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G.R. No. 224469 — DIOSDADO SAMA y HINUPAS and BANDY MASANGLAY y ACEVEDA, *petitioners*, ***versus*** **PEOPLE OF THE PHILIPPINES,** *respondent*.

Promulgated:

January 5, 2021

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SEPARATE OPINION

CAGUIOA, *J.*:

The factual backdrop of the case is simple and quite straightforward: petitioners, who are members of the Iraya-Mangyan indigenous community and residing within their ancestral domain in the hinterlands of Baco, Oriental Mindoro, within the contemplation of the Republic Act No. (R.A.) 8371 or the Indigenous Peoples' Rights Act (IPRA), felled one *dita*[1] tree for the construction of a communal toilet, without having first secured a permit from the Department of Environment and Natural Resources (DENR) pursuant to Section. 77[2] of the Forestry Reform Code of the Philippines (Presidential Decree No. [P.D.] 705), as amended. The factual context of the case covers a breadth of interwoven legal issues that bear upon the foremost question of whether or not herein petitioners may be rightly convicted.

If peered from a constitutional law angle, the view is fraught with reluctance and equal but contrary propositions exist, in part due to the fact that our laws have evolved with inexactness, and have become open to a plurality of persuasions. The lens of constitutional determination may invite that the case be seen from a "State v. Indigenous Peoples" point of view, on the one hand, or a "healthful ecology" framing, on the other. To my mind, neither viewpoint invalidates the other, for the socio-historically complex relation between indigenous peoples' rights and environmental laws are so inextricably linked that any imprecise step in one direction or another may cost highly for both separate but joined causes.

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1 Scientific name: *Alstonia scholaris*. Also known as devil's tree (English), rite (Indonesian), pulai (Malay), among others. *See*: <http://apps.worldagroforestry.org/treedb/AFTPDFS/Alstonia_scholaris.PDF>

2 SECTION 77. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License.* – Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

I would be remiss if I fail to recognize the very valid points raised by Chief Justice Diosdado M. Peralta in his Dissenting Opinion, not the least of which is the overarching reasonable fear that the position I espouse, if followed to its logical conclusion, may open the gates for abuse and perhaps facilitate the ease of pillaging our forest covers. Although I maintain my position that these fears, although grounded, may not be the apt cornerstone from which to best reference the resolution of the present issues, I recognize that the Chief Justice raises real and valid apprehensions, which tell me that this case does not lend itself most suited for the adjudication of these deeply contested questions of law, which may be, for now, best left to the wisdom and clarification of the legislature.

I further submit that the present case may be resolved without needing a constitutional determination or conclusive harmonization of laws. From the more immediate standpoint of criminal law, the facts of this case are clear. I concur with the *ponencia*'s finding that petitioners here do not incur any criminal liability. From the lens of criminal law, the determination of whether the Court has sufficient basis to find that the accused here are guilty of the act betrays gray areas of interpretations and legislative intents behind the penal provision, specifically the acts included in the violation under P.D. 705, one of which was levelled against petitioners. These equivocal areas must, therefore, and until conclusively determined, color the present prosecution with reasonable doubt, which must be resolved in favor of herein accused.

I thus maintain the non-culpability of petitioners for the following reasons: *first,* petitioners may not be found guilty of violating P.D. 705, Sec. 77 as the lands enumerated therein do not include ancestral domains; and *second,* in any event, the petitioners' act of cutting the *dita* tree was undertaken with the required "authority." As Sec. 77 itself provides, petitioners' act of cutting a single *dita* tree for the purpose of building a toilet for the use of their community is well within the rights granted to Indigenous Cultural Communities (ICCs) or Indigenous Peoples (IPs) under the IPRA, and is therefore beyond the ambit of the crimes penalized therein, with its authority rising from no less than the Constitution and the bedrock rationale of the IPRA itself.

To be sure, this Opinion does not assert that members of the ICCs/IPs be wholly exempted from the reach of the courts' jurisdiction over criminal offenses. Rather, it submits that there can be no finding of a crime having been committed where none was intended by laws. This Opinion does not look at P.D. 705 with the intention of subverting it and granting sweeping, unmerited exemptions in favor of members of the ICCs/IPs. Plainly, no exemption is being carved out for petitioners, for one cannot be exempted from a law that did not contemplate them, to begin with.

In the ultimate analysis, while I maintain my position that petitioners cannot be held criminally liable for violating P.D. 705, I likewise recognize the reasonable points raised by the Chief Justice in his dissent. I, too,

recognize that at least three other members of the Court have also given their positions as regards this case. These opinions are in addition to those espoused by the *ponencia*. Evidently, interpreting the law as it affects the concerns of IPs and the environment invites diverse points of view which hinders the Court from finding accused's guilt beyond reasonable doubt. The ramifications of laying down definitive pronouncements in this case that go beyond the criminal liability of the accused may indeed have far-reaching consequences that are already beyond what is necessary in resolving the instant case.

