Republic of the Philippines
Supreme Court
Manila

EN BANC

ISAGANI CRUZ and CESAR EUROPA,
Petitioners,

-versus-

SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, SECRETARY OF BUDGET AND MANAGEMENT and CHAIRMAN and COMMISSIONERS OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES.
Respondents.
x----------x

HON. JUAN M. FLAVIER, HON. PONCIANO BENNAGEN, BAYANI ASCARRAGA, EDTAMI MANSAYANGAN, BASILIO WANDAG, EVELYN DUNUAN, YAOM TUGAS, ALFREMO CARPIANO, LIBERATO A. GABIN, MATERNIDAD M. COLAS, NARCISA M. DALUPINES, BAI KIRAM-CONNIE SATURNO, BAE MALOMO-BEATRIZ T. ABASALA, DATU BALITUNGTUNG-ANTONIO D. LUMANDONG, DATU MANTUMUKAW TEOFISTO SABASALES, DATU EDUARDO BANDA, DATU JOEL UNAD, DATU RAMON BAYAAN, TIMUAY JOSE ANOY, TIMUAY MACARIO D. SALACAO, TIMUAY EDWIN B.

G.R. No. 135385

Present:
DAVIDE, JR., C.J.,
BELLOSILLO,
MELO,
PUNO,
VITUG,
KAPUNAN,
MENDOZA,
PANGANIBAN,
QUISUMBING,
PARDO,
BUENA,
GONZAGA-REYES,
SANTIAGO, and
DE LEON, JJ.

Promulgated:

December 6, 2000

ENDING, DATU SAHAMPONG MALANAW VI, DATU BEN PENDAO CABIGON, BAI NANAPNAY-LIZA SAWAY, BAI INAY DAYA-MELINDA S. REYMUNDO, BAI TINANGHAGA HELINITA T. PANGAN, DATU MAKAPUKAW ADOLINO L. SAWAY, DATU MAUDAYAW-CRISPEN SAWAY, VICKY MAKAY, LOURDES D. AMOS, GILBERT P. HOGGANG, TERESA GASPAR, MANUEL S. ONALAN, MIA GRACE L. GIRON, ROSEMARIE G. PE, BENITO CARINO, JOSEPH JUDE CARANTES, LYNETTE CARANTES-VIVAL, LANGLEY SEGUNDO, SATUR S. BUGNAY, CARLING DOMULOT, ANDRES MENDIOGRIN, LEOPOLDO ABUGAN, VIRGILIO CAYETANO, CONCHITA G. DESCAGA, LEVY ESTEVES, ODETTE G. ESTEVEZ, RODOLFO C. AGUILAR, MAURO VALONES, PEPE H. ATONG, OFELIA T. DAVI, PERFECTO B. GUINOSAO, WALTER N. TIMOL, MANUEL T. SELEN, OSCAR DALUNHAY, RICO O. SULATAN, RAFFY MALINDA, ALFREDO ABILLANOS, JESSIE ANDILAB, MIRLANDO H. MANKULINTAS, SAMIE SATURNO, ROMEO A. LINDAHAY, ROEL S. MANSANG-CAGAN, PAQUITO S. LIESES, FILIPE G. SAWAY, HERMINIA S. SAWAY, JULIUS S. SAWAY, LEONARDA SAWAY, JIMMY UGYUB, SALVADOR TIONGSON, VENANCIO APANG, MADION MALID, SUKIM MALID, NENENG MALID, MANGKATADONG AUGUSTO DIANO, JOSEPHINE M. ALBESO, MORENO MALID,

MARIO MANGCAL, FELAY DIAMILING, SALOME P. SARZA, FELIPE P. BAGON, SAMMY SALNUNGAN, ANTONIO D. EMBA, NORMA MAPANSA GONOS, ROMEO SALIGA, SR., JERSON P. GERADA, RENATO T. BAGON, JR., SARING MASALONG, SOLEDAD M. GERARDA, ELIZABETH L. MENDI, MORANTE S. TIWAN, DANILO M. MALUDAO, MINORS MARICEL MALID, represented by her father CORNELIO MALID, MARCELINO M. LADRA, represented by her father MONICO D. LADRA, JENNYLYN MALID, rep-Resented by her father TONY MALID, ARIEL M. EVANGELISTA, Represented by her mother LINAY BALBUENA, EDWARD M. EMUY, SR., SUSAN BOLANIO, OND, PULA BATO B'LAAN TRIBAL FARMER'S ASSOCIATION, INTER-PEOPLE'S EXCHANGE, INC. and GREEN FORUM-WESTERN VISAYAS.

Intervenors.

x----------x

COMMISSION ON HUMAN RIGHTS,

Intervenor.

x----------x

IKALAHAN INDIGENOUS PEOPLE and HARIBON FOUNDATION FOR THE CONSERVATION OF NATURAL RESOURCES, INC.

Intervenor.

x----------x

RESOLUTION

Per Curiam:

Petitioners Isagani Cruz and Cesar Europa brought this suit for prohibition and mandamus as citizens and taxpayers, assailing the constitutionality of certain provisions of Republic Act No. 8371 (R.A. 8371), otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA), and its Implementing Rules and Regulations (Implementing Rules).

In its resolution of September 29, 1998, the Court required respondents to comment. [1] In compliance, respondents Chairperson and Commissioners of the National Commission on Indigenous Peoples (NCIP), the government agency created under the IPRA to implement its provisions, filed on October 13, 1998 their Comment to the Petition, in which they defend the constitutionality of the IPRA and pray that the petition be dismissed for lack of merit.

On October 19, 1998, respondents Secretary of the Department of Environment and Natural Resources (DENR) and Secretary of the Department of Budget and Management (DBM) filed through the Solicitor General a consolidated Comment. The Solicitor General is of the view that the IPRA is partly unconstitutional on the ground that it grants ownership over natural resources to indigenous peoples and prays that the petition be granted in part.

On November 10, 1998, a group of intervenors, composed of Sen. Juan Flavier, one of the authors of the IPRA, Mr. Ponciano Bennagen, a member of the 1986 Constitutional Commission, and the leaders and members of 112 groups of indigenous peoples (Flavier, et. Al), filed their Motion for Leave to Intervene. They join the NCIP in defending the constitutionality of IPRA and praying for the dismissal of the petition.

On March 22, 1999, the Commission on Human Rights (CHR) likewise filed a Motion to Intervene and/or to Appear as Amicus Curiae. The CHR asserts that IPRA is an expression of the principle of parens patriae and that the State has the responsibility to protect and guarantee the rights of those who are at a serious disadvantage like indigenous peoples. For this reason it prays that the petition be dismissed.

On March 23, 1999, another group, composed of the Ikalahan Indigenous People and the Haribon Foundation for the Conservation of Natural Resources, Inc. (Haribon, et al.), filed a Motion to Intervene with attached Comment-in-Intervention. They agree with the NCIP and Flavier, et al. that IPRA is consistent with the Constitution and pray that the petition for prohibition and mandamus be dismissed.

The motions for intervention of the aforesaid groups and organizations were granted.

Oral arguments were heard on April 13, 1999. Thereafter, the parties and intervenors filed their respective memoranda in which they reiterate the arguments adduced in their earlier pleadings and during the hearing.

[1] Rollo, p. 114.

Petitioners assail the constitutionally of the following provisions of the IPRA and its Implementing Rules on the ground that they amount to an unlawful deprivation of the State's ownership over lands of the public domain as well as minerals and other natural resources therein, in violation of the regalian doctrine embodied in Section 2, Article XII of the Constitution:

> "(1) Section 3(a) which defines the extent and coverage of ancestral domains, and Section 3(b) which, in turn, defines ancestral lands;
>
> "(2) Section 5, in relation to section 3(a), which provides that ancestral domains including inalienable public lands, bodies of water, mineral and other resources found within ancestral domains are private but community property of the indigenous peoples;
>
> "(3) Section 6 in relation to Section 3(a) and 3(b) which defines the composition of ancestral domains and ancestral lands;
>
> "(4) Section 7 which recognizes and enumerates the rights of the indigenous peoples over the ancestral domains;
>
> "(5) Section 8 which recognizes and enumerates the rights of the indigenous peoples over the ancestral lands;
>
> "(6) Section 57 which provides for priority rights of the indigenous peoples in the harvesting, extraction, development or exploration of minerals and other natural resources within the areas claimed to be their ancestral domains, and the right to enter into agreements with nonindigenous peoples for the development and utilization of natural resources therein for a period not exceeding 25 years, renewable for not more than 25 years; and
>
> "(7) Section 58 which gives the indigenous peoples the responsibility to maintain, develop, protect and conserve the ancestral domains and portions thereof which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover or reforestation.[2]

Petitioners also contend that, by providing for an all encompassing definition of "ancestral domains" and "ancestral lands" which might even include private lands found within said areas, Sections 3(a) and 3(b) violate the rights of private landowners.[3]

In addition, petitioners question the provisions of the IPRA defining the powers and jurisdiction of the NICP and making customary law applicable to the settlement of disputes involving ancestral domains and ancestral lands on the ground that these provisions violate the due process clause of the Constitution.[4]

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[2] Petition, Rollo, pp. 16-23.

[3] Id. at 23-25.

[4] Section 1, Article III of the Constitution states: "No person shall be deprived of life, liberty or

These provisions are:

> "(1) Sections 51 to 53 and 59 which detail the process of delineation and recognition of ancestral domains and which vest on the NCIP the sole authority to delineate ancestral domains and ancestral lands;
>
> "(2) Section 52[i] which provides that upon certification by the NICP that a particular area is an ancestral domain and upon notification to the following officials, namely, the Secretary of Environment and Natural Resources, Secretary of Interior and Local Governments, Secretary of Justice and Commissioner of the National Development Corporation, the jurisdiction of said officials over said area terminates;
>
> "(3) Section 63 which provides the customary law, traditions and practices of indigenous peoples shall be applied first with respect to property rights, claims of ownership, hereditary succession and settlement of land disputes, and that any doubt or ambiguity in the interpretation thereof shall be resolved in favor of the indigenous peoples;
>
> "(4) Section 65 which states that customary laws and practices shall be used to resolve disputes involving indigenous peoples; and
>
> "(5) Section 66 which vests on the NCIP the jurisdiction over all claims and disputes involving rights of the indigenous peoples.[5]

Finally, petitioners assail the validity of Rule VII, Part II, Section 1 of the NICP Administrative Order No. 1, series of 1998, which provides that "the administrative relationship of the NICP to the Office of the President is characterized as a lateral but autonomous relationship for purposes of policy and program coordination." They contend that said Rule infringes upon the President's power of control over executive departments under Section 17, Article VII of the Constitution.[6]

Petitioners pray for the following:

> "(1) A declaration that Sections 3, 5, 6, 7, 8, 52[i], 57, 58, 59, 63, 65 and 66 and other related provisions of R.A. 8371 are unconstitutional and invalid;
>
> "(2) The issuance of a writ of prohibition directing the Chairperson and Commissioners of the NICP to cease and desist from implementing the assailed provisions of R.A. 8371 and its Implementing Rules;
>
> "(3) The issuance of a writ of prohibition directing the Secretary of the Department of Environment and Natural Resources to cease the desist

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property without due process of law, nor shall nay person be denied the equal protection of the laws."

[5] Rollo, pp. 25-27

[6] Id. at 27-28

from implementing Department of Environment and Natural Resources Circular No. 2, series of 1998;

"(4) The issuance of a writ of prohibition directing the Secretary of Budget and Management to cease and desist from disbursing public funds for the implementation of the assailed provisions of R.A. 8371; and

"(5) The issuance of a writ of mandamus commanding the Secretary of Environment and Natural Resources to comply with his duty of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization and conservation of Philippine natural resources."[7]

After due deliberation on the petition, the members of the Court voted as follows:

Seven (7) voted to dismiss the petition. Justice Kapunan filed an opinion, which the Chief Justice and Justices Bellosillo, Quisumbing, and Santiago join, sustaining the validity of the challenged provisions of R.A. 8371. Justice Puno also filed a separate opinion sustaining all challenged provisions of the law with the exception of Section 1, Part II, Rule III of NCIP Administrative Order No. 1, series of 1998, the Rules and Regulations Implementing the IPRA, and Section 57 of the IPRA which he contends should be interpreted as dealing with the large-scale exploitation of natural resources and should be read in conjunction with Section 2, Article XII of the 1987 Constitution. On the other hand, Justice Mendoza voted to dismiss the petition solely on the ground that it does not raise a justiciable controversy and petitioners do not have standing to question the constitutionality of R.A. 8371.

Seven (7) other members of the Court voted to grant the petition. Justice Panganiban filed a separate opinion expressing the view that Sections 3 (a)(b), 5, 6, 7 (a)(b), 8, and related provisions of R.A. 8371 are unconstitutional. He reserves judgment on the constitutionality of Sections 58, 59, 65, and 66 of the law, which he believes must await the filing of specific cases by those whose rights may have been violated by the IPRA. Justice Vitug also filed a separate opinion expressing the view that Sections 3(a), 7, and 57 of R.A. 8371 are unconstitutional. Justice Melo, Pardo, Buena, Gonzaga-Reyes, and De Leon join in the separate opinions of Justices Panganiban and Vitug.

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

Attached hereto and made integral parts thereof are the separate opinions of Justices Puno, Vitug, Kapunan, Mendoza, and Panganiban.

SO ORDERED.

HILARIO G. DAVIDE, JR.
Chief Justice

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[7] Transcript of Stenographic Notes of the hearing held on April 13, 1999, pp. 5-6

JOSUE N. BELLOSILLO
Associate Justice

JOSE A. R. MELO
Associate Justice

REYNATO S. PUNO
Associate Justice

JOSE C. VITUG
Associate Justice

SANTIAGO M. KAPUNAN
Associate Justice

VICENTE V. MENDOZA
Associate Justice

ARTEMIO V. PANGANIBAN
Associate Justice

LEONARDO A. QUISUMBING
Associate Justice

BERNARDO P. PARDO
Associate Justice

ARTURO B. BUENA
Associate Justice

MINERVA P. GONZAGA-REYES
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

SABINO R. DE LEON, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HILARIO G. DAVIDE, JR.
Chief Justice

G.R. No. 135385 – ISAGANI A. CRUZ and CESAR S. EUROPA VS. SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, SECRETARY OF BUDGET AND MANAGEMENT, AND THE CHAIR AND COMMISSION OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES

Promulgated:

DECEMBER 6, 2000

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SEPARATE OPINION

PUNO, J.:

PRECIS

A classic essay on the utility of history was written in 1874 by Friedrich Nietzsche entitled "On the Uses and Disadvantages of History for Life." Expounding on Nietzsche's essay, Judge Richard Posner[1] wrote:[8]

> "Law is the most historically oriented, or if you like the most backward-looking, the most 'past-dependent,' of the professions. It venerates tradition, precedent, pedigree, ritual, custom, ancient practices, ancient texts, archaic terminology, maturity, wisdom, seniority, gerontocracy, and interpretation conceived of as a method of recovering history. It is suspicious of innovation, discontinuities, 'paradigm shifts,' and the energy and brashness of youth. These ingrained attitudes are obstacles to anyone who wants to re-orient law in a more pragmatic direction. But, by the same token, **pragmatic jurisprudence must come to terms with history**."

When Congress enacted the **Indigenous Peoples Rights Act** (IPRA), it introduced **radical** concepts into the Philippine legal system which appear to collide with settled constitutional and jural precepts on state ownership of land and other natural resources. The sense and subtleties of this law cannot be appreciated without considering its distinct sociology and the labyrinths of its history. This Opinion attempts to interpret IPRA by discovering its soul shrouded by the mist of our history. After all, the IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities right to their ancestral land but more importantly, **to correct a grave historical injustice to our indigenous people**.

This Opinion discusses the following:

I. The Development of the Regalian Doctrine in the Philippine Legal System.

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[1] Chief Judge, US Court of Appeals for the Seventh Circuit; Senior Lecturer, University of Chicago Law School.

[8] The University of Chicago Law Review, Vol. 67, Summer 2000, No. 3, p. 573

A. The Laws of the Indies
B. Valenton v. Murciano
C. The Public Land Acts and the Torrens System
D. The Philippine Constitutions

II. The Indigenous Peoples Rights Act (IPRA).

A. Indigenous Peoples
1. Indigenous Peoples: Their History
2. Their Concept of Land

III. The IPRA is a Novel Piece of Legislation.

A. Legislative History

IV. The Provisions of the IPRA Do Not Contravene the Constitution.

A. Ancestral domains and ancestral lands are the private property of indigenous peoples and do not constitute part of the land of the public domain.
1. The right to ancestral domains and ancestral lands: how acquired

2. The concept of native title
(a) Cariño v. Insular Government
(b) Indian Title to land
(c) Why the Cariño doctrine is unique

3. The option of securing a torrens title to the ancestral land

B. The right of ownership and possession by the ICCs/Ips to their ancestral domains is a limited form of ownership and does not include the right to alienate the same.
1. The indigenous concept of ownership and customary law

C. Sections 7 (a), 7 (b) and 57 of the IPRA do not violate the Regalian Doctrine Enshrined in Section 2, Article XII of the 1987 Constitution.
1. The rights of ICCs/IPs over their ancestral domains and lands

2. The right of ICCs/IPs to develop lands and natural resources within the ancestral domains does not deprive the State of ownership over the natural resources, control and supervision in their development and exploitation.
(a) Section 1, Part II, Rule III of the Implementing Rules goes beyond the parameters of Section 7(a) of the law on ownership of ancestral domains and is *ultra vires*.
(b) The small-scale utilization of natural resources in Section 7(b) of the IPRA is allowed under Paragraph 3, Section 2, Article XII of the 1987 Constitution.

(c) The large-scale utilization of natural resources in Section 57 of the IPRA may be harmonized with Paragraphs 1 and 4, Section 2, Article XII of the 1987 Constitution.

V. The IPRA is a Recognition of Our Active Participation in the International Indigenous Movement.

DISCUSSION

I. THE DEVELOPMENT OF THE REGALIAN DOCTRINE IN THE PHILIPPINE LEGAL SYSTEM

A. The Laws of the Indies

The capacity of the State to own or acquire property is the state's power of **dominium**.[3] 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 Cedulas**. 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 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 reset 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."[4]

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[3] *Dominium* is distinguished form *imperium* which is the government authority possessed by the state expressed in the concept of sovereignty --- Lee Hong Hok v. David, 48 SCRA 372, 377 [1972].

[4] Valenton v. Murciano, 3 Phil. 537, 534 [1904]; See also Florencio D. R. Ponce, The Philippine Torrens System, P. 13 [1964]

The Philippines passed to Spain by virtue of "discovery" and conquest. Consequently, all lands became the exclusive patrimony and dominion of the Spanish Crown. The Spanish Government took charge of distributing the lands by issuing g royal grants and concessions to Spaniards, both military and civilian.[5] Private land titles could only be acquired from the government either by purchase or by the various modes of land grant from the Crown. [6]

The Laws of the Indies were followed by the **Ley Hipotecaria, or the Mortgage Law of 1893.**[7] The Spanish Mortgage Law provided for the systematic registration of titles and deeds as well as possessory claims. The law sought to register and tax lands pursuant to the Royal Decree of 1880. The Royal Decree of 1894, or the "Maura Law," was partly an amendment of the Mortgage Law as well as the Laws of the Indies, as already amended by previous orders and decrees. [8] This was the last Spanish land law promulgated in the Philippines. It required the "adjustment" or registration of all agricultural lands, otherwise the lands shall revert to the state.

Four years later, by the **Treaty of Paris of December 1, 1898,** Spain ceded to the government of the United States all rights, interests and claims over the national territory of the Philippine Islands. In 1903, the United States colonial government, through the Philippine Commission, passed **Act No. 926, the first Public Land Act.**

B. Valenton v. Murciano

In 1904, under the American regime, this Court decided the case of **Valenton v. Murciano.**[9]

Valenton resolved the question of which is the better basis for ownership of land: long-time occupation or paper title. Plaintiffs had entered into peaceful occupation of the subject land in 1860. Defendant's predecessor-in-interest, on the other hand, purchased the land from the provincial treasurer of Tarlac in 1892. The lower court ruled against the plaintiffs on the ground that they had lost all rights to the land by not objecting to the administrative sale. Plaintiffs appealed the judgment, asserting that their 30-year adverse possession, as an extraordinary period of prescription in the ***Patidas*** and the Civil Code, had given them title to the land as against everyone, including the State; and that the State, not owning the land, could not validly transmit it.

The Court, speaking through Justice Willard, decided the case on the basis of "those special laws which from earliest time have regulated the disposition of the public lands in the

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5 Antonio H. Noblejas, Land Titles and Deeds, p. 5 [1986]; These grants were better known as repartimientos and encomiendas. Repartimientos were handouts to the military as fitting reward for their services to the Spanish crown. The encomiendas were given to Spaniards to administer and develop with the right to receive and enjoy for themselves the tributes of the natives assigned to them. --- Ponce, supra, p. 12, citing Benitez, History of the Philippines, pp. 125-126.

6 Narciso Pena, Registration of Land Titles and Deeds, p. 2 [1994]

7 The Mortgage Law is a misnomer because it is primarily a law on registration of property and secondarily a mortgage law --- Ponce, *supra*, at 16.

8 Ponce, *supra*, at 15.

9 3 Phil. 537 [1904].

colonies."[10] The question posed by the Court was: "Did these special laws recognize any right of description as against the State as to these lands; and is so, to what extent was it recognized?"

Prior to 1880, the Court said, there were no laws specifically providing for the disposition of land in the Philippines. However, it was understood that in the absence of any special law to govern a specific colony, the Laws of the Indies would be followed. Indeed, in the Royal Order of July 5, 1862, it was decreed that until regulations on the subject could be prepared, the authorities of the Philippine Islands should follow strictly the Laws of the Indies, the ***Ordenanza*** of the ***Intendentes*** of 1786, and the Royal Cedula of 1754.[11]

Quoting the preamble of Law 14, Title 12, Book 4 of the ***Recopilacion de Leyes de las Indias,*** the court interpreted it as follows:

> "In the preamble of this law there is, as is seen, a distinct statement that all those lands belong to the Crown which have not been granted by Philip, or in his name, or by the kings who preceded him. **This statement excludes the idea that there might be lands not so granted, that did not belong to the king. It excludes the idea that the king was not still the owner of all ungranted lands,** because some private person had been in the adverse occupation of them. By the mandatory part of the law all the occupants of the public lands are required to produce before the authorities named, and within a time to be fixed by them, their title papers. And those who had good title or showed prescription were to be protected in their holdings. It is apparent that it was not the intention of the law that mere possession for a length of time should make the possessors the owners of the land possessed by them without any action on the part of the authorities."[12]

The preamble stated that all those lands which had not been granted by Philip, or in his name, or by the kings who preceded him, belonged to the Crown.[13] For those lands granted by the king, the decree provided for a system of assignment of such lands. It also ordered that all possessors of agricultural land should exhibit their title deed, otherwise, the land would be restored to the Crown. [14]

The Royal Cedula of October 15, 1754 reinforced the ***Recopilacion*** when it ordered the Crown's principal subdelegate to issue a general order directing the publication of the Crown's instructions:

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10 Id. At 540.

11 Id. At 548.

12 Id. at 543-544.

13 Id. at 543.

14 Id. at 542-543. These comments by the court are clear expressions of the concept that Crown holdings embraced both *imperium* and *dominium* --- Ma. Lourdes Aranal-Sereno and Roan Libarios, *The Interface Between National Land Law and Kalinga Land Law*, 58 P.L.J. 420, 423 [1983].

> "x x x to the end that any and all persons who, since the year 1700, and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not x x x cultivated or tenanted, may x x x appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied. x x x. Said subdelegates will at the same time warn the parties interested that in case of their failure to present their title deeds within the term designated, without a just and valid reason therefore, they will be deprived of and evicted from their lands, and they will be granted to others." [15]

On June 25, 1880, the Crown adopted regulations for the adjustment of lands "wrongfully occupied" by private individuals in the Philippine Islands. **Valenton** construed these regulations together with contemporaneous legislative and executive interpretations of the law, and concluded that plaintiffs' case fared no better under the 1880 decree and other laws which followed it, than it did under the earlier ones. Thus as a general doctrine, the Court stated:

> "While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner."[16]

In conclusion, the Court ruled: "We hold that from 1860 to 1892 there was no law in force in these lands by prescription, without any action by the State." [17]Valenton had no rights other than those which accrued to mere possession. Murciano, on the other hand, was deemed to be the owner of the land by virtue of the grant by the provincial secretary. In effect, Valenton upheld the Spanish concept of state ownership of public land.

As a fitting observation, the Court added that "[t]he policy pursued by the Spanish Government from earliest times, requiring settlers on the public lands to obtain title deeds therefore from the State, has been continued by the American Government in Act No. 926."[18]

C. <u>The Public Land Acts and the Torrens System</u>

Act No. 926, the first Public Land Act, was passed in pursuance of the provisions of the Philippine Bill of 1902. The law governed the disposition of lands of the public domain. It prescribed rules and regulations for the homesteading, selling, and leasing of portions of the public domain of the Philippine Islands, and prescribed the terms and conditions to enable persons to perfect their titles to public lands in the Islands. It also provided for the "issuance of patents to certain native settlers upon public lands," for the establishment of town sites and slae of lots therein, for the completion of imperfect titles, and for the cancellation or confirmation of Spanish concessions and grants in the Islands." In short, the Public Land Act operated on the

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15 Id. at 545-546.

16 Id. at 543.

17 Id. at 557.

18 Id. at 553-554; Valenton was applied in Cansino v. Valdez, 6 Phil. 320 [1906]; Tiglao v. Insular Government, 7 Phil. 80 [1906]; and Cariño v. Insular Government, 7 Phil. 132 [1906]; all decided by the Philippine Supreme Court.

assumption that title to public lands in the Philippine Islands remained in the government;[19] and that the government's title to public land sprung from the Treaty of Paris and other subsequent treaties between Spain and the United States.[20] The term "public land" referred to all lands of the public domain whose title still remained in the government and are thrown open to private appropriation and settlement,[21] and excluded the patrimonial property of the government and the friar lands. [22]

Act No. 926 was superseded in 1919 by Act 2874, the second Public Land Act. This new law was passed under the Jones Law. It 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.[23] After the passage of the 1935 Constitution, Act 2874 was amended in 1936 by **Commonwealth Act No. 141**. 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.[24]

Grants of public land were brought under the operation of the Torrens system under Act 496, or the Land Registration Law of 1903. Enacted by the Philippine Commission, Act 496 placed all public and private lands in the Philippines under the Torrens system. The law is said to be almost a verbatim copy of the Massachussetts Land Registration Act of 1898,[25] which, in turn, followed the principles and procedure of the Torrens system of registration formulated by Sir Robert Torrens who patterned it after the Merchant Shipping Acts in South Australia. The Torrens system requires that the government issue an official certificate of title attesting to the fact that the person named is the owner of the property described therein, subject to such liens and encumbrances as thereon noted or the law warrants or reserves. [26] The certificate of title is indefeasible and imprescriptible and all claims to the parcel of land are quieted upon issuance of said certificate. This system highly facilitates land conveyance and negotiation. [27]

D. The Philippine Constitutions

The Regalian Doctrine was enshrined in the **1935 Constitution**. One of the fixed and

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19 Please see Section 70, Act 926.

20 Ponce, *supra*, at 33.

21 Montano v. Insular Government, 12 Phil. 572 [1909]; also cited in Ponce, *supra*, at 32.

22 Archbishop of Manila v. Director of Lands, 27 Phil. 245 [1914]; also cited in Ponce, *supra*, at 32.

23 Antonio H. Noblejas, Land Titles and Deeds, p. 250 [1961].

24 Ponce, *supra*, at 32.

25 Pena, Registration of Lnad Titles and Deeds, p. 26 [1982]; Noblejas, *supra*, at 32.

26 Noblejas, supra, at 32.

27 Ponce, supra, at 123-124; Noblejas, supra, at 33.

dominating objectives of the 1935 Constitutional Convention was the nationalization and conservation of the natural resources of the country.[28] **There was an overwhelming sentiment in the Convention in favor of state ownership of natural resources and the adoption of the Regalian doctrine.**[29] State ownership of natural resources was seen as a necessary starting point to secure recognition of the state's power to control their disposition, exploitation, development, or utilization. [30] The delegates to the Constitutional Convention very well knew that the concept of State ownership of land and natural resources was introduced by the Spaniards, however, they were not certain whether it was continued and applied by the Americans. To remove all doubts, the Convention approved the provision in the Constitutional affirming the Regalian doctrine.[31]

Thus, the **1935 Constitution**, in Section 1 of Article XIII on "Conservation and Utilization of Natural Resources," reads as follows:

> "*Sec. 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."

The **1973 Constitution** reiterated the Regalian doctrine in Section 8, Article XIV on the "National Economy and the Patrimony of the Nation," to wit:

> "*Sec. 8.* **All lands of the public domain, minerals, coal, petroleum and other mineral oils, all forces of potential energy, 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."

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28 2 Aruego, The Framing of the Philippine Constitution, p. 592 [1937].

29 Id. at 600.

30 Id. at 600-601.

31 Ibid.

The **1987 Constitution** reaffirmed the Regalian doctrine in Section 2 of Article XII on "National Economy and Patrimony," to wit:

> "*Sec. 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.
>
> x x x . "

Simply stated, all **lands of the public domain as well as all natural resources** enumerated therein, whether on public or private land, belong to the State. **It is this concept of State ownership that petitioners claim is being violated by the IPRA.**

II. THE INDIGENOUS PEOPLES RIGHTS ACT

Republic Act No. 8371 is entitled "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefore, and for Other Purposes." **It is simply known as "The Indigenous Peoples Rights Act of 1997" or the IPRA.**

The IPRA recognizes the existence of the indigenous cultural communities or **indigenous peoples** (ICCs/IPs) as a distinct sector in Philippine society. **It grants these people the ownership and possession of their ancestral domains and ancestral lands, and defines the extent of these lands and domains. The ownership given is the indigenous concept of ownership under customary law which traces its origin to native title.**

Other rights are also granted the ICCs/IPs, and these are:

- the right to develop lands and natural resources;
- the right to stay in the territories;
- the right in case of displacement;
- the right to safe and clean air and water;
- the right to claim parts of reservations;

- the right to resolve conflict;[32]
- the right to ancestral lands which include
    a. the right to transfer land/property to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned;
    b. the right to redemption for a period not exceeding 15 years from date transfer, if the transfer is to a non-member of the ICC/IP and is tainted by vitiated consent of the ICC/IP, or if the transfer is for an unconscionable consideration.[33]

Within their ancestral domains and ancestral lands, the ICCs/IPs are given the right to self-governance and empowerment,[34] social justice and human rights,[35] the right to preserve and protect their culture, traditions, institutions and community intellectual rights, and the right to develop their own sciences and technologies.[36]

To carry out the policies of the Act, the law created the National Commission on Indigenous Peoples (NCIP). The NCIP is an independent agency under the Office of the President and is composed of seven (7) Commissioners belonging to ICCs/IPs from each of the ethnographic areas --- Region I and the Cordilleras; Region II; the rest of Luzon; Island groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao. [37] The NCIP took over the functions of the Office for Northern Cultural Communities and the Office for Southern Cultural Communities created by former President Corazon Aquino which were merged under a revitalized structure. [38]

Disputes involving ICCs/IPs are to be resolved under customary laws and practices. When still unresolved, the matter may be brought to the NCIP, which is granted quasi-judicial powers.[39] The NCIP's decisions may be appealed to the Court of Appeals by a petition for review.

Any person who violates any of the provisions of the Act such as, but not limited to, unauthorized and/or unlawful intrusion upon ancestral lands and domains shall be punished in accordance with customary laws or imprisoned from 9 months to 12 years and/or fined from P100,000.00 to P500,000.00 and obliged to pay damages.[40]

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32 Section 7.

33 Section 8.

34 Sections 13 to 20.

35 Sections 21 to 28.

36 Sections 29 to 37.

37 Sections 38 and 40.

38 Sections 74 to 77.

39 Section 69.

40 Section 73.

A. Indigenous Peoples

The IPRA is a law dealing with a specific group of people, i.e., the Indigenous Cultural Communities (ICCs) or the Indigenous Peoples (IPs). The term "ICCs" is used in the 1987 Constitution while that of "IPs" is the contemporary international language in the International Labor Organization (ILO) Convention 169[41] and the United Nations (UN) Draft Declaration on the Rights of Indigenous Peoples.[42]

ICCs/IPs are defined by the IPRA as:

> "*Sec. 3 [h]. Indigenous Cultural Communities/Indigenous Peoples* --- refer to a group of people or homogeneous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains."

Indigenous Cultural Communities or indigenous Peoples refer to a group of people or homogeneous societies who have continuously lived as an organized community on communally bounded and defined territory. These groups of people have actually occupied, possessed and utilized their territories under claim of ownership since time immemorial. They share common bonds of language, customs, traditions and other distinctive cultural traits, or, they, by their resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the Filipino majority. ICCs/IPs also include descendants of ICCs/IPs who inhabited the country at the time of conquest or colonization, who retain some or all of their own social, economic, cultural and political institutions but who may have been displaced from their traditional territories or who may have resettled outside their ancestral domains.

1. Indigenous Peoples: Their History

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41 Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989.

42 Guide to R.A. 8371, published by the Coalition for IPs Rights and Ancestral Domains in cooperation with the ILO and Bilance-Asia Department, p. 4 [1999] --- hereinafter referred to as Guide to R.A. 8371.

Presently, Philippine indigenous peoples inhabit the interiors and mountains of Luzon, Mindanao, Mindoro, Negros, Samar, Leyte, and the Palawan and Sulu group of islands. They are composed of 110 tribes and are as follows:

1. In the Cordillera Autonomous Region --- Kankaney, Ibaloi, Bontoc, Tinggian or Itneg, Ifugao, Kalinga, Yapayao, Aeta or Agta or Pugot, and Bago of Ilocos Norte and Pangasinan; Ibanag of Isabela, Cagayan; Ilongot of Quirino and Nueva Vizcaya; Gaddang of Quirino, Nueva Vizcaya, Itawis of Cagayan; Ivatan of Batanes, Aeta of Cagayan, Quirino and Isabela.

2. In Region III --- Aetas.

3. In Region IV --- Dumagats of Aurora, Rizal; Remontado of Aurora, Rizal, Quezon; Alangan or Mangyan, Batangan, Buid or Buhid, Hanunuo and Iraya of Oriental and Occidental Mindoro; Tadyawan of Occidental Mindoro; Cuyonon, Palawanon, Tagbanua and Tao't bato of Palawan.

4. In Region V --- Aeta of Camarines Norte and Camarines Sur; Aeta-Abiyan, Isarog, and Kabihug of Camarines Norte; Agta, and Mayon of Camarines Sur; Itom of Albay, Cimaron of Sorsogon; and the Pullon of Masbate and Camarines Sur.

5. In Region VI --- Ati of Negros Occidental, Iloilo and Antique, Capiz; the Magahat of Negros Occidental; the Corolano and Sulod.

6. In Reion VII --- Magahat of Negros Oriental and Eskaya of Bohol.

7. In Region IX --- The Badjao numbering about 192, 000 in Tawi-Tawi, Zamboanga del Sur; the Kalibungan of Basilan, the Samal, Sunbanon and Yakat.

8. Region X --- Numbering 1.6 million in Region X alone, the IPs are: the Banwaon, Bukidnon, Matigsalog, Talaanding of Bukidnon; the Camiguin of Camiguin Island; the Higa-unon of Agusan del Norte, Agusan del Sur, Bukidnon and Misamis Occidental; the Tigwahanon of Agusan del Sur, Misamis Oriental and Misamis Occidental, the Manobo of the Agusan provinces, and the Umayamnon of Agusan and Bukidnon.

9. In Region XI --- There are about 1, 774, 065 IPs in Region XI. They are tribes of the Dibabaon, Mansaka of Davao del Norte; B'laan, Kalagan, Langilad, T'boli and Talaingod of Davao del Sur; Mamamanua of Surigao del Sur; Mandaya of the Surigao provinces and Davao Oriental; Manobo Blit of South Cotabato; the Manguguangon of Davao and South Cotabato; Matigsalog of Davao del Norte and Del Sur; Tagakaolo, Tasaday and Ubo of South Cotabato; and Bagobo of Davao del Sur and South Cotabato.

10. In Region XII --- Ilianen, Tiruray, Maguindanao, Maranao, Tausug, Yakan/Samal, and Iranon.[43]

How these indigenous peoples came to live in the Philippines goes back to as early as 25,000 to 30,000 B.C.

Before the time of Western contact, the Philippine archipelago was peopled largely by the Negritos, Indonesians and Malays.[44] The strains from these groups eventually gave rise to common cultural features which became the dominant influence in ethnic reformulation in the archipelago. Influences from the Chinese and Indian civilization in the third or fourth millennium B.V. augmented these ethnic strains. Chinese economic and socio-cultural influences came by way of Chinese porcelain, silk and traders. Indian influence found their way into the religious-cultural aspect of pre-colonial society.[45]

The ancient Filipinos settled beside bodies of water. Hunting and food gathering became supplementary activities as reliance on them was reduced by fishing and the cultivation of the soil.[46] From the hinterland, coastal, and riverine communities, our ancestors evolved an essentially homogenous culture, a basically common way of life where nature was a primary factor. Community life throughout the archipelago was influenced by, and responded to,

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43 Taken from the list of IPs submitted by Rep. Andolana to the House of Representatives during the deliberation on H.B. No. 9125 --- Interpellations of Aug. 20, 1997, pp. 00086-00095. "Lost tribes" such as the Lutangan and Tatang have not been included.

44 How these people came to the Philippines may be explained by two theories. One view, generally linked to Professor Otlye H. Beyer, suggests the "wave theory' --- a series of arrivals in the archipelago bringing in different types and levels of culture. The Negritos, dark-skinned pygmies, came between 25,000 to 30,000 B.C. Their cultural remains are preserved by the Negrito-type Filipinos found in Luzon, Visayas and Mindanao. Their relatively inferior culture did not enable them to overcome the pressures from the second wave of people, the Indonesians A and B who came in 5,000 and 3,500 B.C. They are represented today by the Kalinga, Gaddang, Isneg, Mangyan, Tagbanua, Manobo, Mandaya, Subanon, and Sama. The first group was pushed inland as the second occupied the coastal and downriver settlements. The last wave involved Malay migrations between 500 B.C. and 1,500 A.D. They had a more advanced culture based on metal age technology. They are represented by the Christianized and Islamized Filipinos who pushed the Indonesian groups inland and occupied much of the coastal, lowland and downstream areas.

A second view is postulated by Robert Fox, F. Landa Jocano, Alfredo Evangelista, and Jesus Peralta. Jocano maintains that the Negritos, Indonesians and Malays stand co-equal as ethnic groups without any one being dominant, racially or culturally. The geographic distribution of the ethno-linguistic groups, which shows overlapping of otherwise similar racial strains in both upland and lowland cultures or coastal and inland communities, suggests a random and unstructured advent of different kinds of groups in the archipelago --- Samuel K. Tan, *A History of the Philippines*, published by the Manila Studies Association, Inc. and the Philippine National Historical Society, Inc., pp. 33-34 [1997]; Teodoro A. Agoncillo, *History of the Filipino People*, p. 21 [1990].

45 Tan, *supra*, at 35-36.

46 Onofre D. Corpuz, The Roots of the Filipino Nation, Philippine Centennial (1898-1998) Edition, vol.. p. 13, Aklahi Foundation, Inc. [1989]. It was in 800-1,000 A.D. that the Ifugaos of Northern Luzon Built the rice terraces --- Id. at 37.

common ecology. The generally benign tropical climate and the largely uniform flora and fauna favored similarities, not differences.[47] Life was essentially subsistence but not harsh.[48]

The early Filipinos had a culture that was basically Malayan in structure and form. They had languages that traced their origin to the Austronesian parent-stock and used them not only as a media of daily communication but also as vehicles for the expression of their literary moods. [49] They fashioned concepts and beliefs about the world that they could not see, but which they sensed to be part of their lives.[50] They had their own religion and religious beliefs. They believed in the immortality of the soul and life after death. Their rituals were based on beliefs in a ranking deity whom the called Bathalang Maykapal, and a host of other deities, in the environmental spirits and in soul spirits. The early Filipinos adored the sun, the moon, the animals and birds, for they seemed to consider the objects of Nature as something to be respected. They venerated almost any object that was close to their daily life, indicating the importance of the relationship between man and the object of nature.[51]

The unit of government was the "barangay," a term that derived its meaning from the Malay word "balangay," meaning, a boat, which transported them to these shores.[52] The barangay was basically a family-based community and consisted of thirty to one hundred families. Each barangay was different and ruled by a chieftain called a "dato." It was the chieftain's duty to rule and govern his subjects and promote their welfare and interests. A chieftain had wide powers for he exercised all the functions of government. He was the executive, legislator and judge and was the supreme commander in time of was.[53]

Laws were either customary or written. Customary laws were handed down orally from generation and constituted the bulk of the laws of the barangay. They were preserved in songs and chants and in the memory of the elder persons in the community.[54] The **written laws** were those that the chieftain and his elders promulgated from time to time as the necessity arose. [55] The oldest know written body of laws was the Maragtas Code by Datu Sumakwel at about 1250 A.D. Other old codes are the Muslim Code of Luwaran and the Principal Code of

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47 Id. at 5-6.

48 Id. at 13.

49 Teodoro A. Agoncillo, History of the Filipino People, p. 54 [1990]

50 Corpuz, *supra*, at 5.

51 Corpuz, supra, at 5.

52 Agoncillo, *supra*, at 40.

53 Id. at 40-41.

54 Rafael Iriarte, *History of the Judicial System, the Philippine Indigenous Era Prior to 1565*, unpublished work submitted as entry to the Centennial Essay-Writing contest sponsored by the National Centennial Commission and the Supreme Court in 1997, p. 103, citing Perfecto V. Fernandez, Custom Laws in Pre-Conquest Philippines, UP Law Center, p. 10 [1976].

55 Agoncillo, *supra*, at 41.

Sulu.[56] Whether customary or written, the laws dealt with various subjects, such as inheritance, divorce, usury, loans, partnership, crime and punishment, property rights, family relations and adoption. Whenever disputes arose, these were decided peacefully through a court composed by the chieftain as "judge" and the barangay elders as "jury." Conflicts arising between subjects of different barangays were resolved by arbitration in which a board composed of elders from neutral barangays acted as arbiters.[57]

Baranganic society had a distinguishing feature: the absence of private property of land. The chiefs merely administered the lands in the name of the barangay. The social order was an extension of the family with chiefs embodying the higher unity of the community. Each individual, therefore, participated in the community ownership of the soil and the instruments of production as a member of the barangay. [58] This ancient communalism was practiced in accordance with the concept of mutual sharing of resources so that no individual, regardless of status, was without sustenance. **Ownership of land was non-existent or unimportant and the right of usufruct was what regulated the development of lands.**[59] Marine resources and fishing grounds were likewise free to all. Coastal communities depended for their economic welfare on the kind of fishing sharing concept similar to those in land communities.[60] Recognized leaders, such as the chieftains and elders, by virtue of their positions of importance, enjoyed some economic privileges and benefits. But their rights, related to either land and sea, were subject to their responsibility to protect the communities from danger and to provide them with the leader ship and means of survival.[61]

Sometime in the 13th century, Islam was introduced to the archipelago in Maguindanao. The Sultanate of Sulu was established and claimed jurisdiction over territorial areas represented today by Tawi-tawi, Sulu, Palawan, Basilan and Zamboanga. Four ethnic groups were within this jurisdiction: Sama, Tausug, Yakan and Subanon.[62] The Sultanate of Maguindanao spread out from Cotabato toward Maranao territory, now Lanao del Norte and Lanao del Sur.[63]

The Muslim societies evolved an Asiatic form of feudalism where land was still held in common but was private in use. This is clearly indicated in the Muslim Code of Luwaran. The Code contains a provision on the lease of cultivated lands. It, however, has no provision for the acquisition, transfer, cession or sale of land.[64]

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56 Amelia Alonzo, The History of the Judicial System in the Philippines, Indigenous Era Prior to 1565, unpublished work submitted as entry to the Centennial Essay-Writing Contest sponsored by the National Centennial Commission and the Supreme Court in 1997.

57 Agoncillo, *supra*, at 42.

58 Renato Constantino, *A Past Revisited*, p. 38 [1975].

59 Samuel K. Tan, *A History of the Philippines*, published by the Manila Studies Ass'n., Inc. and the Phil. National Historical Society, Inc., p. 43 [1997].

60 Id.

61 Id. at 43-44.

62 Tan, supra, at 47-48.

63 Id. at 48-49.

64 Cacho v. Government of the P.I., 28 Phil. 616, 625-627 [1914]; see also Ponce, *The Philippine Torrens System*, pp. 11-12 [1964]. In Philippine pre-colonial history, there was only one recorded transaction on the purchase of land. The Maragtas Code tells us of the purchase of Panay Island by ten Bornean datus led by Datu Puti from the Atis under Marikudo in the 13th century. The purchase price for the Island was a gold salakot and a long gold necklace --- Agoncillo, *supra*, at 25.

The societies encountered by **Magellan and Legaspi** therefore were primitive economies where most production was geared to the use of the producers and to the fulfillment of kinship obligations. They were not economies geared to exchange and profit.[65] Moreover, the family basis of barangay membership as well as of leadership and governance worked to splinter the population of the islands into numerous small and separate communities.[66]

When the Spaniards settled permanently in the Philippines in 1565, they found the Filipinos living in barangay settlements scattered along water routes and river banks. One of the first tasks imposed on the missionaries and the encomenderos was to collect all scattered Filipinos together in a **reduccion**.[67] As early as 1551, the Spanish government assumed an unvarying solicitous attitude towards the natives.[68] The Spaniards regarded it a sacred "duty to conscience and humanity to civilize these less fortunate people living in the obscurity of ignorance" and to accord them the "moral and material advantages" of community life and the "protection and vigilance afforded them by the same laws."[69]

The Spanish missionaries were ordered to establish ***pueblos*** where the church and convent would be constructed. All the new Christian converts were required to construct their houses around the church and the unbaptized were invited to do the same.[70] With the ***reduccion***, the Spaniards attempted to "tame" the reluctant Filipinos through Christian indoctrination using the *convento/casa real/plaza* complex as focal point. The reduccion, to the Spaniards, was a "civilizing" device to make the Filipinos law-abiding citizens of the Spanish Crown, and in the long run, to make them ultimately adopt Hispanic culture and civilization.[71]

All lands lost by the old barangays in the process of pueblo organization as well as all lands not assigned to them and the pueblos, were now declared to be crown lands or *realengas*, belonging to the Spanish king. It was from the realengas that land grants were made to non-Filipinos.[72]

The abrogation of the Filipinos' ancestral rights in land and the introduction of the concept of public domain were the most immediate fundamental results of Spanish colonial theory and law.[73] The concept that the Spanish king was the owner of everything of value in the Indies or colonies was imposed on the natives, and the natives were stripped of their ancestral rights to land.[74]

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65 Constantino, *supra*, at 38.

66 Corpuz, supra, at 39.

67 Resettlement --- "bajo el son de la campana" (under the sound of the bell) or "bajo el toque de la campana" (under the peal of the bell).

68 People v. Cayat, 68 Phil. 12, 17 [1939].

69 Id. at 17, citing the Decree of the Governor-General of the Philippines, Jan. 14, 1887.

70 Agoncillo, supra, at 80.

71 Id. at 80.

72 Corpuz, *supra*, at 277-278.

73 Id. at 227.

74 Id.; N.B. But see discussion in *Cariño v. Insular Governments, infra,* where the United States Supreme Court found that the Spanish decrees in the Philippines appeared to recognize that the natives owned some land. Whether in the implementation of these decrees the natives' ancestral rights to land were <u>actually</u> respected was not discussed by the U.S. Supreme Court; see also Note 131, infra.

Increasing their foothold in the Philippines, the Spanish colonialists, civil and religious, classified the Filipinos according to their religious practices and beliefs, and divided them into three types. First were the **Indios**, the Christianized Filipinos, who generally came from the lowland populations. Second, were the **Moros** or the Muslim communities, and the third, were the **infieles** or the **indigenous communities**.[75]

The **Indio** was a product of the advent of Spanish culture. This class was favored by the Spaniards and was allowed certain status although below the Spaniards. The **Moros** and **infieles** were regarded as the lowest classes.[76]

The Moros and infieles resisted Spanish rule and Christianity. The Moros were driven from Manila and the Visayas to Mindanao; **while the infieles, to the hinterlands**. The Spaniards did not pursue them into thedeep interior. The upland societies were naturally outside the immediate concern of Spanish interest, and the cliffs and forests of the hinterlands were difficult and inaccessible, allowing the **infieles**, in effect, relative security.[77] Thus, the infieles, which were peripheral to colonial administration, were not only able to preserve their own culture but also thwarted the Christianization process, separating themselves from the newly evolved Christian community. [78] Their own political, economic and social systems were kept constantly alive and vibrant.

The pro-Christian or pro-Indio attitude of colonialism brought about a generally mutual feeling of suspicion, fear, and hostility between the Christians ont eh one hand and the non-Christians on the other. Colonialism tended to divide and rule an otherwise culturally and historically related populace through a colonial system that exploited both the virtues and vices of the Filipinos. [79]

President McKinley, in his instructions to the Philippine Commission of April 7, 1900, addressed the existence of the infieles:

> **"In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by Congress in permitting the tribes of our <u>North American Indians</u> to maintain their tribal organization and government,** and under which many of those tribes are now living inpeace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal government should, however, be subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs."[80]

Placed in an alternative of either letting the natives alone or guiding them in the path of civilization, the American government chose "to adopt the latter measure as one more in accord with humanity and with the national conscience." [81]

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75 Tan, *supra,* at 49-50.
76 Id. at 67.
77 Id. at 52-53.
78 Id. at 53.
79 Id. at 55.
80 People v. Cayat, 68 Phil. 12, 17 [1939].
81 Memorandum of the Secretary of the Interior, quoted in Rubi v. Provincial Board of Mindoro 39 Phil. 660, 714 [1919]; also cited in People v. Cayat, supra, at 17-18.

The **Americans classified the Filipinos** into two: the **Christian Filipinos** and the **non-Christian** Filipinos. The term "non-Christian" referred not to religious belief; but to a geographical area, and more directly, "to natives of the Philippine Islands of a low grade of civilization, usually living in tribal relationship apart from settled communities."[82]

Like the Spaniards, the Americans pursued a policy of assimilation. In 1903, they passed **Act No. 253 creating the Bureau of Non-Christian Tribes (BNCT)**. Under the Department of the Interior, the BNCT's primary task was to conduct ethnographic research among unhispanized Filipinos, including those in Muslim Mindanao, with a "special view to determining the most practicable means for bringing about their advancement in civilization and prosperity." **The BNCT was modeled after the bureau with American Indians**. The agency took a keen anthropological interest in Philippine cultural minorities and produced a wealth of valuable materials about them. [83]

The 1935 Constitution did not carry any policy on the non-Christian Filipinos. The raging issue then was the conservation of the national patrimony for the Filipinos.

In 1957, the Philippine Congress passed **R.A. No. 1888**, an "Act to effectuate in am ore rapid and complete manner the economic, social, moral and political advancement of the non-Christian Filipinos or national cultural minorities and to render real, complete, and permanent the integration of all said national cultural minorities into the body politic, creating the **Commission on National Integration** charged with said functions." The law called for a **policy of integration** of indigenous peoples into the Philippine mainstream and for this purpose created the **Commission on National Integration** (CNI).[84] The CNI was given, more or less, the same task as the BNCT during the American regime. The **post-independence policy of integration was like the colonial policy of assimilation understood in the context of a guardian-ward relationship.**[85]

The policy of assimilation and integration did not yield the desired result. **Like the Spaniards and Americans, government attempts at integration met with fierce resistance.** Since World War II, a tidal wave of Christian settlers from the lowlands of Luzon and theVisayas swamped the highlands and wide open spaces in Mindanao.[86] **Knowledge by the settlers of the Public Land Acts and the Torrens system resulted in the titling of several ancestral lands in the settlers' names. With government initiative and participation, this titling displaced several indigenous peoples from their lands.** Worse, these peoples were also displaced by projects undertaken by the national government in the name of nation development.[87]

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82 Rubi v. Provincial Board of Mindoro, supra, at 693.

83 Charles MacDonals, *Indigenous Peoples of the Philippines: Between Segregation and Integregation, Indigenous Peoples of Asia,* p. 348, ed. By R.H. Barnes, A. Gray and B. Kingsbury, pub. By Association for Asian Studies [1995]. The BNCT made a Bontok and Subanon ethnography, a history of Sulu genealogy, and a compilation on unhispanized peoples in northern Luzon. --- Owen J. Lynch, Jr., *The Philippine colonial Dichotomy: Attraction and Disenfranchisement*, 63 P. L. J. 139-140 [1988].

84 R.A. No. 1888 of 1957.

85 See People v. Cayat, supra, at 21; See also Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 694 [1919]

86 MacDonald, *Indigenous Peoples of the Philippines, supra,* at 351.

87 The consruction of the Ambuklao and Binga dams in the 1950's resulted in the eviction of hundreds of Ibaloi families --- Cerilo Rico S. Abelardo, Ancestral Domain Rights: Issues, Responses, and Recommendations, Ateneo Law Journal, vol. 38, No. 1, P. 92 [1993].

It was in the **1973 Constitution** that the State adopted the following provision:

> "The State shall consider the customs, traditions, beliefs, and interest of national cultural communities in the formulation and implementation of State policies."[88]

For the first time in Philippine history, the "non-Christian tribes" or the "cultural minorities" were addressed by the highest law of the Republic, and they were referred to as "cultural communities." More importantly this time, their "uncivilized' culture was given some recognition and their "customs, traditions, beliefs and interests" were to be considered by the State in the formulation and implementation of State policies. **President Marcos** abolished the CNI and transferred its functions to the **Presidential Adviser on National Minorities (PANAMIN).** The **PANAMIN** was tasked to integrate the ethnic groups that sought full integration into the larger community, and at the same time "protect the rights of those who wish to preserve their original lifeways beside the larger community."[89] **In short, while still adopting the integration policy, the decree recognized the right of tribal Filipinos to preserve their way to life.** [90]

In 1974, President Marcos promulgated **P.D. No. 410**, otherwise known as the Ancestral Lands Decree. The decree provided for the issuance of land occupancy certificates to members of the national cultural communities who were given up to1984 to register their claims.[91] In 1979, the **Commission on the Settlement of Land Problems** was created under E.O. No. 561 which provided a mechanism for the expeditious resolution of land problems involving small settlers, landowners, and tribal Filipinos.[92]

Despite the promulgation of these laws, from 1974 to the early 1980's, some 100,000 Kalingas and Bontoks of the Cordillera region were displaced by the Chico river dam project of the National Power Corporation (NPC). The Manobos of Bukidnon saw their land bulldozed by the Bukidnon Sugar Industries Company (BUSCO). In Agusan del Sur, the National Development Company was authorized by law in 1979 to take approximately 40,550 hectares of land that later became the NDC-Guthrie plantation in Agusan del Sur. Most of the land was possessed by the Agusan natives.[93] Timber concessions, water projects, plantations, mining, and cattle ranching and other projects of the national government led not only to the eviction of the indigenous peoples from their land but also to the reduction and destruction of their natural environment.[94]

The Aquino government signified a total shift from the policy of integration to one of preservation. Invoking her powers under the **Freedom Constitution**, president Aquino

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88 Section 11, Art. XV, 1973 Constitution.

89 Presidential Decrees Nos. 1017 and 1414.

90 The PANAMIN, however, concentrated funds and resources on image-building, publicity, and impact projects. In Mindanao, the agency resorted to a policy of forced resettlement on reservations, militarization and intimidation --- MacDonald, *Indigenous Peoples of the Philippines, supra*, at 349-350.

91 No occupancy certificates were issued, however, because the government failed to release the decree's implementing rules and regulations --- Abelardo, supra, at 120-121.

92 Id., Note 177.

93 Id., at 93-94.

94 MacDonald, *Indigenous Peoples of the Philippines, supra,* at 351.

created the **Office of Muslim Affairs, Office for the Northern Cultural Communities and the Office for Southern Cultural Communities all under the Office of the President.** [95]

The **1987 Constitution carries at least six (6) provisions which insure the right of tribal Filipinos to preserve their way of life.[96] This Constitution goes further than the 1973 Constitution by expressly guaranteeing the rights of tribal Filipinos to their ancestral domains and ancestral lands. By recognizing their right to their ancestral lands and domains, the State has effectively upheld their right to live in a culture distinctly their own.**

2. Their Concept of Land

Indigenous peoples share distinctive traits that set them apart from the Filipino mainstream. They are non-Christians. They live in less accessible, marginal, mostly upland areas. They have a system of self-government not dependent upon the laws of the central administration of the Republic of the Philippines. They follow ways of life and customs that are perceived as different from those of the rest of the population.[97] The kind of response the indigenous peoples chose to deal with colonial threat worked well to their advantage by making it difficult for Western concepts and religion to erode their customs and traditions. The "infieles societies" which had become peripheral to colonial administration, represented, from a cultural perspective, a much older base of archipelagic culture. The political systems were still structured on the patriarchal and kinship oriented arrangement of power and authority. The economic activities were governed by the concepts of an ancient communalism and mutual help. The social structure which emphasized division of labor and distinction of functions, not status, was maintained. The cultural styles and forms of life portraying the varieties of social courtesies and ecological adjustments were kept constantly vibrant.[98]

Land is the central element of the indigenous peoples' existence. There is no traditional concept of permanent, individual, land ownership. Among the Igorots, ownership of land more accurately applies to the tribal right to use the land or to territorial control. The people are the secondary owners or stewards of the land and that if a member of the tribe ceases to work, he loses his claim of ownership, and the land reverts to the beings of the spirit world who are its true and primary owners. Under the concept of "trusteeship," the right to possess the land does not only belong to the present generation but the future ones as well.[99]

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95 E.O. Nos. 122-A, 122-B and 122-C. The preamble of E.O. NO. 122-B states: "Believing that the new government is committed to formulate more vigorous policies, plans, programs, and projects for tribal Filipinos, otherwise known as Indigenous Cultural Communities, taking into consideration their communal aspirations, customs, traditions, beliefs, and interests, in order to promote and preserve their rich cultural heritage and insure their participation in the country's development for national unity; xxx"

96 Article II, sec. 22; Article VI, sec. 5, par. 2; Article XII, sec. 5; Article XIII, sec. 6; Article XIV, sec. 17; and Article XVI, sec. 12.

97 MacDonals, *Indigenous Peoples of the Philippines, supra,* at 345.

98 Samuel K. Tan, *A History of the Philippines*, p. 54 [1997].

99 Cordillera Studies Program, Land Use and Ownership and Public Policy in the Cordillera, 29-30 [n.d.]; *also cited in* Dante B. