

EN BANC

G.R. No. 181284 – LOLOY UNDURAN, BARANGAY CAPTAIN PACANA, NESTOR MACAPAYAG, ROBERTO DOGIA, JIMMY TALINO, ERMELITO ANGEL, PETOY BESTO, VICTORINO ANGEL, RUEL BOLING, JERMY ANGEL, BERTING SULOD, RIO VESTO, BENDIJO SIMBALAN, and MARK BRAZIL, Petitioners, v. RAMON ABERASTURI, CRISTINA C. LOPEZ, CESAR LOPEZ JR., DIONISIO A. LOPEZ, MERCEDES L. GASTON, AGNES H. LOPEZ, JOSE MARIA S. LOPEZ, ANTON B. ABERASTURI, MA. RAISSA A. VELEZ, ZOILO ANTONIO A. VELEZ, CRISTINA ABERASTURI, EDUARDO LOPEZ JR., ROSARIO S. LOPEZ, JUAN S. LOPEZ, CESAR ANTHONY R. LOPEZ, VENANCIO L. GASTON, ROSEMARIE S. LOPEZ, JAY A. ASUNCION, NICOLO ABERASTURI, LISA A. ASUNCION, INEZ A. VERAY, HERNAN A. ASUNCION, ASUNCION LOPEZ, THOMAS A. VELEZ, LUIS ENRIQUE VELEZ, ANTONIO, H. LOPEZ, CHARLES H. LOPEZ, ANA. L. ZAYCO, PILAR L. QUIROS, CRISTINA L. PICAZO, RENATO SANTOS, GERALDIN AGUIRRE, MARIA CARMENCITA T. LOPEZ, and as represented by attorney-in-fact RAMON ABERASTURI, Respondents.

Promulgated:

October 20, 2015

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CONCURRING OPINION

LEONEN, J.:

I concur with the ponencia in holding that respondents' action, alleged to be involving a claim over the ancestral domain of an indigenous cultural community/indigenous people (ICC/IP), does not fall within the exclusive original jurisdiction of the National Commission on Indigenous Peoples (NCIP).

A careful reading of Section 66¹ of Republic Act No. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997, with particular emphasis on its proviso will reveal that the jurisdiction of the NCIP is limited to disputes where both parties are members of ICC/IPs and come from the same ethnolinguistic group.

¹ SEC. 66. Jurisdiction of the NCIP. The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

Thus, the assailed Decision dated August 17, 2006 and Resolution dated July 4, 2007 of the Court of Appeals in CA-G.R. SP No. 00204-MIN must be affirmed.

The present Petition for Review on Certiorari² is an offshoot of a Petition for *Accion Reivindicatoria* with prayer for issuance of a temporary restraining order or preliminary prohibitory injunction with damages³ (Original Complaint) filed by respondents against petitioners before the Regional Trial Court of Manolo Fortich, Bukidnon on March 3, 2004, docketed as Civil Case No. 04-03-01. This Petition for *Accion Reivindicatoria* was subsequently amended by respondents into a Complaint for injunction, damages, and other relief⁴ (Amended Complaint).

On March 20, 2004, petitioners Brazil and Macapayag filed their Answer to the original Complaint, asserting that respondents had no cause of action against them.⁵

On March 23, 2004, the other petitioners filed a Motion to Dismiss. They argued that the Regional Trial Court had no jurisdiction over the case. They asserted that they were members of the Miarayon, Lapok, Lirongan Talaandig Tribal Association or the Talaandig Tribe, and claimed residence in Barangay Miarayon, Talakag, Bukidnon. They noted that on July 25, 2003, Certificate of Ancestral Domain Claim No. R-10-TAL-0703-0010 was issued in favor of the Talaandig Tribe through NCIP En Banc Resolution No. 08-2003. On October 30, 2003, this Certificate of Ancestral Domain Claim was formally awarded to the Talaandig Tribe by former President Gloria-Macapagal Arroyo. The Certificate covered a total area of 11,105.5657 hectares in Barangay Miarayon, Talakag, Bukidnon.⁶ Petitioners argued that as the case filed by respondents entailed a dispute over the ancestral land of an ICC/IP, it fell within the exclusive original jurisdiction of the NCIP.⁷

On July 1, 2004, the NCIP filed a Motion to Refer the Case to the Regional Hearing Office – National Commission on Indigenous Peoples (Motion to Refer). As with petitioners who filed the Motion to Dismiss, the NCIP insisted that the Regional Trial Court did not have jurisdiction over the case.⁸

² *Rollo*, p. 21–50.