That being said, I shall lay down the bases for my position that petitioners are not liable under P.D. 705.

Petitioners did not violate P.D. 705, Sec. 77.

P.D. 705, Sec. 77, as amended, states:

> Section 77. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.
>
> The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

This provision punishes two distinct and separate offenses:

(1) cutting, gathering, collecting, or removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and

(2) possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[3]

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[3] *Bon v. People*, 464 Phil. 125 (2004); *Lalican v. Hon. Vergara*, 342 Phil. 485 (1997); *Revaldo v. People*, 603 Phil. 332 (2009).

Here, the Information states:

> The undersigned Prosecutor, under oath, accuses DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, BANDY MASANGLAY y ACEVEDA, residents of Barangay Baras, Baco, Oriental Mindoro with the crime of Violation of Presidential Decree No. 705 as amended, committed as follows:
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> That on or about the 15th day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating, and mutually helping one another did and then and there willfully, unlawfully, feloniously and knowingly cut with the use of unregistered power chainsaw, a *Dita* tree, a forest product, with an aggregate volume of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php 20,000.00) PESOS, Philippine Currency.
>
> Contrary to law.[4]

Indubitably, petitioners were charged with the first offense — namely, the cutting of a *dita* tree "without any authority."[5] Thus, to be convicted under this charge, the following elements must first be proven:

(1) Act of cutting, gathering, collecting, or removing

i. Timber or forest products from <u>any forest land</u>, or

ii. Timber from <u>alienable or disposable public land</u>, or from <u>private land</u>; and

(2) Absence of <u>any authority</u> to do such act.

Finding both elements to be present, the lower courts convicted petitioners.

Contrary to the foregoing, I submit that petitioners did <u>not</u> violate any of the punishable acts under P.D. 705, Sec. 77. Otherwise stated, the elements of the offense charged are <u>not</u> present in this case. *First,* since the *dita* tree was located within the petitioners' ancestral domain, the offense did not take place in any of the locations contemplated in Sec. 77. In other words, P.D. 705, Sec. 77 is no longer applicable, especially with the enactment of the IPRA. *Second*, even assuming that P.D. 705, Sec. 77 is still applicable to ancestral domains, the absence of a permit from the DENR does not mean that petitioners are guilty of the charge, as they, under the IPRA, already possessed the required "authority" to cut the *dita* tree.

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4 *Rollo,* pp. 48-49.
5 Id.

Absence of the first element: petitioners cut the dita tree within their ancestral domain, which is neither "forest land," "alienable or disposable public land," nor "private land."

To be considered a violation of Sec. 77, the law itself requires that the timber or forest product is cut, gathered, collected, or removed from any "forest land," "alienable or disposable public land," or "private land."

Cutting within an ancestral domain of ICCs/IPs was not contemplated by P.D. 705, Sec. 77.

As the Court held in *Savage v. Taypin*[6] "we must strictly construe the statute against the State and liberally in favor of the accused, for penal statutes cannot be enlarged or extended by intendment, implication or any equitable consideration."[7]

It also held in *Centeno v. Villalon-Pornillos*[8] (*Centeno*):

> [Penal laws] are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, **the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused**."[9]

In construing penal laws, the Court further held:

> x x x If the statute is ambiguous and admits of two reasonable but contradictory constructions, **that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such.** Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.[10]

Here, the lower courts erred in failing to appreciate the location of the *dita* tree, which, again, was well within the petitioners' ancestral domain.

I disagree. On this note, it should be emphasized that "[t]he law does not operate *in vacuo* nor should its applicability be determined by circumstances in the abstract."[11]

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6 G.R. No. 134217, May 11, 2000, 331 SCRA 697.
7 Id. at 704.
8 G.R. No. 113092, September 1, 1994, 236 SCRA 197.
9 Id. at 205. (Emphasis and underscoring supplied)
10 Id. (Emphasis and underscoring supplied)
11 Id. at 205-206.

I submit that ancestral domains are distinct from public or private lands, and any cutting of timber or forest product therein was not contemplated by Sec. 77 of P.D. 705. Sec. 77 cannot be read in isolation. Its interpretation should not only be construed strictly against the State and in favor of the accused, but it must consider changes brought about by the 1987 Constitution, its recognition of ancestral domains, and the enactment of the IPRA.

"Forest land,"[12] as used in P.D. 705, includes three sub-categories: (1) public forests, (2) permanent forests or forest reserves, and (3) forest reservations, which are defined in the statute itself:

> SECTION 3. Definitions. —
>
> a) Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.
>
> b) Permanent forest or forest reserves refers to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes.
>
> x x x x
>
> g) Forest reservations refer to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes. (Underscoring supplied)

From these definitions, it is clear that all subcategories of "forest land" are classified as lands of the public domain.[13] Similarly, and as the name suggests, "alienable or disposable public land"[14] also forms part of the public domain.

On the other hand, while the term "private land" is not expressly defined in P.D. 705, it is indirectly referred to in Sec. 3(mm), which defines a "private right" as "titled rights of ownership under existing laws, and in the case of national minority to rights of possession existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds, and old clearings, but exclude productive forest inclusive of logged-over areas, commercial forests and established plantations of the forest trees and trees of economic values."[15]

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12 P.D. 705, Sec. 3(d).

13 Section 5 of PD 705 affirms this view: "[t]he Bureau [of Forest Development] shall have jurisdiction and authority over all forest land, grazing lands, and all forest reservations including watershed reservations presently administered by other government agencies or instrumentalities."

14 Section 3(c) defines this as "those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes x x x."

15 P.D. 705, Sec. 3(mm). (Underscoring supplied)

To my mind, these definitions do not cover the concept of ancestral domains. ***Ancestral domains are neither "public" nor "private land" as contemplated by Sec. 77 of P.D. 705.***

Ancestral domains were recognized in the 1987 Constitution when it stated that Congress may provide for the applicability of customary laws governing property rights in determining **the ownership and extent of ancestral domains**. Article XII, Sec. 5 of the 1987 Constitution on National Economy and Patrimony states:

> SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.
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> The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

Implementing the foregoing, Congress enacted the IPRA, which defined ancestral domains as "all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial x x x."[16] These areas even include "forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise x x x."[17] Sec. 3 of the IPRA states:

> SECTION 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean:
>
> a) *Ancestral Domains* — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. **It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise**, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and

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16 IPRA, Sec. 3.

17 Id.

> traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators[.] (Emphasis and underscoring supplied)

Through the IPRA, the State recognized the rights of the ICCs/IPs to their ancestral domains by virtue of *native title*, and such formal recognition is through the Certificate of Ancestral Domain Title (CADT), if obtained at the election of the ICCs/IPs themselves.[18] *Native title* is defined in the IPRA as "pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest."[19]

This concept of "native title" can be traced back to the 1909 case of *Cariño v. Insular Government*[20] (*Cariño*) where the United States Supreme Court upheld the claim by an IP that the parcels of land owned by him were absolutely owned by him and his predecessors-in-interest through the years, as opposed to the Regalian Doctrine invoked by the Government of the Philippines. Thus:

> Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that **when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.** Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the Organic Act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitudes of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof."[21]

Institutionalizing *Cariño* was one of the principal goals in enacting the IPRA. The sponsorship speeches for the progenitor bills of the IPRA both mentioned *Cariño* as one of the law's conceptual anchors. In his Sponsorship Speech, Senator Juan S. Flavier said:

> x x x [O]ur legal tradition subscribes to the Regalian Doctrine as reinstated in Section 2, Article XII of the Constitution x x x

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18 Section 11 of the IPRA:

> SECTION 11. *Recognition of Ancestral Domain Rights.* — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

19 IPRA, Section 3 (l).

20 41 Phil. 935 (1909).

21 Id.

x x x x

[But] decisional law has made exception to the doctrine.

As early as 1909, in the case of *Cariño vs. Insular Government,* the court has recognized long occupancy of land by an indigenous member of the cultural communities as one of private ownership, which, in legal concept, is termed "native title." This ruling has not been overturned. In fact, it was affirmed in subsequent cases.

But the executive department of the government since the American occupation has not implemented the policy. In fact, it was more honored in its breach than in its observance, its wanton disregard shown during the period of the Commonwealth and the early years of the Philippine Republic when government organized and supported massive resettlement of the people to the land of the ICCs.[22]

Cariño was also cited as one of the bases for the IPRA in the interpellations of the precursor bill in the House of Representatives.[23]

In jurisprudence, this concept that was rooted in *Cariño* has been recently upheld in the case of *Republic v. Cosalan*,[24] where the Court held that:

Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." **To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.**[25]

Ancestral domains and lands are thus unique in that they were never public lands, but may include forest lands, and which the ICCs/IPs have held

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22 Sponsorship Speech of Senator Flavier, Legislative History of SBN 1728, II RECORD SENATE 10TH CONGRESS 2ND SESSION 253 (October 16, 1996).

23 Interpellation of August 20, 1997, 6:15 p.m., I RECORD HOUSE 10TH CONGRESS 3RD SESSION 514 (October 20, 1997):

MR. OSMENA. But you are vesting economic rights upon this community. This is where my whole problem is. Because a Christian Filipino who wants to mine chrome, iron ore, or whatever, has to go to the Department of Energy and Natural Resources and apply for mineral sharing agreements and file a lot of papers. In our Constitution, natural resources are national patrimony. But in this bill, you have – in face, I do not know how is the constitutionality of this provision, you are now giving mineral rights to the members of a cultural community. Is that a correct interpretation, Your Honor?

MR. ANDOLANA. Yes, to some extent, it may be interpreted that way. In fact, the committee has considered that vested prior rights must be respected in a claim of mineral or natural resources.

MR. OSMENA. Again, Your Honor…

MR. ANDOLANA. **But when we are going to recall a decision of the US Supreme Court when we were still under the United States of America, in the case of *Cariño vs. Insular Government,* these rights are already vested even before the establishment of the Republic of the Philippines and even before the Spanish regime.** (Emphasis supplied)

24 *Republic v. Cosalan,* G.R. No. 216999, July 4, 2018, 870 SCRA 575.

25 Id. at 587. (Emphasis supplied)

for their communities under a claim of private ownership. Thus, these are ***indisputably presumed*** to have been held in this way before the Spanish Conquest.

Expanding on this peculiar nature of ancestral domains, which he describes as neither public nor private lands, former Chief Justice Reynato S. Puno, in his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*[26] (*Cruz*), stated:

> **The right of ownership and possession of the ICCs/IPs to their ancestral domains is held under the indigenous concept of ownership. This concept maintains the view that ancestral domains are the ICCs/Ips['] private but community property. It is private simply because it is not part of the public domain. But its private character ends there. The ancestral domain is owned in common by the ICCs/IPs and not by one particular person.** The IPRA itself provides that areas within the ancestral domains, whether delineated or not, are presumed to be communally held. **These communal rights, however, are not exactly the same as co-ownership rights under the Civil Code.** Co-ownership gives any co-owner the right to demand partition of the property held in common. The Civil Code expressly provides that "[n]o co-owner shall be obliged to remain in the co-ownership." Each co-owner may demand at any time the partition of the thing in common, insofar as his share is concerned. To allow such a right over ancestral domains may be destructive not only of customary law of the community but of the very community itself.
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> **Communal rights over land are not the same as corporate rights over real property, much less corporate condominium rights.** A corporation can exist only for a maximum of fifty (50) years subject to an extension of another fifty years in any single instance. Every stockholder has the right to disassociate himself from the corporation. Moreover, the corporation itself may be dissolved voluntarily or involuntarily.
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> **Communal rights to the land are held not only by the present possessors of the land but extends to all generations of the ICCs/IPs, past, present and future, to the domain.** This is the reason why the ancestral domain must be kept within the ICCs/IPs themselves. The domain cannot be transferred, sold or conveyed to other persons. It belongs to the ICCs/IPs as a community. [27]

Chief Justice Puno went on to state that "[f]ollowing the constitutional mandate that 'customary law govern property rights or relations in determining the ownership and extent of ancestral domains,' *the IPRA, by legislative fiat, introduces a new concept of ownership. This is a concept that has long existed under customary law.*"[28] He continues:

> **Custom, from which customary law is derived, is also recognized under the Civil Code as a source of law.** Some articles of the Civil Code expressly provide that custom should be applied in cases where no codal provision is applicable. In other words, in the absence of any

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26 G.R. No. 135385, December 6, 2000, 347 SCRA 128.

27 Id. at 222-223. (Emphasis and underscoring supplied, italics omitted)

28 Id. at 223.

> applicable provision in the Civil Code, custom, when duly proven, can define rights and liabilities.
>
> **Customary law** is a **primary,** not secondary, source of rights under the IPRA and uniquely applies to ICCs/IPs. **Its recognition does not depend on the absence of a specific provision in the civil law**. The indigenous concept of ownership under customary law is specifically acknowledged and recognized, and coexists with the civil law concept and the laws on land titling and land registration.
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> x x x x
>
> The moral import of ancestral domain, *native land* or *being native* is "belongingness" to the land, being people of the land — by sheer force of having sprung from the land since time beyond recall, and the faithful nurture of the land by the sweat of one's brow. This is fidelity of usufructuary relation to the land — the possession of stewardship through perduring, intimate tillage, and the mutuality of blessings between man and land; from man, care for land; from the land, sustenance for man.[29]

Clearly, the ICCs/IPs' ownership of their ancestral domains is unique. It is different from the "titled ownership under existing laws" or "right of possession" by "national minorities" contemplated by P.D. 705. ICCs/IPs have ownership — not mere possession — that is characterized as "private but communal," a description that is antithetical to the concept of "titled ownership" as known in civil law.

Given the foregoing, the letter of P.D. 705, Sec. 77 cannot be conceived to cover the cutting of timber or forest products in ancestral domains, as to do so would be a strained construction of a penal statute. It would penalize an act despite the lack of textual support to make it so. It would be an arbitrary and baseless expansion of a penal statute.

The foregoing disquisition thus begs the question: If P.D. 705, Sec. 77 is not applicable to ancestral domains, does this mean that timber and forest products found therein can be cut by anyone — IPs or non-members of IPs alike — without limitations?

The answer would be in the negative.

In cases where non-members of IPs illegally cut trees in ancestral domains, it would still be punishable, not by P.D. 705, Sec. 77, but by the penal provisions of the IPRA, particularly Sec. 72 in relation to Sec. 10, which states:

> SECTION 10. *Unauthorized and Unlawful Intrusion.* — **Unauthorized** and unlawful intrusion upon, or **use of any portion of the ancestral domain**, or any violation of the rights hereinbefore enumerated, shall be punishable under this law. Furthermore, the Government shall take

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[29] Id. at 224-225. (Emphasis supplied, italics omitted)

> measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs. (Emphasis and underscoring supplied)

In fact, compared to P.D. 705, Sec. 77, the provision on "unauthorized and unlawful intrusion" (Sec. 72) bears a heavier penalty:

> SECTION 72. *Punishable Acts and Applicable Penalties.* — Any person who commits violation of any of the provisions of this Act, such as, but not limited to, **unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10**, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: *Provided,* That no such penalty shall be cruel, degrading or inhuman punishment: *Provided, further*, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, **any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court.** In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act. (Emphasis and underscoring supplied)

The IPRA itself allows non-members of IPs to utilize natural resources in ancestral domains, subject to certain conditions:

> SECTION 57. *Natural Resources within Ancestral Domains.* — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. **A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: *Provided*, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation:** *Provided, finally*, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.[30] (Emphasis and underscoring supplied)

Simply put, when it comes to ancestral domains, Sec. 77 of P.D. 705 no longer finds application as it is the provisions of IPRA that have kicked in and now operate.

Do IPs have unbridled discretion as regards the utilization of natural resources which may be found in their ancestral domains? In other words, do the "priority rights" granted by Sec. 57 mean that IPs can exploit the natural resources in ancestral domains without limits? Again, the answer is no.

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[30] IPRA, Sec. 57.

The IPRA recognizes the ICCs/IPs right to the sustainable use of the natural resources found in ancestral domains

A thorough reading of the rights recognized under the IPRA reveals that the IPRA allows ICCs/IPs to utilize the natural resources that may be found in ancestral domains. This is rooted in the indigenous concept of ownership, recognized by the IPRA, which is significantly different from the concept of ownership under civil law.

According to the IPRA,

> [the indigenous] concept of ownership sustains the view that ancestral and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's ***private but community property*** **which belongs to all generations** and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights."[31]

In turn, sustainable traditional resource rights refer to the rights of ICCs/IPs to ***sustainably use***, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value ***in accordance with their indigenous knowledge, beliefs, systems and practices***.[32]

For IPs, this is easy to understand, as nothing provided for in the IPRA is new to them. The IPRA simply recognizes what their practices are. This recognition of the rights of IPs is not confined only in the domestic setting — it is reflected as well in the international sphere. The United Nations Declaration on the Rights of Indigenous Peoples[33] (UNDRIP) states that the United Nations General Assembly (UNGA) "recogniz[es] the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources."[34] Moreover, the provisions of the UNDRIP itself state that:

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31 IPRA, Sec. 5.

32 IPRA, Sec. 3(o).

33 Although non-binding as it is merely a UNGA Declaration, it constitutes evidence of state practice on the matter. The United Nations describes UNDRIP as the "most comprehensive international instrument on the rights of indigenous peoples" as 144 states have voted in its favor, including the Philippines, and the 4 countries that initially voted against it have "reversed their position and now support the Declaration." *See*: https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

34 UNDRIP, preambular clauses.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Thus, that the IPs have their own ways of life and have a unique relationship with the land they live in, and that States have a concomitant duty to respect and protect the rights emanating from that, are matters recognized internationally — only made binding to the Philippines by its enactment of the IPRA.

There is thus no doubt that ICCs/IPs are allowed to use the land and the natural resources found in their ancestral domains. To allay any fears that this formulation will mean the unfettered use of the natural resources in ancestral domains, thereby causing irreversible damage to the detriment of future generations, it is important to point out that the IPRA itself clarifies the limitations of the use allowed for ICCs/IPs. As previously discussed, the IPRA only recognizes sustainable traditional resource rights that allows the IPs to ***"sustainably use x x x in accordance with their indigenous knowledge, beliefs, systems and practices"***[35] the resources which may be found in the ancestral domains which, in turn, are "private but community property **which belongs to all generations and therefore <u>cannot be sold, disposed or destroyed</u>**."[36] This is complemented by Sec. 7 of the IPRA, which states:

SECTION 7. *Rights to Ancestral Domains.* — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

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35 IPRA, Section 3(o). (Emphasis and italics supplied)

36 IPRA, Sec. 5. (Emphasis and underscoring supplied)

> a) *Right of Ownership.* — The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;
>
> b) *Right to Develop Lands and Natural Resources.* — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to **manage and conserve natural resources** within the territories and **uphold the responsibilities for future generations**; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights[.] (emphasis and underscoring supplied)

In this connection, I fully agree with Chief Justice Puno's formulation in his Separate Opinion in *Cruz* that the proper reading of the IPRA insofar as the rights of ICCs/IPs to the natural resources are concerned is to read it in the context of small-scale utilization of natural resources by Filipino citizens which is allowed by the Constitution:[37]

> *Ownership over the natural resources in the ancestral domains remains with the State and the ICCs/IPs are merely granted the right to "manage and conserve" them for future generations, "benefit and share" the profits from their allocation and utilization, and "negotiate the terms and conditions for their exploration" for the purpose of "ensuring ecological and environmental protection and conservation measures."* It must be noted that the right to negotiate the terms and conditions over the natural resources covers only their exploration which must be for the purpose of ensuring ecological and environmental protection of, and conservation measures in the ancestral domain. It does not extend to the exploitation and development of natural resources.
>
> *Simply stated, the ICCs/IPS' rights over the natural resources take the form of management or stewardship.* For the ICCs/IPs may use these resources and share in the profits of their utilization or negotiate the terms for their exploration. **At the same time, however, the ICCs/IPs must ensure that the natural resources within their ancestral domains are conserved for future generations and that the "utilization" of these**

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[37] Article XII, Section 2, paragraph 3 of which states that "[t]he Congress may, by law, allow **small-scale utilization of natural resources by Filipino citizens**, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons."

resources must not harm the ecology and environment pursuant to national and customary laws.

The limited rights of "management and use" in Section 7 (b) must be taken to contemplate small-scale utilization of natural resources as distinguished from large-scale. Small-scale utilization of natural resources is expressly allowed in the third paragraph of Section 2, Article XII of the Constitution "in recognition of the plight of forest dwellers, gold panners, marginal fishermen and others similarly situated who exploit our natural resources for their *daily sustenance and survival.*" *Section 7 (b) also expressly mandates the ICCs/IPs to manage and conserve these resources and ensure environmental and ecological protection within the domains, which duties, by their very nature, necessarily reject utilization in a large-scale.*[38]

Absence of the second element: petitioners had "authority" to cut the tree under the IPRA

It is clear from the foregoing that the IPRA allows ICCs/IPs to use natural resources found in their ancestral domains, albeit *in a limited way.*[39]

Nevertheless, even assuming that ancestral domains are part of "forest lands," "public lands," or "private lands," as contemplated by P.D. 705, Sec. 77 — it is nonetheless my considered view that petitioners still cannot be held criminally liable because the second element of the crime of violation of P.D. 705 is also not present.

As demonstrated, petitioners' act of cutting the *dita* tree was done "**with authority**" emanating from the IPRA; hence, they cannot be held criminally liable. For a better understanding of the "authority" necessitated by the law, a review of its legislative history is imperative.

In 1974, P.D. 389 or the Forestry Reform Code was enacted. Sec. 69 thereof punished the cutting, gathering, and/or collection of timber or other products from forest land:

SECTION 69. *Cutting, Gathering, and/or Collection of Timber or Other Products.* — The penalty of *prision correccional* in its medium period and a fine of five (5) times the minimum single forest charge on such timber and other forest products in addition to the confiscation of the same products, machineries, [equipment,] implements and tools used in the commission of such offense; and the forfeiture of improvements introduced thereon, in favor of the Government, shall be imposed upon any individual, corporation, partnership, or association who shall, **without permit from the Director, occupy or use or cut, gather, collect, or remove timber or other forest products from any public forest, proclaimed timberland, municipal or city forest, grazing land, reforestation project, forest**

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38 Separate Opinion of Justice Puno in *Cruz v. Secretary of Environment and Natural Resources,* supra note 26 at 233-235. (Italics in the original, emphasis supplied)

39 Again, the parameters of the IPRA are sustainable use "in accordance with their indigenous knowledge, beliefs, systems and practices."

> **reserve of whatever character; alienable or disposable land**: Provided, That if the offender is a corporation, partnership or association, the officers thereof shall be liable.
>
> The same penalty above shall also be imposed on any licensee or concessionaire who cuts timber from the license or concession of another without prejudice to the cancellation of his license or concession, as well as his perpetual disqualification from acquiring another such license or concession. (Emphasis and underscoring supplied)

In 1975, P.D. 705 was enacted in order to revise several provisions of P.D. 389, including the above-quoted section, to wit:

> SECTION 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License.* — **Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit**, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; *Provided*, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.
>
> The Court shall further order the confiscation in favor of the government of the timber or forest products to cut, gathered, collected or removed, and the machinery, equipment, implements and tools used therein, and the forfeiture of his improvements in the area.
>
> The same penalty plus cancellation of his license agreement, lease, license or permit and perpetual disqualification from acquiring any such privilege shall be imposed upon any licensee, lessee, or permittee who cuts timber from the licensed or leased area of another, without prejudice to whatever civil action the latter may bring against the offender. (Emphasis and underscoring supplied)

In 1987, this provision was further amended through Executive Order No. (E.O.) 277, which retains its present wording, to wit:

> SECTION 1. Section 68 of Presidential Decree (P.D.) No. 705, as amended, is hereby amended to read as follows:
>
> > Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. – **Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority,** or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships,

> associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.
>
> The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. (Emphasis and underscoring supplied)

In 1991, Sec. 68 above was eventually renumbered to Sec. 77 through R.A. 7161.[40]

As regards the "authority" required by law for the cutting, gathering, and/or collecting timber or other forest products, its evolution is summarized below:

P.D. 389 (1974)	**P.D. 705 (1975)**	**E.O. No. 277 (1987)**
"permit from the Director"	"any authority under a license agreement, lease, license, or permit"	"any authority"

The evolution in the language of the law is not without significance. From the preceding discussion, it can be deduced that the authority required by the law has been expanded and is no longer confined to those granted by the DENR. The use of the phrase "any authority" in the law's present wording — ***without any qualification*** — ought to be construed plainly and liberally in favor of petitioners. This is in accordance with the hornbook principle that penal laws shall be construed liberally in favor of the accused.[41] Moreover, applying the doctrine of *casus omissus pro omisso habendus est* (meaning, a person, object or thing omitted from an enumeration must be held to have been

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[40] R.A. 7161 provides:
SECTION 7. Section 77 of Presidential Decree No. 705, as amended, as numbered herein, is hereby repealed.
Section 68 of Presidential Decree No. 705, as amended by Executive Order No. 277 dated July 25, 1987, and Sections 68-A and 68-B of Presidential Decree No. 705, as added by Executive Order No. 277, are hereby renumbered as Sections 77, 77-A and 77-B.

[41] *People v. Temporada,* 594 Phil. 680 (2008).

omitted intentionally),[42] it can be logically concluded that the limitation on the authority to those issued only by the DENR has been intentionally removed.

Considering the foregoing, I am of the view that the "authority" contemplated in P.D. 705, as amended, should no longer be limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA.[43]

To have a strict interpretation of the term "authority" under Sec. 77 of P.D. 705 despite the clear evolution of its text would amount to construing a penal law ***strictly against*** the accused, which cannot be countenanced. To stress,

> [o]nly those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought.[44]

More importantly, to construe the word "authority" in P.D. 705, Sec. 77 as excluding the rights of ICCs/IPs already recognized in the IPRA would unduly undermine both the text and the purpose of this novel piece of legislation and significantly narrow down the rights recognized therein.

The varying positions in the case show reasonable doubt which calls for petitioners' acquittal

The discussion above lays down my position that petitioners cannot be held liable for violating P.D. 705. Nevertheless, even if the premises I have laid down would be rejected by the Court, I maintain that petitioners in this case should be acquitted.

Contrary to the assertions I have put forth, Chief Justice Peralta dissents and puts the present issues in a different perspective, mainly arguing that the ancestral domains of the indigenous peoples were never carved out from the application of the country's forestry laws, whether by the IPRA or by P.D. 705,[45] and that ancestral domains are not exempted from the regulations in place that pertain to forest use. He adds that the IPRA and P.D. 705 are not pitted against each other, as they cover applications, and complement rather

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42 *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue,* G.R. No. 228539, June 26, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65316>.

43 This should not be taken to mean that mere ownership, especially as understood in civil law, already constitutes the "authority" required by Sec. 77, P.D. 705. As discussed, the ownership exercised by the IPs over their ancestral domains is different from the civil law understanding of ownership.

44 *People v. Garcia*, 85 Phil. 651, 686 (1950).

45 Chief Justice Peralta's Dissenting Opinion, pp. 22-23.

than contradict each other.[46] I most agree that the two laws are not conflicting, and neither one is prevailed upon by the other, as these laws may be both interpreted and applied to the case in a way that breathes life to both, as I have attempted to elucidate above. In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not petitioners were well within their rights when they cut the *dita* tree, such doubt must be resolved to stay the Court's hand from affirming their conviction.

It has been opined that the effect of requiring petitioners to apply for a permit from the DENR to use a resource in their ancestral domain in accordance with their customs is benign, as they are not prohibited from doing so but only imposed upon with prior conditions. This requirement may indeed be benign, and should have simply been complied with by herein petitioners. This simple enough requirement, however, is an operative indication of an underlying constitutional conviction, the conclusiveness of which the Court may not now be prepared to adjudicate. This requirement quietly asks: how can they seek the consent of another without being counterintuitive to the special, nuanced, and self-limiting autonomy granted to them under the law? How can the Court conceive of finding that indigenous communities are as free as the 1987 Constitution can allow, but must, for the act of felling one tree within their land and for their own customary use, have to seek the State's permission? How can the Court lay down these incongruent premises and hold them both true in the same breath? And yet, on the other hand, the Chief Justice, in his dissent, aptly asks the difficult question of where the line must be drawn with respect to the determination of sustainable community use of an IP's ancestral domain resource.

I acknowledge the assertion made by the Chief Justice that "the case before Us presents far more interrelated issues for whether We would like to admit it or not, the seemingly innocuous acquittal of petitioners herein would ultimately result in considerable implications the Court may not have intended."[47] But this caution cuts both ways. The same assertion can be made to a conviction of petitioners — that such, too, may result in considerable implications the Court may not have intended.

To be sure, the facts of this case may not lend itself to all the answers, but perhaps the honor of the work before the Court is in the attempt. I believe that my earlier submission that the self-limiting and tight window within which the indigenous peoples may cut trees from their own ancestral domain without prior permission is narrow enough as to sidestep any need to reconcile rights granted by the IPRA *vis-à-vis* forestry regulations. This supports the primary aspiration that animates the IPRA, that is to restore to ICCs/IPs their land and affirm their right to cultural integrity and customary ways of life, with socio-cultural and legal space to unfold as they have done since time immemorial.

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46 Id.

47 Dissenting Opinion of Chief Justice Diosdado M. Peralta, p. 40.

The IPRA's safeguards have been suggested as insufficient, and the IPs rights over their ancestral domain may very well be so easily abused by non-IPs with proprietary interests in the forest lands. Truly, I submit that these are valid reservations. But I humbly offer, as well, that this may not be the proper yardstick against which we measure the considerations of the issues at hand. For the difficulty in arguing based on fear of a disastrous outcome is that it is impossible to disprove albeit not yet true, and in the meantime, the Court is building walls where the legislature may have intended doors.

I submit that perhaps, if not with this case, a tightrope must eventually be walked with respect to the issues of environmental sustainability and indigenous peoples' rights, without having to weaken one to enable the other.

For as affirmed by the IPRA, the cultural identity of the indigenous peoples has long been inseparable from the environment that surrounds it. There is, therefore, no knowable benefit in an indigenous custom or cultural belief that truthfully permits plunder of the environment that they hold synonymous with their collective identity. **No legally sound argument may be built to support the premise that we ought not affirm the freedom of these indigenous peoples because they might exercise such freedom to bulldoze their own rights**.

That the experience on the ground shows abuses from unscrupulous non-members of ICCs/IPs of ancestral domains does not merit that the very same indigenous communities that have been taken advantage of be made to pay the highest cost of relinquishing what little control that was restored to them by law.

And still, and all told, the Court must not forget, the facts of the case remain to be this: two men felling ONE *dita* tree to build one communal toilet for their indigenous community. Although having risen to the heights of contested constitutional interpretations, this case remains to be a criminal one, where the liberty of petitioners hang in the balance.

On this note, it may be well to remember that the case of *Cruz* which dealt with the constitutionality of the provisions of the IPRA was decided by an equally divided Court.[48] This only goes to show that there are still nuances concerning the rights of IPs within their ancestral land and domain that are very much open to varying interpretations. Prescinding from this jurisprudential history, perhaps the instant case may not provide the most sufficient and adequate venue to resolve the issues brought about by this novel piece of legislation. It would be the height of unfairness to burden the instant case against petitioners with the need to resolve the intricate Constitutional matters brought about by their mere membership in the IP community

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[48] As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same. Accordingly, pursuant to Rule 56, Section 7 of the Rules of Civil Procedure, the petition is DISMISSED.

especially since a criminal case, being personal in nature, affects their liberty as the accused.

The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe the IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, *vis-à-vis* forestry laws, has failed or delivered on its fundamental promise. **That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether or not they are guilty of an offense, but whether or not there was even an offense to speak of.** At most, this doubt only further burdens the fate of the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity.

At the very least, this doubt must merit their acquittal.

Based on these premises, I vote to **GRANT** the petition. Petitioners **DIOSDADO SAMA y HINUPAS** and **BANDY MASANGLAY y ACEVEDA**, as well as their co-accused **DEMETRIO MASANGLAY y ACEVEDA**, should be **ACQUITTED** in Criminal Case No. CR-05-8066.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice