and

⁷³ Internal Rules of Procedure for the Sangguniang Bayan of Balabac, Rule VII, section 5.

⁷⁴ *Id.*, at Rule X, section 2.

⁷⁵ *Id.*, at Rule XII, section 1.

⁷⁶ *Id.*, at Rule XII, section 3.

⁷⁷ Provincial Administrative Code of Palawan, Chapter XV, Rule II, section 1. Underscoring supplied.

⁷⁸ *Id.*, at Rule II, section 3. Underscoring supplied.

- All sessions of the Board shall be open to the public unless a closed-door session is ordered by an affirmative vote of a majority of the members present, there being a quorum, in the interest of the public or for reasons of security, decency or morality.⁷⁹

It will be noted that, under the foregoing provisions, the holding of public hearings and the solicitation of opinions, views or comments from the public are discretionary, not mandatory.

Considering the foregoing, there are no mechanisms to ensure that:

- (a) public hearings or other participatory processes will be conducted, and the public given the opportunity to submit their opinions, views and comments on a proposed policy;
- (b) the relevant public -- *i.e.*, those who are directly affected by the policy proposed -- will be invited to such processes, if any are conducted;
- (c) notice and adequate information will be given within a reasonable time prior to the commencement of the processes, to ensure that the public's participation therein will be meaningful;
- (d) opinions, views and comments of the public, if any are solicited or submitted, will be duly evaluated and considered in the crafting of the ordinance; and
- (e) the public is duly informed about how their comments were considered, evaluated and incorporated in the final draft of the ordinance.

As regards the Fisheries Code, it likewise does not provide for specific participatory mechanisms in the creation of a fish sanctuary. It only states that such must be done in consultation with the pertinent FARMC and the DA.⁸⁰ In a very limited sense, public participation is promoted because a Municipal FARMC must include among its members 11 fisherfolk representatives, one representative from accredited NGOs, and another one from the private sector.⁸¹

In contrast, under the regime of the Fisheries Decree of 1975, specific participatory processes are required in the creation of a fish sanctuary. GMO No. 3 provides that:

- The Provincial Fishery Officer (PFO) shall initiate preliminary meeting with and among fishermen and other concerned officials and citizens in fishing communities within the province for the following purposes:
 - Disseminate the concept of and the need for fish sanctuary as a fish conservation measure;
 - Discuss briefly the various criteria for establishing fish sanctuaries;
 - Come up with probable sites for fish sanctuaries using [the prescribed] criteria; and

⁷⁹ *Id.*, at Rule III, section 3.

⁸⁰ Fisheries Code, section 81.

⁸¹ *Id.*, at section 75.

- Discuss probable management plan for the proposed fish sanctuary. Community-based management scheme is highly preferable.⁸²
- The PFO shall [after undertaking a study or survey of the proposed sites and preparing a formal detailed proposal for the selected site] conduct subsequent public hearings or consultations to confirm acceptability by the communities concerned of the detailed proposal.⁸³
- Concurrence/acceptance by the majority members of the communities shall be manifested through signatures on the proposal and formally endorsed by the Sangguniang Bayan concerned.⁸⁴
- The PFO shall [after submitting the proposal to the BFAR for evaluation and after preparing the final proposal incorporating the comments of the BFAR] conduct final consultation with the communities concerned on the final proposal and the latter's concurrence shall be manifested through signatures on the final proposal or through formal endorsement of the same by the Sangguniang Bayan/Panlalawigan concerned.⁸⁵

However, as observed in the section on access to information, the devolution of the power to create fish sanctuaries rendered the foregoing inoperative and left a void as to the participatory processes that must be undertaken in the creation of a fish sanctuary.

Like in the case of access to information, the SEP Law and the IPRA are also relevant in the assessment of the legal framework for opportunities for participation, considering the nature and subject matter of the Subject Municipal Ordinance.

The SEP Law institutionalizes “Social Acceptability” and the conduct of participatory processes as one of its cornerstone philosophies.⁸⁶ It defines social acceptability as a situation where “the people themselves, through participatory process, [are] fully committed to support sustainable development activities by fostering equity in access to resources and the benefits derived from them.”⁸⁷ On the other hand, it defines participatory processes as “the involvement of all the key sectors of development, from the grassroots to the policy-making bodies of the National Government, in providing the values and ideas from which strategic development and environmental protection action can come about.”⁸⁸ The following provisions on public participation in the ECAN zoning process are contained in the ECAN Guidelines:

⁸² GMO No. 3, section 6.1.

⁸³ *Id.*, at section 6.3.

⁸⁴ *Id.*, at section 6.4.

⁸⁵ *Id.*, at section 6.10.

⁸⁶ SEP Law, section 5(2).

⁸⁷ *Id.*

⁸⁸ *Id.*, at section 3(6).

- PCSD shall also promote and encourage the involvement of all sectors of society and maximize people participation in natural resources management, conservation and protection;⁸⁹ and
- The local communities shall be involved in all phases of ECAN delineation up to its implementation and long term management.

Community consultation on the ECAN map shall be undertaken by the PCSD Staff together with the local government units. The activity will provide a venue for all stakeholders to express their views on such maps and subsequent preparations of the zoning plan.⁹⁰

However, as previously noted, these provisions apply specifically to the conduct of ECAN zoning. It appears that an LGU may proceed with the zoning of its marine areas independently of the ECAN zoning by the PCSD.