³ *Id.* at 60, Court of Appeals Decision dated August 17, 2006.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 79, Original Certificate of Title.

⁷ *Id.* at 30–32, Petition for Review on Certiorari.

⁸ *Id.* at 60, Court of Appeals Decision dated August 17, 2006.

On July 5, 2004, respondents filed a Motion to Amend and Supplement the original Complaint into one for injunction, damages, and other relief. Attached to this Motion was the amended Complaint.⁹

On July 30, 2004, petitioners filed their Opposition to the Admission of the amended Complaint. On August 1, 2004, they also filed a Motion to Dismiss the amended Complaint, insisting on the Regional Trial Court's lack of jurisdiction.¹⁰

On August 10, 2004, the Regional Trial Court issued the Order granting the Motion to Amend and Supplement. The same Order declared the NCIP's Motion to Refer and petitioners' Motions to Dismiss moot and academic.¹¹

On August 25, 2004, petitioners filed another Motion to Refer and another Motion to Dismiss.¹²

On September 14, 2004, respondents filed their Opposition and a Motion for Judgment by Default.¹³

On February 14, 2005, the Regional Trial Court issued the Order denying the Motion to Refer, declaring petitioners (except Macapayag and Brazil, who had earlier filed an Answer) in default, and calling the case for pre-trial (against Macapayag and Brazil) and for ex-parte presentation of evidence (against the other petitioners). The court also issued a Writ of Preliminary Injunction subject to respondents' posting of a ₱100,000.00 bond.¹⁴

Aggrieved, petitioners filed a Petition for Certiorari and Prohibition under Rule 65 of the 1997 Rules of Civil Procedure before the Court of Appeals.

In the Decision¹⁵ dated August 17, 2006, the Court of Appeals affirmed with modification (i.e., lifted the order of default) the Regional Trial Court's February 14, 2005 Order. In the Resolution dated July 4, 2007, the Court of Appeals denied petitioners' Motion for Reconsideration.

Hence, this Petition was filed.

⁹ Id.

¹⁰ Id. at 61.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 61–62.

¹⁵ Id. at 57–68.

Petitioners pray that the Court of Appeals' August 17, 2006 Decision and July 4, 2007 Resolution be reversed and set aside and that a decision be rendered declaring that the Regional Trial Court has no jurisdiction, enjoining the Regional Trial Court from proceeding, ordering that the case be referred to the NCIP, and declaring void the Writ of Preliminary Injunction issued by the Regional Trial Court.

Petitioners insist that the NCIP has exclusive and original jurisdiction over the case as it involves the ancestral domain of an ICC/IP. They also assail the amendment of the Complaint from *accion reivindicatoria* to one for injunction, saying that the amendment was made merely to clothe the Regional Trial Court with jurisdiction and to downplay how the case is ultimately concerned with an ICC/IP's rights over its ancestral domain. Likewise, they claim that the NCIP should not be deprived of jurisdiction merely on account of the Complaints' failure to allege that parties to the case belong to ICCs/IPs.

This case concerns the issue of which, between the Regional Trial Court and the NCIP, has jurisdiction over the case.

The case filed by respondents does not fall within the scope of the NCIP's jurisdiction as laid out in Section 66¹⁶ of the Indigenous Peoples' Rights Act.

