

EN BANC

G.R. No. 224469 – DIOSDADO SAMA Y HINUPAS AND BANDY MASANGLAY Y ACEVEDA, *Petitioners*, v. PEOPLE OF THE PHILIPPINES, *Respondent*.

Promulgated: *R. Papa-Javier*

January 5, 2021 *Hi*

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SEPARATE CONCURRING OPINION

“Such arrogance to say that you own the land, when you are owned by it! How can you own that which outlives you? Only the people own the land because only the people live forever. To claim a place is the birthright of everyone. Even the lowly animals have their own place...how much more when we talk of human beings?”

- *Macli-ing Dulag, Pangat, Butbut Tribe, Bugnay, Kalinga¹*

LEONEN, J.:

I concur that petitioners should be acquitted of the crime charged. I contribute to the discussion of the erudite *ponente*, Associate Justice Amy C. Lazaro-Javier, a disquisition on the pre-colonial experience and historical backdrop of the Filipino tribal groups’ rights over their ancestral lands and domains, including the resources found there.

Petitioners are Iraya-Mangyans who reside in Barangay Baras, Baco, Oriental Mindoro.² They were indicted for violating Section 77 of Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, after they cut down a *dita* tree without a license or permit issued by the proper authority.³ Section 77 of Presidential Decree No. 705 states:

¹ See Bantayog ng mga Bayani, *DULAG, Macli-ing*, October 15, 2015, <<http://www.bantayog.org/dulag-macli-ing/>> (last accessed on January 5, 2021). See also Martial Law Museum, *The Heroes Who Fought Martial Law: Macli-ing Dulag*, <<https://martiallawmuseum.ph/magaral/martial-law-heroes-macliing-dulag/>> (last accessed on January 5, 2021).

² *Ponencia*, p. 9.

³ *Id.* at 3–4.

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.

In praying for their acquittal, petitioners invoke their Indigenous People (IP) right to harvest *dita* tree logs, which allegedly constitute a part of their right to cultural integrity, ancestral domain, and ancestral lands. They insist that the felled *dita* tree was planted in their ancestral domain, over which the Iraya-Mangyans' exercise communal dominion.⁴

Settled is the rule that “[o]nly questions of law may be raised in a petition for review on certiorari.”⁵ Further, “[t]his Court is not a trier of facts.”⁶ It accords great weight and respect to the trial court’s findings of fact, especially when affirmed by the Court of Appeals.⁷

However, this rule is not without exception. In *Medina v. Asistio, Jr.*:⁸

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) *When the judgment is based on a misapprehension of facts*; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners’ main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is

⁴ Id. at 9.

⁵ *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

⁶ Id.

⁷ *People v. Quintos*, 746 Phil. 809, 820 (2014) [Per J. Leonen, Second Division]

⁸ 269 Phil. 225 (1990) [Per J. Bidin, Third Division]

contradicted by the evidence on record.⁹ (Citations omitted, emphasis supplied)

Furthermore, it has been held that this Court may reevaluate the lower court's factual findings "when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal."¹⁰

*Daayata v. People*¹¹ explained the degree of proof necessary to sustain a conviction in criminal actions:

Conviction in criminal actions demands proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence states:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience[.]¹²

In *Pit-og v. People*,¹³ the petitioner was charged of theft after she took sugarcane and banana plants allegedly planted on the private complainant's land. The case involved a communal land called *tayan* owned by the tomayan group. A portion of the *tayan* was sold to private complainant Edward Pasiteng (Pasiteng), who planted sugarcane and banana plants there.

Pasiteng's lot was adjacent to the area cultivated by the petitioner, where she likewise planted banana plants and sugarcane. The petitioner was then convicted by the lower courts and the Court of Appeals. Yet, when the case reached this Court, the petitioner was acquitted based on reasonable doubt. This Court noted that "the areas cultivated by [Pasiteng] and Erkey were adjacent and so close to each other that the possibility of confusion as to who planted which plants is not remote."¹⁴

⁹ Id. at 232.

¹⁰ *Pit-og v. People*, 268 Phil. 413, 420 (1990) [Per C.J. Fernan, Third Division].

¹¹ 807 Phil. 102 (2017) [Per J. Leonen, Second Division].

¹² Id. at 117–118.

¹³ 268 Phil. 413 (1990) [Per C.J. Fernan, Third Division].

¹⁴ Id. at 422.

Further, this Court decreed that the prosecution's failure to definitively delineate the exact location where the petitioner harvested the plants equated to its failure to identify the real owner of the stolen items, thus:

Hence, the definitive identification of the area allegedly possessed and planted to sugarcane and bananas by Edward Pasiteng is imperative. There is on record a survey plan of the 512 square-meter area claimed by Edward but there are no indications therein of the exact area involved in this case. This omission of the prosecution to definitively delineate the exact location of the place where Erkey allegedly harvested Edward's plants has punctured what appeared to be its neat presentation of the case. Proof on the matter, however, is important for it means the identification of the rightful owner of the stolen properties. *It should be emphasized that to prove the crime of theft, it is necessary and indispensable to clearly identify the person who, as a result of a criminal act, without his knowledge and consent, was wrongfully deprived of a thing belonging to him.*¹⁵ (Citation omitted, emphasis supplied)

As in *Pit-og*, a perusal of the records in this case reveals that circumstances had been overlooked by the lower courts, which if considered, casts reasonable doubt on petitioners' guilt.

In rendering a judgment of conviction, the Regional Trial Court primarily relied on the testimony of the prosecution's lone witness, Police Officer 3 Villamor Rance (PO3 Rance). According to him, he and his team were directed to conduct a surveillance operation against illegal loggers. While patrolling the mountainous area of Barangay Calangatan, they heard a chainsaw and saw a tree slowly falling down.¹⁶ Upon hearing this, "they immediately crossed the river and climbed the hilly portion where the cutting was being done[.]"¹⁷ He admitted that he did not witness petitioners cut the tree, and that he only saw them holding a chainsaw, thus:

Q Mr. Witness, if you remember during the previous hearing, you stated that at the time that you arrived at the (discontinued). Mr. Witness during the previous hearing, you stated that at that time that you arrived at the alleged scene of the crime, you already saw the cut tree, is that correct?

A Yes Ma'am.

Q As such the tree was already cut at the time that you arrived, is that correct Mr. Witness?

A Yes ma'am.

Q How could you then say that one of the accused was the one operating the chainsaw when at the time that you arrived, the tree has already been fell?

A **Before I arrived at the alleged crime scene some of my companions already arrived ahead of me, ma'am.**

¹⁵ Id. at 422-423.

¹⁶ *Ponencia*, p. 3.

¹⁷ *Rollo*, p. 18, Petition citing *TSN* dated May 4, 2020.

Q As such Mr. Witness, you cannot be testifying on the identity of the person who actually operated the said chainsaw, is that correct?

A **When I arrived he was the person holding the chainsaw ma'am.**

Q Holding the chainsaw Mr. witness but not actually using the chainsaw to cut the tree, is that correct?

A He was just holding it ma'am[.]¹⁸ (Emphasis in the original)

PO3 Rance's testimony, that they did not personally witness petitioners cut the tree, casts reasonable doubt on petitioners' guilt. That he saw petitioners holding a chainsaw without them using it cannot suffice to hold them liable for the act for which they are being indicted for.

Likewise, PO3 Rance's admission that his team's distance from the scene of the crime was approximately 50 meters further, reinforces the conclusion that they did not personally see petitioners commit the crime they are being charged with.¹⁹

The Court of Appeals decreed that petitioners failed to prove ownership of the land where the felled *dita* tree was found. This failure equates to their inability to demonstrate their right to use and enjoy the land in accordance with Republic Act No. 8371.²⁰

However, petitioners insist that they own the land and have occupied it since time immemorial. Their ownership is evidenced by Certificate of Ancestral Domain Claim (CADC) No. R04-CADC-126, issued by the Department of Environment and Natural Resources (DENR).²¹

The *ponencia* took judicial notice of the fact that CADC No. R04-CADC-126 "covers the municipalities of Baco, San Teodoro and Puerto Galera in Oriental Mindoro with a land area of 33,334 hectares." It was issued to the Iraya-Mangyan tribe on June 5, 1998. As of March 31, 2018, CADC No. R04-CADC-126 is pending conversion to a Certificate of Ancestral Domain Title (CADT).²²

The CADC's existence casts reasonable doubt on who the real owner of the subject area is, along with the resources found there. In the absence of proof beyond reasonable doubt, petitioners' acquittal becomes imperative. As ruled in *People v. Ganguso*:²³

¹⁸ Id. at 18-19.

¹⁹ Id. at 18.

²⁰ Id. at 85-86.

²¹ *Rollo*, pp. 162-163. Reply.

²² *Ponencia*, p. 40 citing <<https://www.doe.gov.ph/sites/default/files/pdf/eicc/cadt-region04.pdf>>.

²³ 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.²⁴ (Citations omitted)

I share the observation of Associate Justice Estela M. Perlas-Bernabe that laws passed after the Revised Forestry Code cast reasonable doubt as to the criminal liability of the accused.²⁵

Presidential Decree No. 705 was passed in 1975. Its declared policy includes the “protection, development and rehabilitation of forest lands... to ensure their continuity in productive condition.”²⁶ At the time the law was enacted, the 1973 Constitution devoted one (1) provision concerning national cultural minorities.²⁷ Article XV, Section 11 provides:

SECTION 11. The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of state policies.

Upon the ratification of the 1987 Constitution, the State’s attitude towards indigenous people shifted from integration to maintaining and preserving the indigenous people’s identity. “[I]t commits to not only recognize, but also *promote*, ‘the rights of indigenous cultural communities.’”²⁸ In addition, the 1987 Constitution affirms to “protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.”²⁹

Taking this shift into account, subsequent laws incorporated the concept of ancestral land and recognized the rights of indigenous peoples.³⁰

²⁴ Id. at 325.

²⁵ See J. Perlas-Bernabe Separate Concurring Opinion, pp. 4–7.

²⁶ Pres. Decree No. 705 (1975), sec. 2(d).

²⁷ See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145>> [Per J. Leonen, Third Division].

²⁸ *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145>> [Per J. Leonen, Third Division].

²⁹ CONST. art. XII, sec. 5.

³⁰ See Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 161 (1998).

The Comprehensive Agrarian Reform Law of 1988 provides:

SECTION 9. *Ancestral Lands.* — For purposes of this Act, ancestral lands of each indigenous cultural community shall include, but not be limited to, lands in the actual, continuous and open possession and occupation of the community and its members: Provided, that the Torrens System shall be respected.

The right of these communities to their ancestral lands shall be protected to ensure their economic, social and cultural well-being. In line with the principles of self-determination and autonomy, the systems of land ownership, land use, and the modes of settling land disputes of all these communities must be recognized and respected.

Similarly, the National Integrated Protected Areas System Act of 1992 states:

SECTION 13. *Ancestral Lands and Rights Over Them.* — Ancestral lands and customary rights and interest arising therefrom shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern ancestral lands within protected areas: Provided, That the DENR shall have no power to evict indigenous communities from their present occupancy nor resettle them to another area without their consent: Provided, however, that all rules and regulations, whether adversely affecting said communities or not, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community.

As mentioned in the Philippine Mining Act of 1995:

SECTION 16. *Opening of Ancestral Lands for Mining Operations.* — No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned.

Further, the Wildlife Resources Conservation and Protection Act provides:

SECTION 27. *Illegal Acts.* — Unless otherwise allowed in accordance with this Act, it shall be unlawful for any person to willfully and knowingly exploit wildlife resources and their habitats, or undertake the following acts:

(a) killing and destroying wildlife species, except in the following instances;

(i) when it is done as part of the religious rituals of established tribal groups or indigenous cultural communities[.]

And lastly, as stated in the Expanded National Integrated Protected Areas System Act of 2018 or Republic Act No. 11038:

SECTION 18. Section 20 of Republic Act No. 7586 is hereby amended to read as follows:

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

.....

(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; except, however, when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes[.]

On this note, Chief Justice Diosdado M. Peralta (Chief Justice Peralta) is of the view that no law relieves the Indigenous Cultural Communities/Indigenous Peoples (ICC/IPs) from the obligation of obtaining the necessary cutting permit. He opines that while the State recognizes their cultural practices, indigenous peoples are not exempt from the country's regulatory policies on forests and natural resources. Further, he continues that the DENR and National Commission on Indigenous Peoples (NCIP) have issued Joint Administrative Order No. 2008-01 (DENR-NCIP JAO No. 2008-01) effectively harmonizing the provisions of Presidential Decree No. 705 and the Indigenous Peoples' Rights Act of 1997 (IPRA).³¹

I regret that I am unable to join Chief Justice Peralta's sentiment.

DENR-NCIP JAO No. 2008-01 provides for the guidelines for the recognition and registration of ICC/IPs' Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP). It further states that the forest resource utilization permit shall only be issued to ICCs/IPs with registered STIFRMSP.³²

In criminal cases, the burden of proving the accused's guilt lies with the prosecution. It is charged with the duty of proving the elements constituting the crime charged. "The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense."³³

In this case, petitioners' lack of authority to cut and utilize the tree is a negative allegation and constitutes an element of the crime charged. As in cases involving illegal possession of firearms, petitioners' lack of authority may be established by a testimony or certificate from the administrative

³¹ See C.J. Peralta Separate Opinion, pp. 16–23.

³² DENR-NCIP JAO No. 2008-01, sec. 10 (10.1).

³³ *People v. Asis*, 439 Phil. 707, 728 (2002) [Per J. Panganiban, En Banc].

agencies tasked with issuing this permit.³⁴ Unfortunately, the prosecution offered no certification from the DENR to prove that no permit was issued in favor of petitioners.

However, it must be clarified that the requirement of negative certification must apply only to situations where indigenous peoples are being accused of cutting trees within their ancestral domain, as in this case. This is because the indigenous peoples own the land covered by their ancestral domain, and the resources found there.

In addition, it must be emphasized that under the present legal framework, the State commits to recognize and protect the rights of indigenous cultural communities to their ancestral lands. In this regard, recent criminal and environmental legislations, such as The Expanded National Integrated Protected Areas System Act of 2018, have acknowledged the exercise by the indigenous peoples of their cultural practices and traditions to be an exception from the permit requirement.

Further, the continuing inclination towards considering these cultural practices as an exception casts reasonable doubt on whether or not petitioners should be held guilty under Presidential Decree No. 705. The preferential application of these later laws is not only in accord with the *pro reo* principle, but also with the concept of social justice.

The *ponencia* sustained petitioners' argument and decreed that Iraya-Mangyans have a right, as indigenous peoples, to harvest a *dita* tree for the communal use of their group. This right constitutes a manifestation of petitioners' right to preserve their cultural integrity³⁵ and an economic manifestation of their right to their ancestral domain and ancestral land.³⁶

I agree with the *ponencia*.

The Iraya-Mangyans are indigenous peoples publicly known to be residing in Mindoro Island. Specifically, the Iraya-Mangyans occupy certain municipalities in Occidental Mindoro such as: (1) Abra de Ilog; (2) Paluan; (3) Mamburao; (4) and Sta. Cruz.³⁷ They can also be found in Oriental Mindoro, particularly in the municipalities of Puerto Galera, San Teodoro, and Baco.³⁸

³⁴ *People v. Velasco*, G.R. No. 231787, August 19, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/shfowdocs/1/65645>> [Per J. Caguioa, Second Division].

³⁵ *Ponencia*, p. 38.

³⁶ *Id.* at 41.

³⁷ Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains*, 47 ATENEO L. J. 624, 626 (2002).

³⁸ *Ponencia*, p. 9.

Although Iraya is a term which denotes people from the upland or upstream, they originally lived in the lowlands or the town proper known as the *poblacion* or *lumang bayan*. They were, however, forced to flee to the uplands when armed men invaded their area.³⁹

Like all other indigenous peoples, Iraya-Mangyans have always had a unique relationship with nature, specifically their land and its resources. This relationship comes from a belief of a higher being that has bestowed upon them the land and its resources, which must be respected, so as not to incur its wrath. This belief has then ingrained a sense of respect for the land and resources within each Filipino tribal group member.⁴⁰

To them, nature is a space where the natural and supernatural meet. They conform to the view that nature is guarded by spirits. For this reason, Iraya-Mangyans utilize natural resources in accordance with the spirits' wishes.⁴¹

To the Iraya-Mangyans, nature is a source of their sustenance and economic needs. The forest and water not only provide for their subsistence, but likewise supply their timber needs. Accordingly, they treat nature with utter respect and work for its preservation.⁴²

Moreover, Iraya-Mangyans recognize that they must utilize the resources in a manner as not to deplete it. They observe certain traditional restrictions to ensure that the resources in their lands are not exhausted to the point of extinction. For instance, they refrain from cutting bamboo shoots and certain native grasses, as they are used for weaving. In cutting down trees, Iraya-Mangyans recognize that not all logs must be cut. Some species must be preserved as a means to control erosion.⁴³

Iraya-Mangyans are generally engaged in swidden agriculture or shifting cultivation.⁴⁴ As such, they possess intricate knowledge of the tropical ecosystem. They employ a methodological procedure which yields maximum benefits without destroying the environment from which they

³⁹ Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains*, 47 ATENEO L. J. 624, 627 (2002).

⁴⁰ John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose land, Which Lands*, 42 ATENEO L. J. 159, 203 (1997). Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains* 47 ATENEO L. J. 624, 632-633 (2002).

⁴¹ Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains* 47 ATENEO L. J. 624, 632-633 (2002).

⁴² Id. at 633-634.

⁴³ Id. at 634.

⁴⁴ Id. at 629.

derive their sustenance.⁴⁵

In choosing their fields, they consider the floral composition of the site to determine soil properties. They avoid the headwaters of streams to protect the water source. In the *kaingin*, a fireline is made so that the fire will not spread. Instead of starting from the lower portion, the burning is started from the top. Then, the lower portion is burned. In such case, the fire could not spread upward, preventing the other areas from getting burned. Before, there was no necessity to make a fireline in the *kaingin* because of the abundance of trees. Now that the trees are getting depleted, the elders encouraged the community to use a fireline to protect the forest.

Big trees are covered with *saha ng saging* (banana trunks) so that heat will not destroy them if the same is within the *Kaingin* area. They also do not use explosives and high-powered inflammable substances. During the early times, they use stones and/or bamboos rubbed against each other to create fire. Lately, they resorted to the use of matches.⁴⁶

The intricate knowledge of the Iraya-Mangyans in terms of the tropical ecosystem indicates the existence of practices and traditions which date back to the pre-colonial period. These practices and traditions serve as a material basis of their cultural integrity. In this regard, the IPRA takes into account the ICCs/IPs cultural well-being, among others, by recognizing the following rights: (1) the applicability of their customary laws relating to property rights or relations; (2) the significance of their culture, traditions and institution on formulating national laws and policies; and (3) the assurance that ICCs/IPs benefit equally with respect to opportunities which the laws and education, health, and other services beneficial to ICCs/IPs.⁴⁷

⁴⁵ Id. at 635.

⁴⁶ Id.

⁴⁷ Republic Act No. 8371 (1997), sec. 2 provides:

SECTION 2. *Declaration of State Policies.* — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
- b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
- d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;
- e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and
- f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

By these, the State guarantees that these culture and traditions are recognized, respected, and protected.⁴⁸

The complexity of the legal backdrop of indigenous land rights can be attributed to the colonial experience of indigenous populations.⁴⁹ Prior to colonization, the sense of community was integral in the concept of ownership and property.

Since time immemorial, Filipino tribal groups have occupied and cultivated countless hectares of Philippine soil. They have adopted and practiced their own method of recognizing and acknowledging property rights based upon “kinship, communal affiliation, and local custom[.]”⁵⁰

By the time the Spaniards reached our shores, these tribal groups have already developed their own sets of customs, traditions, and laws. These customs and traditions included the practice that everyone within the group should participate in the communal ownership over their land. This denotes a communal ownership grounded upon historical patterns of usage.⁵¹

“Ownership” to the indigenous peoples of the Philippines has been described as the “tribal right to use the land or to territorial control.” Ownership in this sense is equivalent to work. Ceasing to work means losing one’s claim to ownership. In this paradigm, individuals are considered as mere “secondary owners” or “stewards of the land.” Only beings of the spirit world may be the “true and primary or reciprocal owners of the land.” On the other hand, “property” refers to things which require the application of labor or those “produced from labor.”⁵²

Indigenous peoples view their lands as communal, which means that it can be used by anybody who is a recognized member of the group. It is regarded as “a collective right to freely use the particular territory.” Indigenous peoples also view land in the “concept of ‘trusteeship.’” They believed that it is “not only the present generation, but also the future ones, which possess the right to the land.”⁵³

⁴⁸ Republic Act No. 8371 (1997), sec. 29.

SECTION 29. Protection of Indigenous Culture, Traditions and Institutions. — The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

⁴⁹ See June Prill-Brett, *Indigenous Land Rights and Legal Pluralism among Philippine Highlanders*, 28 LAW AND SOCIETY IN SOUTHEAST ASIA 687, 691–692 (1994).

⁵⁰ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

⁵¹ Id.

⁵² Marvic M.V.F Leonen, *Law at Its Margins: Questions of Identity, Rights of Indigenous Peoples, Ancestral Domains and the Diffusion of Law*, 83 PHIL. L. J. 787, 807 (2009).

⁵³ Id.

Unfortunately, certain government policies threaten the Filipino indigenous peoples' way of life. There are those who are denied the resources found within the very land they have occupied and cultivated for many years. As a result, the economic base upon which their survival rests is put at risk.⁵⁴

I concur in the result. Petitioners should be acquitted.

I

For almost 21,500 years prior to Ferdinand Magellan's arrival in 1521, the Philippines had already been inhabited by different tribal groups.⁵⁵ These groups have "developed a wide array of legal norms, leadership structures... dispute settlement processes[,]""⁵⁶ and property norms.⁵⁷ These matters reflect environmental, cultural, and historical factors which were unique to the pre-conquest natives of the Philippine archipelago.⁵⁸

These indigenous property concepts were present throughout the Philippine archipelago, and was concerned with generalized patterns of territorial behavior relating to ownership of land.⁵⁹

There was, however, a dearth of literature pertaining to land ownership during the pre-conquest era. This notwithstanding, it had been a widespread custom that any person who acquires for himself and his close kin long term rights over a land, maintains such right so long as he continues to use the land. This practice made sure that the land would not remain indefinitely idle, since non-use of the land would mean forfeiture of one's right over it.⁶⁰

The arrival of the Spaniards, and the subsequent subjugation of the different groups under its authority, paved the way for a new rule concerning land ownership over the Philippine archipelago.

Through discovery and conquest, Philippines passed to Spain. As a result, all lands of the Philippine archipelago came under the dominion of

⁵⁴ John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose land, Which Lands*, 42 ATENEO L. J. 159, 202 (1997).

⁵⁵ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

⁵⁶ Owen James Lynch, Jr., *The Philippine Indigenous Law Collection: An Introduction and Preliminary Bibliography*, 58 PHIL. L. J. 457, 459 (1983).

⁵⁷ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

⁵⁸ Owen James Lynch, Jr., *The Philippine Indigenous Law Collection: An Introduction and Preliminary Bibliography*, 58 Phil. L.J. 457, 459 (1983).

⁵⁹ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 Phil. L.J. 268, 272-273 (1982).

⁶⁰ Id.

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the Spanish Crown.⁶¹

Upon their arrival in the Philippines, the Spaniards discovered that Filipinos living in settlements were scattered along water routes and riverbanks. Accordingly, they implemented a process called *reduccion*, wherein Spanish missionaries were tasked to establish *pueblos*. Spaniards used the policy of *reduccion* to introduce and impose the Hispanic culture and civilization upon the Filipinos.⁶²

The establishment of *pueblos* meant that the old barangays were divested of their lands. These lands were declared “crown lands or *realengas*, belonging to the Spanish king.”⁶³ By this reason, “the natives were stripped of their ancestral rights to land.”⁶⁴

The Spaniards justified their sovereign claims based on discovery⁶⁵ and through the Law of the Indies, they introduced the concept of the Regalian Doctrine or *jura regalia*.⁶⁶ It constituted as the Spaniard’s elaborated legal framework through which they can administer the Philippines from Madrid,⁶⁷ thus:

The capacity of the State to own or acquire property is the state's power of *dominium*. This was the foundation for the early Spanish decrees embracing the feudal theory of *jura regalia*. The “Regalian Doctrine” or *jura regalia* is a Western legal concept that was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal Cédulas. The Laws of the Indies, *i.e.*, more specifically, Law 14, Title 12, Book 4 of the *Novisima Recopilacion de Leyes de las Indias*, set the policy of the Spanish Crown with respect to the Philippine Islands in the following manner:

“We, having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their

⁶¹ J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 953–954 (2000) [Per Curiam, En Banc].

⁶² Id. at 954.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 286 (1987).

⁶⁶ J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 934 (2000) [Per Curiam, En Banc].

⁶⁷ Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 286 (1987).

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future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.

We therefore order and command that all viceroys and presidents of pretorial courts designate at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will.”⁶⁸ (Citations omitted, emphasis in the original)

Having exclusive dominion over the lands in the Philippines, the Spanish government began issuing royal grants and concessions which effectively distributed land rights to the Spaniards and loyal Spanish subjects. This notwithstanding, the *Law of the Indies*, and the subsequent laws enacted by the Spanish government, made it clear that the distribution of land rights and interests should not impair the rights and interests of the natives in their holdings.⁶⁹

The Spanish Government’s intention to guarantee the rights of the natives over their lands was reiterated and further clarified in the subsequent Royal Decree of October 15, 1754, which stated that the native’s “justified long and continuous possession” qualified them for title to their cultivated land. The Royal Decree considered as valid title the native’s ancient possession of their land, notwithstanding the possessor’s failure to produce title deeds over the land.⁷⁰

The Royal Cedula Circular of March 3, 1798 further expounded on this matter and proclaimed that “the will of the ‘Crown’ as expressed in various, instructions, royal edicts, orders and decrees, that the distribution of land to conquistadores’ discoverers, and settlers should never prejudice the natives and their land-holdings.”⁷¹

Despite the apparent deference of the Spanish Government to the native’s rights over their lands, subsequent laws, however, triggered their

⁶⁸ J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 932, 934–935 (2000) [Per Curiam, En Banc].

⁶⁹ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 274 (1982).

⁷⁰ Id. at 274–275.

⁷¹ Id. at 275.

legal disenfranchisement.⁷²

On June 25, 1880, a Royal Decree was enacted stating that “all persons in possession of real property were to be considered owners provided they, had in good faith occupied and possessed their claimed land for at least [10] years.”⁷³

The Royal Decree of 1880 was followed by the Spanish Mortgage Law which had for its purpose “the systematic registration of land titles and deeds as well as for possessory claims.” It was adopted as a means of registering and subjecting to taxation the lands held pursuant to the Royal Decree of 1880. The law provided that “‘owners who lack recorded title of ownership’ could have their interests registered during a possessory information proceeding[.]” However, the title was a mere record of possession which can later be converted into a record of ownership after 20 years from its date of issue.⁷⁴

By 1894, the unresolved applications for official documentary recognition of ownership reached 200,000. The natives were unable to show titles to their lands except by actual possession. The natives were presumed to be unaware of the Spanish laws concerning registration and documentation of lands by reason of “[t]he uneven Spanish impact, abuses by colonial officials, the absence of effective notice, illiteracy, lack of money to pay for transportation fares and legal prerequisites, e.g. filing fees, attorney’s fees, survey costs[.]”⁷⁵

In a final attempt to remedy the problems concerning property registration, the Spanish Government issued the Royal Decree of February 13, 1894, otherwise known as the Maura Law. It was the last land law promulgated by the Spanish colonial regime in the Philippines.⁷⁶ The preamble provided that the law’s purpose is to, “insure to the natives, in the future, whenever it may be possible, the necessary land for cultivation, in accordance with traditional usages.”⁷⁷ However, a contrary intention was revealed in Article 4 of the law, which provides:

The title to all agricultural lands which were capable of adjustment under the Royal Decree of 1880, but the adjustment of which has not been sought at the time of promulgation of this Decree... will revert to the State.

⁷² John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

⁷³ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982). See also John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

⁷⁴ Id.

⁷⁵ Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L. J. 82, 107 (1988).

⁷⁶ Id. at 108.

⁷⁷ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982).

Any claim to such lands by those who might have applied for adjustment of the same but have not done so at the time of the above-mentioned date, will not avail themselves in any way or at any time.⁷⁸

The Maura law imposed a unilateral registration deadline⁷⁹ to all natives for their customary claims over their lands, otherwise, their land will be taken away or confiscated by the Crown.⁸⁰ In a sense, it was the first law which empowered the Spanish government to deny legal recognition of the native's customary property rights. It was a manifestation of "the colonial regime's insensitivity to the plight and potentials of the masses."⁸¹

The law's effects, based on wrong premises, proved to be enduring. It was later used by the American colonizers as basis to deny recognition of ancestral property rights. Further, the law became the foundation for what will be the known as the Regalian Doctrine in modern times.⁸²

II

On the international scale, war broke out between Spain and the United States of America. Spain surrendered on May 1, 1898, and the United States was set to secure a sovereign claim over the Philippines.⁸³

On December 10, 1898, Spain ceded the Philippines to the United States through the Treaty of Paris. The Treaty provided that all immovable properties which, in conformity with law, belonged to the Crown of Spain, had been relinquished and ceded to the United States. Nevertheless, Article VIII of the Treaty recognized that, "the relinquishment and cession... cannot in any respect impair the property rights which by law belong to peaceful possession."⁸⁴

In 1899, the first Philippine Commission, also known as the Schurman Commission, started to receive reports as to the vast tracts of lands considered to be private. However, they were more interested in the extent of land rights acquired by the United States and focused its attention to the Philippine archipelago's public domain. Investigations were then conducted,

⁷⁸ As cited in John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

⁷⁹ Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L.J. 82, 108 (1988).

⁸⁰ John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

⁸¹ Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L. J. 82, 109 (1988).

⁸² Id.

⁸³ Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 294 (1987) citing G. DEWEY, *AUTOBIOGRAPHY OF GEORGE DEWEY, ADMIRAL OF THE NAVY*, 222 (1913).

⁸⁴ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982). See also Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws (1900-1913)*, 63 PHIL. L. J. 249 (1988).

which revealed that almost half of the archipelago was considered public.⁸⁵ This estimate notwithstanding, only 10% of the total land mass was documented and recognized by the Spanish Regime:

The remaining portions of the private domain belonged to hundreds of thousands of people who held, or were believed to hold, undocumented customary rights or some local variation of a customary/colonial right which lacked proper documentation.⁸⁶

President William McKinley (President McKinley) then issued a directive, ordering the Philippine Commission:

[T]o impose, regardless of custom, "upon every branch and division of the colonial government" the "inviolable" constitutional mandates that no person shall be deprived of property without due process of law and that just compensation be paid for all private property taken for public use[.]⁸⁷ (Citation omitted)

The Taft Commission disregarded not only President McKinley's instruction, but likewise its predecessor's findings, and claimed that "Article VIII vested ownership of 92.3% of the total Philippine land mass, or approximately 27,694,000 hectares, in the U.S. Government."⁸⁸ This percentage included forest lands and mineral resources, which were considered part of the public domain. In effect, the Taft Commission's estimate discounted the undocumented property rights possessed by Filipino groups over their respective ancestral lands and domains.⁸⁹

Subsequently, the United States Congress passed the Organic Act of July 1, 1902, otherwise known as the Philippine Bill. It extended to the Filipino people most of the guarantees in the American Bill of Rights which included the constitutional right not to be deprived of private property without due process of law and just compensation.⁹⁰ Section 13 of the Philippine Bill likewise authorized the Philippine Commission to promulgate rules concerning disposition of public lands.⁹¹ Section 14

⁸⁵ Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 250 (1988).

⁸⁶ Id.

⁸⁷ Id. at 250-251.

⁸⁸ Id. at 251.

⁸⁹ Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 250 (1988).

⁹⁰ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982).

⁹¹ Philippine Bill of July 1, 1902, sec. 13 provides:

SECTION 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such

further empowered the Philippine Commission to prescribe the rules for perfecting titles to public lands by qualified applicants.⁹² Finally, Section 16⁹³ mandated that in the sale of public domain, actual occupants shall be given preference.⁹⁴

Shortly thereafter, or on November 6, 1902, the Land Registration Act was enacted. It established, among others, the Court of Land Registration tasked to hear applications for registration filed pursuant to its provisions.⁹⁵ It likewise empowered the Court of Land Registration to adjudicate conflicting claims to title.⁹⁶

The enactment of the Land Registration Act saw the implementation of a “complete system of registration on the general lines of the Torrens system.”⁹⁷

The Torrens system created a guarantee that certificates of title over lands shall be indefeasible⁹⁸ and that “all claims to the parcel of land are quieted upon issuance of said certificate[,]”⁹⁹ thus:

period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.

⁹² Philippine Bill of July 1, 1902, sec. 14 provides:

SECTION 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.

⁹³ Philippine Bill of July 1, 1902, sec. 16 provides:

SECTION 16. That in granting or selling any part of the public domain under the provisions of the last preceding section, preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said Government to any other person without the consent thereto of said prior occupant or settler first had and obtained: Provided, That the prior right hereby secured to an occupant of land, who can show no other proof of title than possession, shall not apply to more than sixteen hectares in any one tract.

⁹⁴ Owen James Jr. Lynch, *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982).

⁹⁵ Act No. 496, sec. 2 provides:

SECTION 2. A court is hereby established to be called the "Court of Land Registration," which shall have the exclusive jurisdiction of all applications for the registration under this Act of title to land or buildings or an interest therein within the Philippine Islands, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this Act, subject, however, to the right of appeal, as hereinafter provided. The proceedings upon such applications shall be proceedings in rem against the land and the buildings and improvements thereon, and the decrees shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto.

⁹⁶ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 281 (1982).

⁹⁷ Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 281 (1988).

⁹⁸ Id. at 282.

⁹⁹ J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 941 (2000) [Per Curiam, En Banc].

The Torrens system registers and guarantees the legal rights of private land owners. The system was devised during the 1830s by Sir Robert Torrens who had served as commissioner of customs in South Austria before becoming a land registrar of deeds. . . .

The Torrens system promotes the use of land as a marketable commodity. Unlike customary systems, a Torrens title holder need have no relation to the land other than what is stated in the Torrens document. A Torrens title holder is also generally free to convey his or her rights to anyone, regardless of whether or not they belong to the community where the land is located or whether they intend to use the land or leave it idle.¹⁰⁰

Subsequently, Act No. 926, otherwise known as the Public Land Act, was passed. It provided for the various modes as to how public lands can be alienated either through a homestead application, sale, lease, issuance of free patents to native settlers, creation of town sites, or for perfection of titles and Spanish grants. In this regard, the Public Land Act recognized the natives' rights over land that they have continuously occupied and cultivated, either by themselves or through their ancestors:

SECTION 32. Any native of the Philippine Islands now as occupant and cultivator of unreserved, unappropriated agricultural public land, as defined by the Act of Congress of July first, nineteen hundred and two, who has continuously occupied and cultivated such land, either by himself or through his ancestors, since August first, eighteen hundred and ninety; or who prior to August first, eighteen hundred and ninety eight continuously occupied and cultivated such land for three years immediately prior to said date, and who has been continuously since July fourth, nineteen hundred and two, until the date of the taking effect of this Act, an occupier and cultivator of such land, shall be entitled to have a patent issued to him without compensation for such tract of land, not exceeding sixteen hectares, as hereinafter in this chapter provided.

In 1919, Act No. 2874¹⁰¹ superseded Act No. 926. The second Public Land Act "was more comprehensive in scope but limited the exploitation of agricultural lands to Filipinos and Americans and citizens of other countries which gave Filipinos the same privileges."¹⁰²

The Public Land Act was followed by Act No. 1148 or the Forest Act. Prior to its enactment on May 7, 1904, the Organic Law of July 1, 1902 already provided, to some extent, the legal framework and procedure for the allocation of legal rights relating to forest lands and the resources found there. The Organic Law provided that the United States Government shall have the power "to issue licenses to cut, harvest, or collect timber or other

¹⁰⁰ Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 282 (1988).

¹⁰¹ Republic Act No. 2874, sec. 128 provides:

Section 128. Act Numbered Nine hundred and twenty-six known as the "Public Land Act," and all acts and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed.

¹⁰² See J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 940 (2000) [Per Curiam, En Banc].

forest products.”¹⁰³ The Organic Law proscribed the cutting, destruction, removal, or appropriation of forest resources “except by special permission of [the] Government and other such regulations as it may prescribe.”¹⁰⁴

Gifford Pinchot, an official of the United States Forest Service and primary author of the Forest Act, believed that forests must be harvested on a commercial scale. By this reason, the Forest Act contained provisions which empowered the United States Government “to issue licenses for up to [20] years ‘for the cutting, collection, and removal of timber, firewood, gums, resins, and other forest products.’”¹⁰⁵

One of the salient provisions of the Forest Act is the authority given to the bureau chief to grant gratuitous licenses for the free use of timber and other forest products, provided that it shall be reasonable in quantity, within definite territorial limits, and that it is only for domestic purposes.¹⁰⁶

An amendment to the free use provision was later introduced, allowing the bureau director to designate specific parcels of land as communal forests. Persons who wish to utilize timber and other forest products were free to do so within the designated communal forests. After the said amendment took place, numerous municipalities and townships applied for the grant and designation for communal forests within their jurisdiction.¹⁰⁷

Meanwhile, by reason of the deteriorating condition of the public forest, the United States Government issued General Order No. 92 to address the unauthorized practice of swidden farming or *kaingin* which the Americans considered as “the most destructive agency in the Philippine forests[.]”¹⁰⁸

The legal prohibition against swidden farming proved to be ineffective in most forest zones. The United States Government claimed that municipal and provincial authorities had full knowledge of the swidden farming happening within their jurisdiction, but had not acted upon it in any way.¹⁰⁹

United States Government officials lamented the continued practice of swidden farming. They stated that if the Filipinos were left on their own devices and desire to continue with their practice of swidden farming, it

¹⁰³ Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 272 (1988).

¹⁰⁴ Id.

¹⁰⁵ Id. at 273.

¹⁰⁶ Id. at 274.

¹⁰⁷ Id. at 276.

¹⁰⁸ Id. at 277.

¹⁰⁹ Id. at 278.

would “consume their capital as well as their interests.”¹¹⁰

Interestingly, this sentiment from United States Government officials confirmed a degree of autonomy enjoyed by rural people, including municipal and provincial officials, away from the centralized nature of the American regime. This also revealed the erroneous perception that Filipinos who practiced swidden farming are considered as destroyers of forest resources.¹¹¹

III

In 1936, Commonwealth Act No. 141 was enacted. It provides for the methods by which the government may dispose of agricultural lands, namely: “(1) [f]or homestead settlement; (2) [b]y sale; (3) [b]y lease; [and] (4) [b]y confirmation of imperfect or incomplete titles[.]”¹¹²


Further, as mentioned in Associate Justice Reynato Puno’s separate opinion in *Cruz v. Secretary of Natural Resources*:¹¹³

Commonwealth Act No. 141 remains the present Public Land Law and it is essentially the same as Act 2874. The main difference between the two relates to the transitory provisions on the rights of American citizens and corporations during the Commonwealth period at par with Filipino citizens and corporations.¹¹⁴ (Citation omitted)

Amendments to Commonwealth Act No. 141 were made in 1964. Otherwise known as the Manahan Amendments, Republic Act No. 3872 introduced the following amendments to Sections 44 and 48:

SECTION 1. A new paragraph is hereby added to Section 44 of Commonwealth Act Numbered One hundred forty-one, to read as follows:

“SEC. 44. Any natural-born citizen of the Philippines who is not the owner of more than twenty-four hectares and who since July fourth, nineteen hundred and twenty-six or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twenty-four hectares.



¹¹⁰ Id.

¹¹¹ Id.

¹¹² Com. Act No. 141, sec. 11.

¹¹³ 400 Phil. 904, 941 (2000) [Per Curiam, En Banc].

¹¹⁴ Id.

“A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, whether disposable or not since July 4, 1955, shall be entitled to the right granted in the preceding paragraph of this section: Provided, That at the time he files his free patent application he is not the owner of any real property secured or disposable under this provision of the Public Land Law.”

SECTION 2. A new sub-section (c) is hereby added to Section 48 of the same Act to read as follows:

....

“(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof.”
(Underscoring supplied)

Led by Senator Manuel Manahan, then-Chairman of the Senate Committee on National Minorities, the amendments' objective was to address the cultural minorities' continuing loss of their ancestral homes by reason of the “grant of pasture leases or permits to the more aggressive Christians[.]” It was “to give Tribal Filipinos ‘a fair chance and equal opportunity’ to acquire title to public lands.”¹¹⁵

The Manahan amendments had the effect of creating “a distinction between applications for judicial confirmation of imperfect titles by members of national cultural minorities and applications by other qualified persons in general[.]”¹¹⁶ thus:

Members of cultural minorities may apply for confirmation of their title to lands of the public domain, *whether disposable or not*; they may therefore apply for public lands even though such lands are legally forest lands or mineral lands of the public domain, so long as such lands are *in fact suitable for agriculture*. The rest of the community, however, “Christians” or members of mainstream society may apply only in respect of “agricultural lands of the public domain,” that is, “disposable lands of the public domain” which would of course exclude lands embraced within forest reservations or mineral land reservations.¹¹⁷ (Emphasis in the original.)

¹¹⁵ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 290 (1982).

¹¹⁶ *Republic v. Court of Appeals*, 278 Phil. 1, 15 (1991) [Per J. Feliciano, Third Division].

¹¹⁷ *Id.*

In 1977, the distinction established by the Manahan amendment was expressly abandoned by Presidential Decree No. 1073 when the latter limited the application of Section 48 (b) and (c) “to alienable and disposable lands of the public domain[.]”¹¹⁸

IV

After the Philippines gained its independence from the United States, the Filipino people ratified the 1935 Constitution on May 14, 1935.¹¹⁹

One of the primary objectives of the framers of the 1935 Constitution was to guarantee “the nationalization and conservation of the natural resources of the country.”¹²⁰ They considered it to be of great importance to ensure that the State’s power of control over the natural resources was recognized and established. By this reason, the delegates to the Constitutional Convention adopted and incorporated Article XIII, Section 1 in the 1935 Constitution,¹²¹ which states:

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

Article XIV, Section 8 of the 1973 Constitution echoed the same provision:

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy,

¹¹⁸ Pres. Decree No. 1073, sec. 4 provides:

SECTION 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.

¹¹⁹ Official Gazette, *The Commonwealth of the Philippines*, available at <<https://www.officialgazette.gov.ph/the-commonwealth-of-the-Philippines/>> (last accessed on January 5, 2020).

¹²⁰ See J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 942 (2000)[Per Curiam, En Banc].

¹²¹ *Id.*

fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.

In the same way, Article XII, Section 2 of the 1987 Constitution provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The abovementioned constitutional provision has been interpreted and construed to embody the feudal theory of *jura regalia* or the Regalian Doctrine.

My esteemed colleague, Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa) is of the view that ancestral domains and lands are beyond Section 77's coverage.¹²² He insists that the law only covers public and private lands to which categories ancestral domains and lands neither apply.¹²³ He maintains that ancestral domains and lands are indisputably presumed to have been held by the ICCs/IPs under a claim of ownership even before the Spanish Conquest, and deemed to have never been part of the public domain.¹²⁴

Associate Justice Caguioa opines that the indigenous concept of ownership notwithstanding, ICCs/IPs are only granted the right to

¹²² J. Caguioa, Separate Opinion, pp. 5-6.

¹²³ Id. at 6-8.

¹²⁴ Id. at 8-9.

sustainably use the natural resources found in ancestral domains.¹²⁵ He postulates that ownership over the natural resources remains with the State and the ICCs/IPs' right is limited to managing and conserving these resources for future generations.¹²⁶

Associate Justice Estela M. Perlas-Bernabe shares Associate Justice Caguioa's sentiment that the right accorded to ICCs/IPs with respect to natural resources found in their ancestral domain is limited to the utilization of these resources.¹²⁷

With utmost respect to my colleagues, it is my opinion that the indigenous concept of ownership covers not only the ancestral domains and land, but also the natural resources found there.

The State's alleged ownership over the natural resources is founded on the doctrine of *jura regalia*, which provides that "all lands of the public domain as well as all natural resources enumerated therein, whether on private or public land, belong to the State."¹²⁸

I reiterate my opinion previously expressed in *Heirs of Malabanan v. Republic*,¹²⁹ *Republic v. Tan*,¹³⁰ and *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*,¹³¹ that the 1987 Constitution does not provide for the Regalian Doctrine.

A perusal of Article XII, Section 2 of the 1987 Constitution reveals that the State's ownership of lands is limited to "lands of the public domain[.]" Further, "[l]ands that are in private possession in the concept of an owner since time immemorial are considered never to have been public[.]" since the state never owned them.¹³²

In addition, the doctrine of *jura regalia* is a feudal theory introduced by the Spaniards. However, its application in the Philippines was put to an end upon the arrival of the Americans. The landmark case of *Cariño v. Insular Government*¹³³ clarified on this matter.¹³⁴

¹²⁵ Id. at 13–14.

¹²⁶ See J. Caguioa, Separate Opinion, p. 16 citing J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904 (2000) [Per Curiam, En Banc].

¹²⁷ J. Perlas-Bernabe, Separate Opinion, pp. 3–4.

¹²⁸ J. Brion, Separate Opinion in *La Tondeña, Inc. v. Republic*, 765 Phil. 795, 823 (2015) [Per J. Leonen, Second Division].

¹²⁹ J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203–209 (2013) [Per J. Bersamin, En Banc].

¹³⁰ J. Leonen, Separate Opinion in *Republic v. Tan*, 780 Phil. 764, 776–778 (2016) [Per J. Brion, Second Division].

¹³¹ J. Leonen, Separate Opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, G.R. Nos. 202897, 206823 & 207969, August 6, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65416>> [Per J. Hernando, En Banc].

¹³² J. Leonen, Separate Opinion in *Republic v. Tan*, 780 Phil. 764, 776 (2016) [Per J. Brion, Second Division].

¹³³ *Cariño v. Insular Government*, 212 U.S. 449, 456 (1909).

On June 22, 1903, Mateo Cariño (Cariño), an Igorot of the Province of Benguet, filed a petition before the Court of Land Registration in order to register a piece of land located in the same province.¹³⁵ According to Cariño, he and his ancestors owned the land over 50 years before the Treaty of Paris. They have maintained fences for cattle and have cultivated the land subject of the petition for registration. Furthermore, they have been recognized as owners of the land by the other Igorots. Cariño also stated that he had inherited the land from his father in accordance with Igorot custom, and that he had made prior applications before the Spanish Crown to register the land, but nothing seemed to have come of it.¹³⁶

The Court of Land Registration gave due course to the petition for registration. However, the Benguet Court of First Instance reversed the decision on appeal and dismissed Cariño's application. This decision was affirmed by the Philippine Supreme Court.¹³⁷

Through a writ of error, the case reached the United States Supreme Court. It reversed the Philippine Supreme Court's decision and upheld Cariño's ownership of the land in question. The United States Supreme Court decreed that, whatever Spain's position may have been in relation to the status of Cariño's application for registration, it does not follow that he had lost his rights over the land subject of registration when the United States assumed sovereignty over the Philippines. Thus:

The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.¹³⁸

Citing the Philippine Bill of 1902, the United States Supreme Court went on further and held:

In the light of the declaration that we have quoted from section 12, it is hard to believe that the United States was ready to declare in the next breath that "any person" did not embrace the inhabitants of Benguet, or that it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association — one of the profoundest factors in human thought — regarded as their own.

¹³⁴ J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 208–209 (2013) [Per J. Bersamin, En Banc].

¹³⁵ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982).

¹³⁶ *Cariño v. Insular Government*, 212 U.S. 449, 456 (1909).

¹³⁷ *Cariño v. Insular Government*, 7 Phil. 132 (1906) [Per J. Willard, En Banc].

¹³⁸ *Cariño v. Insular Government*, 212 U.S. 449, 458 (1909).

It is true that, by section 14, the government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some, but not all, Spanish conditions had been fulfilled, and to issue patents to natives for not more than 16 hectares of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land, and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners at that date. We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat. It is true again that there is excepted from the provision that we have quoted as to the administration of the property and rights acquired by the United States, such land and property as shall be designated by the President for military or other reservations, as this land since has been. But there still remains the question what property and rights the United States asserted itself to have acquired.

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 attitude 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."¹³⁹

Cariño established the notion that Igorots and, by analogy, other groups with similar customs and long associations, have constitutionally protected native titles to their respective ancestral lands.¹⁴⁰ It also emphasized that, based on native custom and long association, there exists a legal foundation that the ancestral lands of some native groups within the Philippine archipelago are owned pursuant to private, communal title.¹⁴¹

The doctrine espoused in *Cariño* was further reinforced by the United States Supreme Court in *Reavis v. Fianza*.¹⁴²

Reavis involved two (2) gold mines situated in the province of Benguet. These mines were in a tract of land, the sole and exclusive

¹³⁹ Id. at 458-460.

¹⁴⁰ Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 278 (1982).

¹⁴¹ Id. at 279.

¹⁴² 215 U.S. 16 (1909). See also Dominique Gallego, *Indigenous Peoples: Their Right to Compensation Sui Generis for Ancestral Territories Taken*, 43 ATENEO L. J. 43, 55 (1998).

possession of which belonged to an Igorot named Toctoc. The gold mines were developed by Igorot miners in accordance with their customs.¹⁴³

Toctoc neither had any paper title over the mines nor was he granted concession by the Spanish Government. This notwithstanding, Toctoc's "title and ownership thereto were generally known and recognized by the people of the community[,]” including the Spanish officials.¹⁴⁴

Upon Toctoc's death, the mines' possession and ownership passed on to his heirs, which included Fianza. Toctoc's heirs continued to live and work on the mines without interruption. However, in 1901, Reavis entered upon the subject mines and proceeded to stake his claims on them. Reavis was in the honest but mistaken belief that the mines were part of the abandoned and forfeited Spanish grant of a certain Holman. Insisting ownership over the mines, Fianza filed a formal protest against Reavis.¹⁴⁵

When the case reached the United States Supreme Court, it sustained Fianza's claim of ownership of the mines and decreed:

The appellees are Igorrots [sic], and it is found that, for fifty years, and probably for many more, Fianza and his ancestors have held possession of these mines. He now claims title under the Philippine act of July 1, 1902, chap. 1369, 45, 32 Stat. at L. 691. This section reads as follows:

‘That where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent.’

It is not disputed that this section applies to possession maintained for a sufficient time before and until the statute went into effect. . . . The period of prescription at that time was ten years. . . . Therefore, as the United States had not had the sovereignty of the Philippines for ten years, the section, notwithstanding its similarity to Rev. Stat. 2332, U. S. Comp. Stat. 1901, p. 1433, must be taken to refer to the conditions as they were before the United States had come into power. Especially must it be supposed to have had in view the natives of . . . the islands, and to have intended to do liberal justice to them. By 16, their occupancy of public lands is respected and made to confer rights. In dealing with an Igorrot [sic] of the province of Benguet, it would be absurd to expect technical niceties, and the courts below were quite justified in their liberal mode of dealing with the evidence of possession and the possibly rather gradual

¹⁴³ *Fianza v. Reavis*, 7 Phil. 610, 613–614 (1907) [Per J. Willard, En Banc].

¹⁴⁴ *Id.* at 614.

¹⁴⁵ *Id.* at 615.

settling of the precise boundaries of the appellees' claim. . . At all events, they found that the appellees and their ancestors had held the claim and worked it to the exclusion of all others down to the bringing of this suit, and that the boundaries were as shown in a plan that was filed and seems to have been put in evidence before the trial came to an end.¹⁴⁶

Reavis recognized the extent of the natives' rights over their ancestral territories. It acknowledged that their rights extend not only to the lands, but likewise include the natural resources found in them.¹⁴⁷ Accordingly, the State's power over these resources extend only to its regulation. The State, as laid down under Section 57 of IPRA, can only provide for the guidelines and limitation on how these resources can be utilized, thus:

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.

V

There are at least six provisions in the 1987 Constitution which protect the rights of indigenous peoples to their customs, heritage, and traditions:¹⁴⁸ (1) Article 2, Section 22;¹⁴⁹ (2) Article VI, Section 5(2);¹⁵⁰ (3) Article XII, Section 5;¹⁵¹ (4) Article XIII, Section 6;¹⁵² (5) Article XIV,

¹⁴⁶ 215 U.S. 16 (1909).

¹⁴⁷ Dominique Gallego, *Indigenous Peoples: Their Right to Compensation Sui Generis for Ancestral Territories Taken*, 43 ATENEO L. J. 43, 55 (1998).

¹⁴⁸ See J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 932–1016 (2000) [Per Curiam, En Banc].

¹⁴⁹ CONST., art. II, sec. 22 provides:

SECTION 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

¹⁵⁰ CONST., art. VI, sec. 5(2) provides:

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

¹⁵¹ CONST., article XII, sec. 5 provides:

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.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

¹⁵² CONST., art. XIII, sec. 6 provides:

SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including

Section 17;¹⁵³ and (6) Article XVI, Section 12.¹⁵⁴

The 1987 Constitution has made a noticeable shift from its predecessors. Unlike the 1935 and the 1973 Constitutions, the present Constitution recognizes and expressly guarantees the indigenous peoples' rights to their ancestral lands and ancestral domain. Through these constitutional provisions "the State has effectively upheld their right to live in a culture distinctly their own."¹⁵⁵

V (A)

Enacted in 1997, Republic Act No. 8371 or the IPRA seeks to address the "centuries-old neglect of the Philippine indigenous peoples."¹⁵⁶ It is considered as "the principal piece of legislation that would govern with respect to most of the demands of indigenous peoples through their various organizations."¹⁵⁷

IPRA implements Article II, Section 22 and Article XII, Section 5 of the 1987 Constitution in four (4) ways:

- (a) Firstly, enumerating the civil and political rights of all members of indigenous cultural communities or indigenous peoples, regardless of their relation to ancestral lands or domains;
- (b) Secondly, enumerating the social and cultural rights of all members of indigenous cultural communities or indigenous peoples;
- (c) Thirdly, recognizing a general concept of indigenous property right and granting title thereto; and
- (d) Finally, creating a National Commission on Indigenous Peoples (NCIP) to act as a mechanism to coordinate implementation of the law as well as a final authority that has jurisdiction to issue Certificates of Ancestral Domain/Land Titles."¹⁵⁸

lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

¹⁵³ CONST., art. XIV, sec. 17 provides:

SECTION 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

¹⁵⁴ CONST., art. XVI, sec. 12 provides:

SECTION 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

¹⁵⁵ J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 960 (2000) [Per Curiam, En Banc].

¹⁵⁶ *Id.* at 963.

¹⁵⁷ Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 160 (1998).

¹⁵⁸ *Id.* at 161.

Section 21¹⁵⁹ of IPRA provides that ICC/IPs shall be accorded rights, protections, and privileges enjoyed by the rest of the citizenry with due regard to their distinct characteristics and identity.¹⁶⁰

As a result, classification of ICC/IPs by reason of ethnicity shall be deemed impermissible, unless it is made “in due recognition of the characteristics and identity.” Classification may be allowed only when its purpose is to provide affirmative action in favor of the ICC/IPs.¹⁶¹

V (B)

Another salient principle introduced by IPRA is the ICC/IPs’ right to claim ownership over their land as well as the resources found there.

To recall, the ICC/IPs’ rights to their ancestral domains and ancestral lands have been recognized as early as *Cariño*. The doctrine introduced in that case, had the effect of extending to any person who has occupied a parcel of land since time immemorial—with or without documentary title, the right to enjoy the protection extended to private property rights since the land is “presumed to have been held in the same way... and never to have been public land.”¹⁶²

Cariño’s implication is to shift to the State the burden of proving that a parcel of land or territory falls within the public domain, when the same had been held since time immemorial by the undocumented possessor.¹⁶³

The doctrine espoused in *Cariño* has not yet been overturned and remains a valid basis of the ICC/IPs’ claim of ownership.¹⁶⁴

¹⁵⁹ Republic Act No. 8371 (1997), sec. 21.

SECTION 21. Equal Protection and Non-discrimination of ICCs/IPs. — Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

¹⁶⁰ Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 161 (1998).

¹⁶¹ Id. at 162.

¹⁶² Id. at 170.

¹⁶³ Id.

¹⁶⁴ Id. at 171.

VI

Two (2) additional modes of acquiring ownership were introduced when IPRA was enacted. ICC/IPs may now apply for a CADT or Certificate of Ancestral Land Title for their ancestral domain or ancestral land, respectively:¹⁶⁵

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 traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) *Ancestral Lands* — Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots[.]”¹⁶⁶

The new modes of acquiring ownership introduced by IPRA constitute different kinds of ownership which should not be confused with the concept of ownership under the New Civil Code or the official national legal system.¹⁶⁷ The concept of ownership under the New Civil Code is explained as follows:

Ownership under the New Civil Code is defined under Articles 427 and 428. It is understood as either: “. . . the independent and general power of a person over a thing for purposes recognized by law and within limits established thereby,” or “a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights

¹⁶⁵ Id. at 176–177.

¹⁶⁶ REP. ACT NO. 8371, sec. 3 (a) and (b).

¹⁶⁷ Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 178 (1998).

of another.” Moreover, ownership is said to have the attributes of *jus utendi, fruendi, abutendi, disponendi et vindicandi*. One therefore is said to own a piece of land when s/he exercises, to the exclusion of all others, the rights to use, enjoy the fruits and alienate or dispose of it in any manner not prohibited by law.¹⁶⁸

On the other hand, IPRA defines indigenous concept of ownership over ancestral domains in the following manner:


SECTION 5. Indigenous Concept of Ownership. – 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.¹⁶⁹

The concept of ownership introduced by IPRA is distinct in the sense that, unlike the Civil Code which puts emphasis on individual and corporate holders, IPRA stresses the private but communal nature of ancestral domains. Furthermore, IPRA recognizes that ICC/IPs have a claim of ownership, not only upon the ancestral domain, but also on the resources found in them. It acknowledges that the ancestral domain and the resources located therein constitute as the ICC/IPs basis for their cultural integrity.¹⁷⁰

The indigenous peoples’ struggle for their rights have long been enduring. Their struggle for the recognition of their rights to land and self-determination is rooted in their effort for cultural and human survival.¹⁷¹

We should honor the struggle of our people. This decision is the least we can do to correct a historical injustice.

ACCORDINGLY, I emphatically join the *ponente* and vote that the Petition be **GRANTED**.

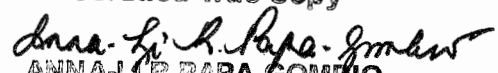

MARVIC M.V.F. LEONEN
Associate Justice

¹⁶⁸ Id. at 178.

¹⁶⁹ Republic Act. 8371 (1997), sec. 5.

¹⁷⁰ Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 179 (1998).

¹⁷¹ John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose land, which lands*, 42 ATENEO L. J. 159, 166 (1997).


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