In contrast, the IPRA offers the most solid ground for public participation among the laws examined as it demands not only the participation of IPs in the process of adopting a policy, but in fact requires their consent to the same. Under the IPRA, if ancestral domains or portions thereof are found to be necessary for protected areas (as determined by appropriate agencies with the full participation of the IPs), the IPs concerned shall be given responsibility to maintain, develop, protect and conserve such areas. Should the IPs decide to transfer the responsibility over the said areas, the decision must be made in writing. Furthermore, the consent must be arrived at in accordance with its customary laws without prejudice to the basic requirements on FPIC.⁹¹

Corollary to the statutory provisions on FPIC, the IPRA's implementing rules require the participation of IPs in the formulation, implementation and evaluation of plans, policies and programs for national, regional and local development which may affect them. Likewise, they require the NCIP to take special measures to guarantee the right of IPs to pursue their economic, social and cultural development at their own choice and pace, and to ensure that economic opportunities created by the government are extended to them based on freedom of initiative and self-reliance.⁹²

Towards these ends, the following activities are made mandatory in the process of obtaining FPIC:

- Notices. Posting of notices in conspicuous places in and around the area of the concerned IP community by the NCIP that a preliminary consultative meeting will be had. Said notices shall indicate the date and venue of the meeting, the objectives and the nature and scope of the project and identity of the project proponent. Aside from posting of notices, personal service of notices by NCIP to the concerned Council of Elders/Leaders is

⁸⁹ PCSD Resolution No. 05-250, Chapter I, section 2.

⁹⁰ *Id.*, at Title 3, Chapter I, section 17.

⁹¹ IPRA, section 58.

⁹² IPRA Implementing Rules and Regulations, Rule IV, Part 1, section 7.

required, which must be served at least five days before the intended date of the preliminary consultative meeting.

- Preliminary Consultative Meeting. During this meeting, the proponent shall be given sufficient time to present and clarify its project proposal. The Operation Plan and the scope and extent of the proposal shall be presented to the IP elders/leaders. The latter shall be given the needed information including, but not limited to, the cost and benefits of the proposal to the IPs and their ancestral domains and the perceived disadvantages or adverse effects to the community and the measures adopted by the proponent to mitigate these. The oppositors to the proposal, if there are any, shall likewise be given equal time in the said meeting. NCIP's presence in the meeting is mandatory for the purpose of facilitating the conduct of the meeting and to provide the participants education and information on IPRA, particularly on the FPIC;
- Consensus Building. Within a period of 15 days after the termination of the last preliminary consultative meeting, the IP elders/leaders shall complete the conduct of their own consultation meetings with their members in the community, employing their own traditional consensus building processes in order to discern the merits and demerits of the proposal; and
- Community Assembly. Within 15 days after the lapse of the period provided for community consensus building, the NCIP shall cause the conduct of assembly of all the members of the community as represented by the household heads. It is on this occasion that the decision of the IPs with respect to the proposal will be made known.⁹³

However, as previously noted, the foregoing opportunities are, by their nature, extended not to the general public, but to members of the concerned IP communities only.

Effort and Effectiveness

As previously noted, two bodies were involved in the enactment of the Subject Municipal Ordinance – the Sangguniang Bayan of Balabac, and the Sangguniang Panlalawigan of Palawan, on review.

With regard to the Sangguniang Bayan, it barely exerted any effort to provide the public with opportunities to participate in the enactment of the Subject Municipal Ordinance. Interviews with residents of the Affected Communities consistently disclosed that the Municipality did not conduct public hearings, nor solicit their opinions, views or comments on the Subject Municipal Ordinance and Subject Policy.⁹⁴ This was confirmed by interviews with the NGOs assisting the Affected Communities.⁹⁵

⁹³ NCIP AO No. 03, series of 2002, section 14(a), (c), (d) and (e).

⁹⁴ Interviews with Messrs. Oscar Pelayo, Jilmani Naseron, Juanito Robea, Renato Santican and Jonathan Santican, July 1, 2006; Interviews with IPs of Barangay Pandanan, July 3, 2006.

⁹⁵ Interview with Ms. Ma. Cleofe P. Bernardino, July 11, 2006; Interview with Ms. Ma. Cristina Guerrero, July 14, 2006.

While the Municipality claims that Punong Barangays were deputized to conduct public consultations with their respective constituents,⁹⁶ there is no evidence that any consultations at the barangay level were held. Interviews with members and a barangay official of the Affected Communities consistently revealed that no consultations were conducted in their barangays.⁹⁷ In fact, Mrs. Avelina Maliwanag, a Barangay Kagawad, and currently Officer-in-Charge, of Barangay Sibaring (one of the Affected Communities), claims that the barangay officials of Sibaring themselves (with the possible exception of their Punong Barangay, who never relayed any information to them) had no idea about the Subject Municipal Ordinance prior to its enactment.⁹⁸ And while the Subject Municipal Ordinance states that the adoption of the Subject Policy was made upon the recommendation of the Barangay Council of Barangay Bugsuk,⁹⁹ it must be noted that Barangay Bugsuk (with the exception of Sitio Marihangin on Marihangin Island) is virtually under the control of Jewelmer, and its affiliate, Agricultural Investors, Inc. (“AII”). None of its residents are fisherfolk, as they are mostly employees of Jewelmer and AII.

Apart from the supposed “multi-sectoral/multi-stakeholder meeting” referred to in the section on access to information, there is no evidence of any other effort on the part of the Municipality to provide the public with opportunities to participate. However, the said meeting cannot, by any stretch, be considered as an adequate opportunity for participation because:

(a) the stakeholders directly affected by the Subject Policy were not invited and did not participate therein. There is no available information on the number and composition of the participants thereto;

(b) the talks during the meeting were limited to discussions on the need to protect Balabac’s marine resources in general. The details of the proposed policy (*e.g.*, the specific activities that will be prohibited, the various zones to be constituted, the location of these zones and the limitations to be imposed therein), its impact on the environment and on the livelihood of the affected residents, and the options and alternatives available were never discussed;¹⁰⁰

(c) there was no genuine effort to solicit the opinions, views and comments of the public on the Subject Policy, and to consider these comments in the crafting of the Subject Municipal Ordinance.¹⁰¹

It also appears that the Municipality made no attempt to consult or involve other government agencies that may have the technical capability to assist it in the process, or which it is mandated by law to consult. Thus, it did not involve:

⁹⁶ Interview with Vice Mayor Hadz Ismael Hussin. July 4, 2006.

⁹⁷ Interviews with Oscar Pelayo, Jilmani Naseron, Juanito Robea, Renato Santican and Jonathan Santican. July 1, 2006.

⁹⁸ Interview with Barangay Kagawad Avelina Maliwanag, July 7, 2006.

⁹⁹ Municipal Ordinance No. 01-2005, section 4.

¹⁰⁰ See Exhibit M.

¹⁰¹ *Id.*

(a) the DA through the BFAR,¹⁰² notwithstanding the requirement in the Fisheries Code that the creation of a fish sanctuary be done in consultation with the former.¹⁰³ Furthermore, there were no consultations with the Municipal FARMC as no FARMC had yet been convened at the time of the adoption of the Subject Municipal Ordinance;¹⁰⁴

(b) the PCSD because the adoption of the Subject Policy was done independently of the ECAN zoning process. At present, the PCSD is in the process of preparing Balabac's ECAN map for marine areas;¹⁰⁵ and

(c) the NCIP. The Subject Municipal Ordinance and the Subject Policy did not go through the FPIC Process and does not have the concerned IPs' consent.¹⁰⁶

As regards the Sangguniang Panlalawigan, it conducted two committee meetings in the process of reviewing the Subject Municipal Ordinance. However, these hearings did not afford adequate opportunity for meaningful participation because:

(a) the Sangguniang Panlalawigan did not make a serious effort to analyze, examine and consider the issues brought before it by the Affected Communities and the resource persons invited to the hearings (*e.g.*, issue on access rights, issue on the allowance of pearl farming within a supposed "core/strict protection zone");¹⁰⁷

(b) by its nature, review by the Sangguniang Panlalawigan is limited to an examination of whether the ordinance under review is within the power conferred by law on the Sangguniang Bayan, and may not go into the wisdom or propriety of the same.¹⁰⁸ Hence, even if the Sangguniang Panlalawigan had been inclined to consider the opinions, views and comments of the members of the Affected Communities and the invited resource persons, it could not have substituted its own judgment over that of the Sangguniang Bayan insofar as matters involving the wisdom or propriety Subject Policy are concerned¹⁰⁹;

(c) be that as it may, the Sangguniang Panlalawigan did not exert efforts to ensure that the Sangguniang Bayan would conduct participatory processes despite its recommendation that it do so. On the contrary, it approved the Subject Municipal Ordinance when the latter was forwarded to it for review, notwithstanding that only superficial changes were made, and without requiring any proof that consultations had been conducted.

¹⁰² Interview with Mr. Paciano Gianan, July 13, 2006.

¹⁰³ Fisheries Code, section 81.

¹⁰⁴ Municipal Ordinance No. 01-2005, section 7.

¹⁰⁵ Letter of PCSD OIC Executive Director Romeo Dorado dated July 5, 2006; Interview with Mr. Madrono Cabrestante, July 24, 2006.

¹⁰⁶ Letter of NCIP Commissioner Lagtum Pasag dated November 30, 2005, a copy of which is attached as **Exhibit O**; Letter of Engr. Jeanette Manuel, NCIP Ancestral Domains Office, dated November 30, 2005, a copy of which is attached as **Exhibit P**.

¹⁰⁷ Interviews with Juanito Robea and Oscar Pelayo, July 1, 2006; Interview with Ma. Cleofe P. Bernardino, July 11, 2006; Interview with Angelique Songco, July 14, 2006.

¹⁰⁸ See Local Government Code, section 56(c).

¹⁰⁹ It is submitted that the issue on the allowance of pearl farming in a core or strict protection zone does not go into the wisdom of the Subject Policy, but concerns the power of the Sangguniang Bayan to enact the same, considering that the SEP Law itself provides that core zones are areas of maximum protection where no human activity shall be allowed.

The Sangguniang Panlalawigan afforded the Affected Communities another opportunity to be heard during the November 8, 2005 dialogue. The dialogue lasted for almost four hours, was attended by Sambilog members, members of two other IP organizations sympathetic to Jewelmer, Balabac officials, Jewelmer representatives, the parties' respective legal counsels and Rep. Risa Hontiveros-Baraquel (an ardent supporter of Sambilog),¹¹⁰ and was fully covered by local media. However, the proceedings were an exercise in futility because:

(a) it appears that the dialogue was only meant to diffuse the pressure created by Sambilog's "Solidarity Caravan-March" and subsequent camp out, and to give a public appearance that the Sangguniang Panlalawigan was exerting efforts to address the problem brought before it. Ultimately, however, the Sangguniang Panlalawigan did not want to politically antagonize the municipal officials of Balabac and Jewelmer by revoking its approval of the Subject Municipal Ordinance;¹¹¹ and

(b) even if the Sangguniang Panlalawigan had been inclined to revoke its approval of the Subject Municipal Ordinance, there were serious questions as to what effect such a revocation would have had on the validity or enforceability of the Ordinance;¹¹² and

(c) even though, as admitted by Vice Governor Ponce de Leon himself, the Sangguniang Panlalawigan exercises moral authority over the Municipality of Balabac,¹¹³ the former did not exercise such authority in order to convince the latter to review or amend the Subject Municipal Ordinance.

Capacity Building

Law

Existing laws are almost bereft of provisions on capacity building with respect to access to information and opportunities for participation.

None of the laws examined provides for the capacity building of government officials and staff. Specifically:

(a) the Local Government Code does not provide for the capacity building of LGU officials and staff (whether at the provincial, city or municipal, and barangay level) with respect to access to information and opportunities for participation, in relation to local legislative processes;

¹¹⁰ See Stenographic Notes Taken During the 67th Regular Session of the 38th Sangguniang Panlalawigan held at the Sangguniang Panlalawigan Session Hall on November 8, 2005, City of Puerto Princesa.

¹¹¹ Interview with Ms. Ma. Cleofe Bernardino, July 11, 2006.

¹¹² Report of the Special/Ad Hoc Committee on the Sambilog Petition.

¹¹³ See Stenographic Notes Taken During the 67th Regular Session of the 38th Sangguniang Panlalawigan held at the Sangguniang Panlalawigan Session Hall on November 8, 2005, City of Puerto Princesa.

(b) the Fisheries Code does not require the BFAR to extend assistance to municipal governments in building the capacity of its officials and staff with respect to access to information and opportunities for participation, in relation to the enactment of fisheries-related ordinances, and the creation of fish sanctuaries;

(c) the SEP Law and its implementing guidelines do not require the PCSD to extend assistance to municipal governments in educating its officials and staff about the ECAN and the “participatory processes” involved in its implementation;

(d) the IPRA and its implementing guidelines do not require the NCIP to educate LGUs about the rights of IPs over their ancestral domain, and the need to secure FPIC prior to the enactment and implementation of policies that will impact on the latter; and

(e) Republic Act No. 6713 does not provide for the building of the capacity of public officials and staff with respect to access to information.

Likewise, these laws and their implementing guidelines do not provide for the capacity building of the public, with the exception of:

(a) the ECAN Guidelines, which provides for the “empowerment of local communities through trainings, seminars and other community participation activities, in relation to the ECAN zoning process;¹¹⁴

(b) the FPIC Guidelines, which require the presence of the NCIP during preliminary consultative meetings for the purpose of facilitating the conduct of the meeting and to provide the participants education and information on IPRA, particularly on the FPIC and the rights and privileges of IPs;¹¹⁵ and

(c) Republic Act No. 6713, where every head of department, office or agency is required to establish information systems and networks that will affect the widest possible dissemination of information regarding the provisions of the said law.¹¹⁶

Effort and Effectiveness

With regard to the capacity building of government officials and staff:

(a) we have no information as to whether the Sangguniang Bayan of Balabac has offered any trainings or guidelines to its officials and staff with respect to access to information and opportunities for participation, in relation to local legislative processes;

(b) the Sangguniang Panlalawigan of Palawan has not offered any trainings or guidelines to its officials and staff, or to the legislative officials and staff of component municipalities, with respect to access to information and opportunities for participation, in relation to local legislative processes;¹¹⁷

(c) the BFAR Palawan Provincial Office has no program for the capacity building of municipal officials and staff with respect to access to information and

¹¹⁴ PCSD Resolution No. 05-250, Title 3, Chapter I, section 17.

¹¹⁵ NCIP AO No. 3, series of 2002, section 14 (c).

¹¹⁶ Republic Act No. 6713, section 4.

¹¹⁷ Interview with Mrs. Norma Valencia, July 27, 2006.

opportunities for participation, in relation to the enactment of fisheries-related ordinances, and the creation of fish sanctuaries. Under the present legal framework, the BFAR's participation in the creation of fish sanctuaries is limited to the provision of technical assistance (through the conduct of a rapid resource appraisal, the provision of resource speakers during public fora, and the provision of mooring bouys), if requested by the pertinent LGU;¹¹⁸

(d) the PCSD has no program to educate municipal officials and staff about "participatory processes" embodied in the SEP Law;¹¹⁹ and

(e) the NCIP Palawan Provincial Office has no program to educate municipal officials and staff about the need to secure FPIC prior to the enactment of policies that will impact on IPs and their ancestral domain. It has been observed by the NCIP itself that many LGUs are even reluctant to recognize IP rights and to cooperate in the CADT application process.¹²⁰

On the capacity building of the public:

(a) the municipal government of Balabac has not offered any trainings or guidelines to the Affected Communities with respect to access to information and opportunities for participation, in relation to local legislative processes;

(b) the Sangguniang Panlalawigan of Palawan has not offered any trainings or guidelines to the public with respect to access to information and opportunities for participation, in relation to local legislative processes;¹²¹

(c) the BFAR Palawan Palawan Provincial Office has no program for the capacity building of the public with respect to access to information and opportunities for participation, in relation to the enactment of fisheries-related ordinances, and the creation of fish sanctuaries. However, in areas where FARMCs have been constituted, seminars and trainings (*e.g.*, paralegal, values formation) have been provided to the FARMCs;¹²²

(d) the PCSD has no program to build the capacity of the public with respect to "participatory processes";¹²³ and

(e) the NCIP has no program to educate the public, in general, and IPs, in particular, about IPs's rights over their ancestral domain, save for information and education campaigns held in applicant IP communities as part of the CADT application process.¹²⁴

CONCLUSION AND RECOMMENDATIONS

The importance of access to information and opportunities for participation cannot be overemphasized in this case. Given the Affected Communities' history of disenfranchisement and repression, any environmental measure that would have the

¹¹⁸ Interview with Mr. Paciano Gianan, July 13, 2006.

¹¹⁹ Interview with Mr. John Pontillas, July 13, 2006.

¹²⁰ Interview with Engr. Roldan Parangue, July 13, 2006.

¹²¹ Interview with Mrs. Norma Valencia, July 27, 2006.

¹²² Interview with Mr. Paciano Gianan, July 13, 2006.

¹²³ Interview with Mr. John Pontillas, July 13, 2006.

¹²⁴ Interview with Engr. Roldan Parangue, July 13, 2006.

effect of depriving them of their traditional fishing grounds, or restricting their use of the same, requires intensive social preparation. Widespread information dissemination and extensive community consultations must be undertaken not only to ensure that the proposed policy will be understood and well received by the individuals and communities affected thereby, but also to make sure that substantive rights are not run over rough shod, and equity in access is ensured.

In the present case, not only did the Municipality of Balabac fail to observe the foregoing processes, it also adopted a policy, purportedly for environmental protection purposes, that goes against international principles, Philippine statutory provision and established coastal resource management practices (*i.e.*, it allowed pearl farming in a core or strict protection zone).¹²⁵ The confluence of these circumstances has given rise to a public perception, whether rightly or wrongly, that the Subject Policy was adopted solely to accommodate Jewelmer's interests and to legitimize the prohibition that it has, for many years, foisted upon the Affected Communities without the sanction of law.

Despite its glaring inequity and patent flaws, the Subject Municipal Ordinance has put on an appearance of impregnability, given the obstinacy of the Municipality of Balabac led by its Mayor, Romel Sulani, and Sangguniang Bayan, and the apathy and indecisiveness of the Sangguniang Panlalawigan of Palawan. As things stand, it appears that the court case is the Affected Communities' last remaining legal remedy. However, given the existing realities, resort to judicial action has not proven to be a speedy and adequate remedy. To date, the case remains pending, almost one year since its inception, and the Affected Communities continue to languish in poverty as they await its resolution.

It may be concluded that this predicament can be attributed to two main factors, namely: (a) gaps in existing laws; and (b) the failure of political will, and the lack of a deep-seated orientation on, and capacity to implement, principles on access to information and opportunities for participation, on the part of the concerned government agencies.

Foremost, the gaps in the law consist of:

- (a) the absence of an established set of procedures governing the creation of fish sanctuaries, similar to that under the old Fisheries Code of 1975;
- (b) the failure of the Fisheries Code to provide for the effects of failure to consult the DA and the FARMC in the creation of fish sanctuaries;
- (c) the absence of an unequivocal mandate in the Local Government Code for the conduct of participatory processes in the course of enacting local legislation;
- (d) the absence of sanctions for failure to observe these processes; and
- (e) the absence of administrative remedies against local legislation that violate due process.

¹²⁵ Interview with Ms. Angelique Sonco, July 14, 2006.

On the other hand, the failure of political will, and the lack of a deep-seated orientation on, and capacity to implement, principles on access to information and opportunities for participation on the part of the concerned government agencies are exemplified by:

(a) the blatant disregard by the Municipality of Balabac of the repeated demands by the Affected Communities, and the admonition of the Sangguniang Panlalawigan, to conduct public consultations, and to suspend the implementation of the Subject Municipal Ordinance pending the same;

(b) the absence of a FARMC and the Municipality of Balabac's failure to consult the same prior to the adoption of the Subject Policy;

(c) the perfunctory treatment by the Sangguniang Panlalawigan of its duty to review the municipal ordinances, as shown by its failure to confirm whether its initial recommendations were complied with, prior to approving the Subject Municipal Ordinance;

(d) the refusal of the PCSD to get involved in the issue, despite its mandate under the SEP Law to coordinate with local governments to ensure that the latter's plans, programs and projects are aligned with the plans, programs and policies of the SEP,¹²⁶ and despite possessing the technical capability to review the correctness of the Subject Policy;

(e) the failure of the NCIP to take decisive action against the Municipality of Balabac and the Subject Municipal Ordinance despite (i) its mandate under the IPRA to initiate the appropriate legal or administrative actions against natural and juridical persons believed to have violated IP rights,¹²⁷ (ii) the existence of sanctions under the IPRA for violation of its provisions, including provisions on FPIC,¹²⁸ and (iii) the grant of injunctive power under the IPRA,¹²⁹ and

(f) the general lack of awareness among LGUs about IPs' ancestral domain rights, and the need to secure FPIC not only for projects initiated by private individuals or groups, but also for government-initiated programs and policies.¹³⁰

To address the foregoing, a complement of (a) policy reforms, (b) enforcement actions, and (c) capability building activities is recommended.

In terms of policy reform, the following are recommended:

(a) the promulgation of guidelines setting forth the procedure to be observed by LGUs in the creation of fish sanctuaries, similar to GMO No. 3. The guidelines must also provide sanctions (*e.g.*, administrative penalties against the responsible officials) for failure to observe these processes.

¹²⁶ SEP Law, section 19(2).

¹²⁷ IPRA, section 48(g).

¹²⁸ *Id.*, at sections 72 and 73.

¹²⁹ *Id.*, at section 69(d).

¹³⁰ Interview with Engr. Roldan Parangue, July 13, 2006.

However, this policy reform must be complemented by capacity building activities to enable LGU officials and staff to perform the tasks required under the new guidelines;

- (b) the amendment of the Local Government Code as to:
 - (i) provide for additional circumstances where the conduct of public hearings is mandatory. As it may be impracticable to require public hearings in all instances, the amendment can specify circumstances – *e.g.*, where the policy is of such magnitude that it will affect a great number of people, where there is mounting public opposition to the policy, or upon written request of the concerned stakeholders;
 - (ii) provide disincentives for failure to observe participatory processes, such as penal or administrative sanctions against the erring officials, and the unenforceability of the ordinance in question;
 - (iii) broaden the scope of the review to be conducted by the Sangguniang Panlalawigan as to include other grounds for disapproving municipal ordinances, such as patent violation of due process and patent inconsistency with existing laws; and/or
 - (iv) provide administrative remedies against municipal ordinances which are patently defective (*e.g.*, appeal to the Sangguniang Panlalawigan or to the Office of the President); and
- (c) the issuance of a circular from the Office of the President, or a joint circular from the DILG and NCIP reminding LGUs of the FPIC requirement under the IPRA for government programs and policies that impact on IPs and their ancestral domains, and directing strict compliance therewith. This must be complemented with an intensive information and education campaign among LGUs on the IPRA, IP rights and the FPIC requirement.

On the other hand, the following enforcement actions are recommended:

- (a) for the PCSD to review the technical correctness of the Subject Policy, and conduct intensive participatory processes in the course of the on-going preparation of Balabac’s marine ECAN map. It should not automatically incorporate the provisions of the Subject Policy on the said map, and should recommend changes thereto, taking into consideration the principle of “Social Acceptability” as embodied in the SEP Law;
- (b) for the NCIP to institute the necessary legal or administrative processes to enjoin the enforcement of the Subject Municipal Ordinance and to impose sanctions on the erring officials of Balabac; and
- (c) the creation of FARMCs in the Affected Communities, and the building of the capacity of these FARMCs to become effective advocates of fisherfolks’ rights and interests.

It is hoped that the foregoing policy reforms, enforcement actions and capability building measures, if implemented, will not only provide the Affected Communities with means for immediate relief, but will also prevent other IP and fishing communities from being placed in a predicament similar to theirs, and render the processes involved less susceptible to manipulation to favor vested interests.

APPENDIX A

Individuals Interviewed/Sought to be Interviewed for Case Study

Agency/Affiliation	Interviewee	Reason for Selection	Status/Feedback	Documentation
Government				
Municipality of Balabac	Vice Mayor Hadz Ismael Hussin	Vice Mayor Hussin is the Presiding Officer of Sangguniang Bayan of Balabac, the body that enacted the Subject Municipal Ordinance.	Interviewed in person on July 4, 2006. He agreed to a verbal interview but refused to respond to written questionnaire. He gave very limited responses, citing the pendency of the case to nullify the Subject Municipal Ordinance. He was apprehensive that his responses would be prejudicial to the case.	No documentation apart from interviewer's notes. Picture taken during the interview was exposed.
	Mr. Said Alih Sha, Secretary to the Sangguniang Bayan	The Secretary to the Sangguniang Bayan is the records custodian of the latter.	Mr. Sha could not be located despite visits to the municipal offices in Balabac on two occasions. The request for interview and interview questionnaire were left with his staff on July 4, 2006. Subsequent text messages to Mr. Sha were never answered.	Receiving copy of the request for interview is attached as Appendix A-1 .
	Mr. Salam Ami, Sangguniang Bayan Member	Councilor Ami is the Chairman of the Committee on Environment and Natural Resources of the	Mr. Ami could not be located despite visits to his house in Balabac on two occasions. He does not have an office.	No documentation. Mr. Ami had no office or no staff member who could

		Sangguniang Bayan.		receive the request for interview.
	Mr. Emilio Ong, Municipal Planning and Development Officer (“MPDO”)	The Subject Municipal Ordinance designates the MPDO as a member of the Management Zoning Committee, and Fisheries and Aquatic Resources Council to be constituted pursuant thereto.	Interviewed in person on July 4, 2006. He agreed to a verbal interview but refused to respond to written questionnaire, citing his limited knowledge on the Subject Municipal Ordinance. He also expressed the apprehension that answering the questionnaire might be interpreted as insubordination to the Mayor.	No documentation apart from interviewer’s notes. Picture taken during the interview was exposed.
	Mr. John Taha, Municipal Environment and Natural Resources Officer	He was one of the officials amenable to an interview.	Interviewed in person on July 4, 2006. He agreed to a verbal interview but refused to respond to written questionnaire, citing his limited knowledge on the Subject Municipal Ordinance. He also expressed the apprehension that answering the questionnaire might be interpreted as insubordination to the Mayor.	No documentation apart from interviewer’s notes. Picture taken during the interview was exposed.
	Mayor Romel S. Sulani	We originally did not intend to interview Mayor Sulani considering that he is an executive official and the processes involved form part of legislative functions. However, the officials interviewed and listed above hinted that he would	Mayor Sulani was not in the municipal offices in Balabac on the two occasions we visited. We were advised that he was in Puerto Princesa City. Thus, we delivered a request for interview and interview questionnaire to Balabac’s Extension Office in Puerto Princesa City on July 13,	Receiving copy of the request for interview is attached as Appendix A-2 .

		be the right person to interview.	2006. When following up the Mayor's responses at the Extension Office, we were told that the he is in Manila.	
	Mr. Eduardo Alfaro, Punong Barangay, Barangay Bugsuk	The Subject Municipal Ordinance states that the designation of the Jewelmer concession area as a "strict protection zone" was made pursuant to the recommendation of the Barangay Council of Barangay Bugsuk.	Barangay Bugsuk is off limits to outsiders. A resident was asked to relay the request for interview and interview questionnaire to Mr. Alfaro. We never received a response or any feedback.	No documentation. The receiving copy was never returned.
	Ms. Emelita dela Torre, Punong Barangay, Barangay Sibaring	Barangay Sibaring is one of the barangays directly affected by the designation of the strict protection zone.	Ms. Dela Torre was not in Barangay Sibaring when we visited. We were told that she has been away for some time. Barangay Kagawad Avelina Maliwanag, who acts as Officer-in-Charge, answered the interview questionnaire.	Ms. Maliwanag's written responses are attached as Appendix A-3.
Provincial Government of Palawan	Vice Governor David Ponce de Leon	The Sangguniang Panlalawigan of Palawan passed upon the Subject Municipal Ordinance on review. Vice Governor Ponce de Leon is the Presiding Officer of Sangguniang Panlalawigan	The Office of the Vice Governor forwarded the request for interview and interview questionnaire to the Office Secretary of the Sangguniang Panlalawigan.	Receiving copy of request for interview is attached as Appendix A-4.
	Ms. Norma Valencia, Secretary to the	The Secretary to the Sangguniang Panlalawigan	Written interview. Responses received on July 28, 2006.	Ms. Valencia's written responses are

	Sangguniang Panlalawigan	is the records custodian of the latter.		attached as Appendix A-5.
	Mr. Arthur Ventura, Sangguniang Panlalawigan Member	Board Member Ventura is the Chairman of the Sangguniang Panlalawigan's Committee on Environment and Natural Resources, which lead the review of the Subject Municipal Ordinance.	Board Member Ventura declined to respond the interview.	Receiving copy of request for interview is attached as Appendix A-4. (Common receiving copy as the request to the Vice Governor.)
Palawan Council for Sustainable Development ("PCSD")	Mr. Romeo Dorado, OIC Executive Director	PCSD is the agency tasked with the implementation of the SEP Law.	Request for interview and interview questionnaire sent on July 4, 2006. In a letter dated July 5, 2006, Director Dorado declined to take part in the interview. According to the letter, PCSD has limited information as it was not involved in the formulation, adoption and implementation of the Subject Municipal Ordinance. After subsequent communications by the researcher, however, Director Dorado authorized Mr. Madrono Cabrestante, Chief of the ECAN Division, to take part in the study. Mr Cabrestante was interviewed by telephone on July 24, 2006. We were also able to interview	Director Dorado's letter dated July 5, 2006 is attached as Appendix A-6.

			separately Mr. John Pontillas, Research and Policy Division Chief, in person on July 13, 2006.	
National Commission on Indigenous Peoples (“NCIP”)	Engr. Roldan Parangue, Provincial Officer	NCIP is the agency tasked with the protection of IP rights.	Interviewed in person on July 13, 2006.	Engr. Parangue’s written responses are attached as Appendix A-7.
Bureau of Fisheries and Aquatic Resources (“BFAR”)	Mr. Paciano Gianan, Provincial Officer	BFAR is a line agency under the Department of Agriculture tasked with fisheries-related concerns.	Accomplished written interview on July 12, 2006, and interviewed in person on July 13, 2006.	Mr. Gianan’s written responses are attached as Appendix A-8.
Community Members				
Sitio Marihangin	Mr. Oscar Pelayo	Sitio Marihangin is part of Barangay Bugsuk and is located inside the designated strict protection zone. Mr. Pelayo is one of the recognized non-IP leaders of Sambilog in Sitio Marihangin. He was able to participate in the review proceedings before the Committee on Environment and Natural Resources, and in the dialogue before the Sangguniang Panlalawigan on November 8, 2005.	Interviewed in person on July 1, 2006; accomplished written interview on July 7, 2006	Mr. Pelayo’s written responses are attached as Appendix A-9.
	Mr. Jilmani Naseron	Mr. Naseron is one of the recognized IP leaders of Sambilog in Sitio	Interviewed in person and accomplished written interview on July 1, 2006.	Mr. Naseron’s written responses are attached as

		Marihangin.		Appendix A-10.
Barangay Sibaring	Mr. Juanito Robea	Mr. Robea is one of the recognized non-IP leaders of Sambilog in Barangay Sibaring. He was able to participate in the review proceedings before the Committee on Environment and Natural Resources, and in the dialogue before the Sangguniang Panlalawigan on November 8, 2005.	Interviewed in person and accomplished written interview on July 1, 2006.	Mr. Pelayo's written responses are attached as Appendix A-11.
	Mr. Renato Santican	Mr. Santican is one of the recognized IP leaders of Sambilog in Barangay Sibaring. He was able to participate in the dialogue before the Sangguniang Panlalawigan on November 8, 2005.	Interviewed in person and accomplished written interview on July 1, 2006.	Mr. Sanctican's written responses are attached as Appendix A-12.
	Mr. Jonathan Santican	Mr. Santican is one of the recognized IP leaders of Sambilog in Barangay Sibaring. He was able to participate in the dialogue before the Sangguniang Panlalawigan on November 8, 2005.	Interviewed in person and accomplished written interview on July 1, 2006.	Common interview sheet with Mr. Renato Santican.
Barangay Pandanan	Messrs. Pinta Francisco, Ismael dela Cruz, Rogelio	Barangay Pandanan is inside the "strict protection zone." The interviewees are	Interviewed in person on July 3, 2006. They were no longer asked to answer written interview sheets	No documentation apart from interviewer's notes.

	Caton, Joring Anrique, Edio Jampang, Augusto Ading, Tuwino Pitang, Apid Ading, Anring Ogbuk and Plerio Ading.	IP residents, but are not affiliated with Sambilog.	as they barely knew anything about the Subject Municipal Ordinance.	Picture taken during the interview was exposed.
NGOs				
Palawan NGO Network, Inc. ("PNNI")	Ms. Ma. Cleofe Bernardino, Executive Director	PNNI is the lead Palawan-based organization assisting Sambilog.	Interviewed by email. Responses received on July 11, 2006.	Ms. Bernardino's written responses are attached as Appendix A-13.
	Mr. Victor Colili, Community Organizer	Mr. Colili has been assigned to assist Sambilog as community organizer.	Interviewed in person on July 18, 2006.	No documentation apart from interviewer's notes.
Tubbataha Management Office	Ms. Angelique Songo, Park Manager	Ms. Songco was one of the invited resource persons during the proceedings before the Committee on Environment and Natural Resources.	Written Interview. Responses received on July 14, 2006.	Ms. Songco's written responses are attached as Appendix A-14.
Non-Timber Forest Products-Task Force ("NTFP-TF")	Ms. Ma. Cristina Guerrero, Deputy Director	NTFP-TF is a member of Task Force Bugsuk, a loose coalition of NGOs assisting Sambilog. Ms. Guerrero is one of the convenors of Task Force Bugsuk.	Interviewed by email. Responses received on July 14, 2006.	Ms. Guerrero's written responses are attached as Appendix A-15.
Conservation International	Mr. Art Faburada, Coordinator, Sulu-	CI has an on-going project in Balabac, the Sulu-	In a letter dated July 10, 2006, CI declined to take part in the study	CI's letter dated July 10, 2006 is attached

Philippines (“CI”)	Sulawesi Seascape Project	Sulawesi Seascape Project.	considering its on-going activities. According to the letter, CI cannot pre-judge the situation or even be perceived to do so. Thus, it declined to respond to the interview questions to preserve impartiality.	as Appendix A-16.
World Wildlife Fund-Kabang Kalikasan ng Pilipinas (“WWF”)	Ms. Marivel Dygico, Project Manager	WWF-KKP has an ongoing project in Balabac.	Written interview. Responses received on July 26, 2006.	Ms. Dygico’s written responses are attached as Appendix A-17.
Batas Kalikasan Foundation	Atty. Tony Oposa	Atty. Oposa advocated the creation of a marine protected area in Balabac and gave substantive inputs on the Subject Municipal Ordinance.	Interviewed by telephone on July 14, 2006. Follow-up interview by email. Responses received on the same day, July 14, 2006.	Email correspondence with Atty. Oposa is attached as Appendix A-18.

APPENDIX B

Sites Visited for Case Study

Site	Date	Documentation
Offices of the Municipality of Balabac Poblacion, Balabac, Palawan	June 27-29, 2006/ July 4-5, 2006	Pictures taken were exposed.
Sitio Marihangin, Barangay Bugsuk, Balabac, Palawan	July 1, 2006	Pictures taken were exposed.
Barangay Pandanan, Balabac, Palawan	July 3, 2006	Pictures taken were exposed.
Barangay Sibaring, Balabac, Palawan	July 5, 2006	Pictures taken were exposed.
Palawan Center for Sustainable Development, Puerto Princesa City	July 13, 2006	Picture of the site is attached as Appendix B-1 .
National Commission on Indigenous Peoples (Provincial Office), Sta. Monica, Puerto Princesa City	July 13, 2006	Picture of the site is attached as Appendix B-2 .
Bureau of Fisheries and Aquatic Resources, (Provincial Office) Lacao St., Puerto Princesa City	July 13, 2006	Picture of the site is attached as Appendix B-2 .
Balabac Extension Office, Fernandez St., Puerto Princesa City	July 13, 2006/	Picture of the site is attached as Appendix B-4 .
Office of the Secretariat of the Sangguniang Panlalawigan of Palawan, Legislative Building, Fernandez St. Puerto Princesa City	July 19, 2006/ July 28, 2006	Picture of the site is attached as Appendix B-5 .