“Jurisdiction is the power and authority of [a] tribunal to hear, try and decide a case.”¹⁷ Moreover, “[j]urisdiction over a subject matter is conferred by law.”¹⁸ It could not be conferred by any other source, such as the parties' action or conduct and “any judgment, order or resolution issued without it is void.”¹⁹

I

¹⁶ SEC. 66. Jurisdiction of the NCIP. The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

¹⁷ *Veneracion v. Mancilla*, 528 Phil. 309, 325 (2006) [Per J. Callejo, Sr., First Division].

¹⁸ *Machado v. Gatdula*, 626 Phil. 457, 468 (2010) [Per J. Brion, Second Division], citing *Spouses Vargas v. Spouses Caminas*, 577 Phil. 185 (2008) [Per J. Carpio, First Division]; *Metromedia Times Corporation v. Pastorin*, 503 Phil. 288 (2005) [Per J. Tinga, Second Division]; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986) [Per J. Narvasa, First Division].

¹⁹ *Magno v. People of the Philippines*, 662 Phil. 726, 735 (2011) [Per J. Brion, Third Division]; citing *Machado v. Gatdula*, 626 Phil. 457 (2010) [Per J. Brion, Second Division].

The NCIP does not have jurisdiction over cases where one of the parties does not belong to an indigenous cultural community.

Section 38 of the Act created the NCIP to carry out the policies set forth in the Indigenous Peoples Rights Act. Per Section 38, the NCIP “shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.” Section 39 provides for the NCIP’s mandate to “protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.”

Chapter IX of the Indigenous Peoples’ Rights Act pertains to the quasi-judicial powers of the NCIP. Thus, Section 69²⁰ expressly enables the NCIP to exercise powers that are necessary incidents of this quasi-judicial power: the promulgation of rules and regulations; the administration of oaths; the power to summon parties, issue subpoenas, and contempt power; and the power to issue writs of injunction. Section 68²¹ enables the NCIP to issue writs of execution. Section 67²² provides for the mode of appeal from decisions of the NCIP. Section 70²³ bars inferior courts from restraining proceedings in the NCIP. Section 65²⁴ establishes a framework for resolving disputes by recognizing the primacy of customary laws and practices.

Section 66 specifically provides for the jurisdiction of the NCIP:

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- ²⁰ SECTION 69. Quasi-Judicial Powers of the NCIP. — The NCIP shall have the power and authority:
- a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;
 - b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;
 - c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and
 - d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.
- ²¹ SECTION 68. Execution of Decisions, Awards, Orders. — Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.
- ²² SECTION 67. Appeals to the Court of Appeals. — Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.
- ²³ SECTION 70. No Restraining Order or Preliminary Injunction. — No inferior court of the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.
- ²⁴ SECTION 65. Primacy of Customary Laws and Practices. — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

SEC. 66. Jurisdiction of the NCIP. The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

Section 66's grant of jurisdiction is *ostensibly* cast in absolute terms: "over **all** claims and disputes involving rights of ICCs/IPs."

However, further into Section 66 are two clauses that qualify the NCIP's jurisdiction. First is the proviso that "*no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws.*" Second is that "*a certification . . . issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved . . . shall be a condition precedent to the filing of a petition with the NCIP.*"

A cursory reading of these clauses shows that they state a procedural requirement (i.e., exhaustion of remedies under customary law) and a formal requirement (i.e., certification issued by the Council of Elders/Leaders) that must first be complied with before the NCIP may take cognizance of a case. However, these procedural and formal requirements are not all there is to the qualifying clauses of Section 66.

II

Attention must be drawn to the proviso's choice of words. To reiterate, the proviso reads: "Provided, however, That no such dispute shall be brought to the NCIP unless **the parties** have exhausted all remedies provided under **their** customary laws."

The proviso uses the plural term "the parties." It also uses the plural "their," which is a possessive pronoun substituting for the noun phrase "the parties."

The use of the **plural** "the parties" necessarily means that the requirement of exhaustion of remedies provided under customary laws is a requirement that is **not exclusive** to a singular party.

The basic framework of adversarial litigation, as is the case in our jurisdiction, is one that entails two (2) parties: first, the one initiating or

bringing the action (i.e., the plaintiff/complainant/ claimant/petitioner); and the one against whom an action is initiated or brought (i.e., the defendant/respondent).

Thus, for Section 66 to say that “the parties” must exhaust all remedies is to say that **both** plaintiff/complainant/claimant/petitioner, on one hand, and defendant/respondent, on the other, must comply. In a case brought by A against B, both A and B must comply with the requirement.

Had Section 66 intended that compliance with the requirement by only one party shall suffice, it should have used the singular “**a party**,” similar language like “**either party**,” or permissive language like “**a/the party/ies**.” Had Section 66 intended that the requirement must be complied with by a specific party, it should have used specific language like “**the petitioner**.”

One may point out that the plural “the parties” can be taken to mean two or more of several petitioners, or two or more of several respondents where there are multiple petitioners and/or respondents. This interpretation is untenable. Precisely, it would find application **only** in situations where there are multiple petitioners and/or respondents. To adopt this interpretation would, therefore, be to unduly restrict and to render inutile under general circumstances the requirement of exhaustion of remedies.

III

The phrase “their customary laws” is significant in two respects. First, “their” is a plural possessive pronoun substituting for the noun phrase “the parties.” Second, “their” is a possessive determiner indicating possession (or otherwise a sense of belonging) of the words that follow it.

Section 66’s use of the phrase “their customary laws” is, therefore, to say that “the parties” have customary laws. Considering what the phrase “the parties” refers to (as explained previously), it follows that **both** the petitioner(s) and the respondent(s) must have or adhere to customary laws in order that a case between them may fall under the jurisdiction of the NCIP.

Section 3(f) of the Indigenous Peoples’ Rights Act defines “customary laws” as follows:

Section 3. Definition of Terms. — For purposes of this Act, the following terms shall mean:

....

- f) Customary Laws — refer to a body of written and/or unwritten rules, usages, customs and practices *traditionally and continually recognized, accepted and observed by respective ICCs/IPs*[.] (Emphasis supplied)

It is evident that only those belonging to ICCs/IPs have or adhere to customary laws. Since Section 66 refers to parties having customary laws, it follows that the NCIP’s jurisdiction, as defined in Section 66 of the Indigenous Peoples’ Rights Act, is limited to parties who belong to ICCs/IPs. It excludes those who do not.

To hold otherwise is to summarily compel those who do not belong to ICCs/IPs to adhere and subject themselves to customary laws despite their not having “traditionally and continually recognized, accepted[,] and observed”²⁵ these laws. This runs afoul of fair play and violates their right to due process.

Thus, Section 66’s qualifiers—as specifically worded—indicate that cases that fall under the jurisdiction of the NCIP must be limited to those where both parties belong to ICCs/IPs.

IV

The requirement that both parties must exhaust all remedies provided under their customary laws necessarily means that both parties must belong to the same ICC/IP.

The word “respective” denotes “belonging or relating to each one of the people or things that have been mentioned.”²⁶

Section 3(f) of the Indigenous Peoples’ Rights Act conceives of “customary laws” as “refer[ring] to a body of . . . rules, usages, customs[,] and practices traditionally and continually recognized, accepted[,] and observed by *respective* ICCs/IPs.” Thus, inherent in the Act’s conception of “customary laws” is a recognition that each ICC/IP has a set of continually recognized, accepted, and observed rules, usages, customs, and practices that is *distinct and separate* from those of other ICCs/IPs.

The recognition that ICCs/IPs have distinct customary laws is similarly a recognition that each ICC/IP has a distinct dispute settlement mechanism pursuant to their respective customary laws. To belong to a

²⁵ Rep. Act No. 8371 (1997), sec. 3(f).

²⁶ Merriam Webster Online <<http://www.merriam-webster.com/dictionary/respective>> (Visited October 21, 2015).

specific ICC/IP is, therefore, to say that one adheres not only to a specific set of customary laws but also to a specific dispute settlement mechanism applicable to that ICC/IP.

Thus, much as interpreting Section 66 as encompassing disputes where a party does not belong to an ICC/IP runs afoul of fair play and violates the (non-ICC/IP member's) right to due process, so does interpreting Section 66 as encompassing disputes where the parties belong to different ICCs/IPs. As with the former, to make such a conclusion is to summarily compel a party who adheres to a specific set of customary laws and dispute settlement mechanisms to adhere and be subjected to another set of customary laws.

Rule IV, Section 14 of NCIP Administrative Circular No. 1-03, the Rules on Pleadings, Practice and Procedure Before the NCIP (NCIP Rules) provides for situations “[w]here one of the parties . . . does not belong to the same IP/IC Community” as an exception to the requirement of a certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute. This is a recognition that the Indigenous Peoples’ Rights Act does not provide a dispute settlement mechanism where the parties belong to different ICCs/IPs. However, even as Rule IV, Section 14 of the NCIP Rules does away with the certification requirement, it cannot serve to extend the NCIP’s jurisdiction to disputes involving parties from different ICCs/IPs.

V

Extending the NCIP’s jurisdiction to those who do not belong to an indigenous cultural community or are not indigenous peoples finds no support elsewhere in the Indigenous Peoples Rights Act.

Section 66 is the sole provision of the Indigenous Peoples Rights Act that spells out the NCIP’s jurisdiction in respect of the *exercise of its quasi-judicial power*.

This court has defined quasi-judicial power as follows:

Quasi-judicial or administrative adjudicatory power on the other hand *is the power of the administrative agency to adjudicate the rights of persons before it*. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the

executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are *required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature*. Since rights of specific persons are affected it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings.²⁷ (Emphasis supplied)

Judicial power, in turn, has been defined in *Macasiano v. National Housing Authority*,²⁸ as the “right to determine actual controversies arising between adverse litigants.”²⁹ In *Lopez v. Roxas*:³⁰

Judicial power is the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights.³¹

It is true that the other provisions of the Indigenous Peoples Rights Act pertain to the competencies of the NCIP. However, a reading of these provisions will show that they do not extend the NCIP’s jurisdiction, *in the exercise of its quasi-judicial power*, to those who do not belong to ICCs/IPs.

Section 38³² creates the NCIP and states its purpose as “the primary government agency responsible for the *formulation and implementation of policies, plans and programs* to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as the rights thereto.”

Section 39³³ articulates in broad language the mandate of the NCIP to “protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.”

Section 44³⁴ provides that the NCIP shall have the “powers, *jurisdiction* and function” provided therein in order that it may “accomplish

²⁷ *Dole Philippines Inc. v. Esteva*, 538 Phil. 817, 860–861 (2006) [Per J. Chico-Nazario, First Division], citing *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1018–1019 (1996) [Per J. Vitug, First Division].

²⁸ G.R. No. 107921, July 1, 1993, 224 SCRA 236 [Per J. Davide, Jr., En Banc].

²⁹ *Id.* at 243.

³⁰ 124 Phil. 168 (1966) [Per C.J. Concepcion, En Banc].

³¹ *Id.* at 173, citing *Black, Constitutional Law*, 2nd ed. p. 82; *Ruperto vs. Torres*, 100 Phil. 1098 [Per J. Labrador, Unreported Case], in turn citing 34 C.J. 1183-1184; *Wheeling & Elm Grove Railroad Co., Appt. vs. Town of Philadelphia, et al.*, 4 LRA (NS) pp. 321, 328–329.

³² Section 38. National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP). — To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as the rights thereto.

³³ Section 39. Mandate. — The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

its mandate.” Section 44 lists 17 of such “powers, *jurisdiction* and function”:

- (1) Item (a) identifies the NCIP “as the *primary government agency through which ICCs/IPs can seek government assistance* and as the medium, through which such assistance may be extended.”
- (2) Item (b) authorizes the NCIP “[t]o *review and assess the conditions* of ICCs/IPs . . . to *propose relevant laws and policies*[.]” a function which is evidently not (quasi-)judicial in nature.
- (3) Item (c) refers to the “*formulat[ion] and implement[ation]* [of] policies, plans, programs and projects[.]”

³⁴ Section 44. Powers and Functions. — To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

- a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended;
- b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
- c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;
- d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;
- e) To issue certificate of ancestral land/domain title;
- f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs;
- g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;
- h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;
- i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;
- j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;
- k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;
- l) To prepare and submit the appropriate budget to the Office of the President;
- m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;
- n) To decide all appeals from the decisions and acts of all the various offices within the Commission;
- o) To promulgate the necessary rules and regulations for the implementation of this Act;
- p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and
- q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

- (4) Item (d) permits the NCIP to avail itself of “the services and support” of *experts and consultants*, whether from government or the private sector.
- (5) Item (e) places in the NCIP the authority “[t]o issue *certificate[s] of ancestral land/domain title.*”
- (6) Item (f) enables the NCIP “to enter into *contracts, agreements, or arrangement[s]* . . . and . . . to obtain *loans.*”
- (7) Item (g) enables the NCIP “[t]o negotiate for *funds* and to accept grants, donations, gifts[,] and/or *properties* . . . and administer the same.”
- (8) Item (h) makes the NCIP the “coordinat[or] [of] development *programs and projects.*”
- (9) Item (i) enables the NCIP “[t]o convene periodic *conventions or assemblies* of IPs to review, assess as well as propose policies or plans.”
- (10) Item (j) spells out the NCIP’s advisory and reportorial duties vis-à-vis the President of the Philippines, i.e., “[t]o *advise the President* of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a *report of its operations and achievements.*”
- (11) Item (k) allows the NCIP “[t]o submit to Congress appropriate *legislative proposals.*”
- (12) Item (l) spells out the budgetary duty of the NCIP, i.e., “[t]o prepare and submit the appropriate *budget* to the Office of the President.”
- (13) Item (m) relates to the “*issu[ance] [of] . . . certification[s]* as a pre-condition to the grant of... authority for the disposition, utilization, management[,] and appropriation by *any private individual, corporate entity or any government agency, corporation or subdivision thereof* on any part or portion of the ancestral domain[.]”
- (14) *Item (n) provides for the NCIP’s appellate power, i.e., “[t]o decide all appeals from the decisions and acts of all the various offices within the Commission.*”

- (15) *Item (o) provides for the NCIP’s rule-making power, i.e., “[t]o promulgate the necessary **rules and regulations** for the implementation of this Act.”*
- (16) Item (p) is a catch-all provision enabling the NCIP “[t]o exercise such other **powers and functions as may be directed by the President** of the Republic of the Philippines.”
- (17) Item (q) allows the NCIP “[t]o represent the Philippine ICCs/IPs in all **international conferences and conventions** dealing with indigenous peoples and other related concerns.”

None but two (2) of these 17 “powers, jurisdiction and function[s]” are directly related to the NCIP’s exercise of its quasi-judicial power. These two (2) items are item (n)—on the NCIP’s appellate power—and Item (o)—on the NCIP’s rule-making power— which may be read vis-à-vis Section 69’s investiture upon the NCIP of the power “[t]o promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act.” Neither of these two states that the NCIP’s jurisdiction extends to disputes where a party does not belong to an ICC/IP or to those where the parties belong to different ICCs/IPs.

Item (m) enables the NCIP to exercise authority over those who not belong to ICCs/IPs, i.e., “any private individual, corporate entity or any government agency, corporation or subdivision thereof.” However, item (m) refers specifically to the “issuance of certification[s] as a pre-condition to the grant of . . . authority for the disposition, utilization, management[,] and appropriation . . . on any part or portion of the ancestral domain[.]” It does not refer to the “exercise of discretion in a judicial nature”³⁵ and the “determin[ation] [of] actual controversies arising between adverse litigants.”³⁶

VI

Reliance on the Indigenous Peoples Rights Act’s Implementing Rules and Regulations and the NCIP’s rules in support of the assertion that the NCIP has jurisdiction is misplaced. In extending the NCIP’s jurisdiction, these rules contradict statutory provisions.

³⁵ *Dole Philippines Inc. v. Esteva*, 538 Phil. 817, 860–861 (2006) [Per J. Chico-Nazario, First Division], citing *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1018–1019 (1996) [Per J. Vitug, First Division].

³⁶ *Macasiano v. National Housing Authority*, G.R. No. 107921, July 1, 1993, 224 SCRA 236, 243 [Per J. Davide, Jr., En Banc].

Rule IX, Section 1 of the Indigenous Peoples Rights Act's Implementing Rules and Regulations reads:

RULE IX. JURISDICTION AND PROCEDURES FOR
ENFORCEMENT OF RIGHTS

Section 1. Primacy of Customary Law. All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or land is located.

All conflicts related to the ancestral domains or lands where one of the parties is a non-ICC/IP or where the dispute could not be resolved through customary law shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures Before the NCIP to be adopted hereafter.

All decisions of the NCIP may be brought on Appeal by Petition for Review to the Court of Appeals within fifteen (15) days from receipt of the Order or Decision. (Emphasis supplied)

Rule III, Section 5 of the NCIP Rules, NCIP Administrative Circular No. 1-03 reads:

Sec. 5. Jurisdiction of the NCIP.—*The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:*

- (1) Original and Exclusive Jurisdiction of the Regional Hearing Office (RHO):
 - a. Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs;
 - b. Cases involving violations of the requirement of free and prior and informed consent of ICCs/IPs;
 - c. Actions for enforcement of decisions of ICCs/IPs involving violations of customary laws or desecration of ceremonial sites, sacred places, or rituals;
 - d. Actions for redemption/reconveyance under Section 8(b) of R.A. 8371; and
 - e. Such other cases analogous to the foregoing.
- (2) Original Jurisdiction of the Regional Hearing Officer:

- a. Cases affecting property rights, claims of ownership, hereditary succession, and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws; and
 - b. Actions for damages arising out of any violation of Republic Act No. 8371.
- (3) Exclusive and Original Jurisdiction of the Commission:
- a. Petition for cancellation of Certificate of Ancestral Domain Titles/Certificate of Ancestral Land Titles (CADTs/CALTs) alleged to have been fraudulently acquired by, and issued to, any person or community as provided for under Section 54 of R.A. 8371. Provided that such action is filed within one (1) year from the date of registration. (Emphasis supplied)

Apart from these, Rule IV, Sections 13 and 14 of the NCIP Rules provide:

Section 13. Certification to File Action. Upon the request of the proper party, members of the indigenous dispute settlement group or council of elders shall likewise issue a certification to file action before the NCIP. In giving due regard to customary laws, the certification may be in any form so long as it states in substance the failure of settlement notwithstanding the efforts made under customary law or traditional practices.

Section 14. Exceptions. The certification shall not be required in the following cases:

- a. *Where one of the parties is a public or private corporation, partnership, association or juridical person or a public officer or employee and the dispute is in connection with the performance of his official functions;*
- b. *Where one of the parties is non-IP/ICC or does not belong to the same IP/IC Community, except when he voluntarily submits to the jurisdiction of the Council of Elders/Leaders;*
- c. Where the relief sought for in the complaint or petition seeks to prevent any grave, imminent and irreparable damage or injury that may result if not acted upon immediately; and
- d. Where the Council of Elders/Leaders refuse to issue the necessary certification without justifiable reasons. (Emphasis supplied)

These provisions support the conclusion that the NCIP has jurisdiction even over cases where a party does not belong to an ICC/IP.

However, it is a basic principle in administrative law that an administrative rule must conform to and not contradict the provision of an enabling law. In *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*:³⁷

As mandated by Article 7 of the Civil Code,³⁸ an administrative rule or regulation cannot contravene the law on which it is based. . . . The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the objects and purposes of the law, and should not be in contradiction to, but in conformity with, the standards prescribed by law.

To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void.

While administrative agencies . . . may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.³⁹

The Indigenous Peoples Rights Act does not extend the NCIP's jurisdiction to disputes involving those who do not belong to ICCs/IPs. The precise wording of Section 66 and the silence of the remainder of the Indigenous Peoples Rights Act on extending the NCIP's jurisdiction bear this out.

³⁷ 617 Phil. 358 (2009) [Per J. Leonardo-De Castro, En Banc].

³⁸ Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.

When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

³⁹ *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, 617 Phil. 358, 368–369 (2009) [Per J. Leonardo-De Castro, En Banc], citing *Francel Realty Corporation v. Sycip*, 506 Phil. 407 (2005) [Per Acting C.J. Panganiban, Third Division] and *Sunga v. Commission on Elections*, 351 Phil. 310 (1998) [Per J. Bellosillo, En Banc].

Likewise, “[j]urisdiction over a subject matter is conferred by law.”⁴⁰ No amount of administrative rule-making can vest jurisdiction where neither Constitution nor statute vests it.

Thus, Rule IX, Section 1 of the Indigenous Peoples Rights Act’s Implementing Rules and Regulations, Rule III, Section 5, and Rule IV, Sections 13 and 14 of the NCIP Rules, insofar as they extend the NCIP’s jurisdiction to disputes where a party does not belong to an ICC/IP, must be deemed null and void. They are inconsistent with the Indigenous Peoples Rights Act in that they modify and expand the NCIP’s jurisdiction as spelled out in Section 66. In light of this discrepancy between a basic law and administrative rules, the basic law—the Indigenous Peoples Rights Act—must prevail.

VII

In sum, the requirements for the proper exercise of the NCIP’s jurisdiction over a dispute, pursuant to Section 66 of the Indigenous Peoples Rights Act, are as follows:

- (1) The claim or dispute must involve the rights of ICCs/IPs;
- (2) Both parties must belong to the same ICC/IP;
- (3) These parties must have exhausted all remedies provided under their ICC/IP’s customary laws; and
- (4) Compliance with this requirement of exhausting remedies under customary laws must be evidenced by a certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute, to the effect that the dispute has not been resolved.

In this case, it is not disputed that respondents do not belong to an ICC/IP. Their sole interest is in their supposed ownership and possession of land which, in turn, “appears to be located within the ancestral domain of the Talaandig tribe.”⁴¹ Thus, the National Commission on Indigenous Peoples may not exercise jurisdiction over the case filed by respondents.

⁴⁰ *Machado v. Gatdula*, 626 Phil. 457, 468 (2010) [Per J. Brion, Second Division], citing *Spouses Vargas v. Spouses Caminas*, 577 Phil. 185 (2008) [Per J. Carpio, First Division]; *Metromedia Times Corporation v. Pastorin*, 503 Phil. 288 (2005) [Per J. Tinga, Second Division]; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986) [Per J. Narvasa, First Division].

⁴¹ Ponencia, April 23, 2014, p. 2.

VII

Customary norms are as varied as there are tribes within ethnolinguistic groups. If we are to animate the spirit of both the Constitution and the Indigenous Peoples Rights Act, we should not stereotype all cultures as homogenous or incapable of dynamic interfaces with each other. Customary law is a descriptive label which should acknowledge that each tribe lived through its own history and endogenously emerged their own set of norms reflecting their values and lifeways. To say that the customary norms of the Kalinga are the same as those of the Subanen betrays the same colonial mindset that marginalized what our colonizers called as “Non-Christian Tribes” in the distant past.

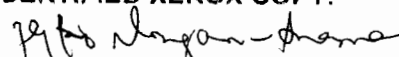
Neither should we straightjacket any culture as incapable of dynamic interfaces or accommodation with other cultures. Various groups of indigenous communities are able to work with the entirety of our legal system in appropriate cases. This case, which involves a party not of their tribe, is certainly one such case.

ACCORDINGLY, I vote to **DENY** the Petition for Review on Certiorari. The assailed Decision dated August 17, 2006 and Resolution dated July 4, 2007 of the Court of Appeals in CA-G.R. SP No. 00204-MIN must be **AFFIRMED**.



MARVIC M.V.F. LEONEN
Associate Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT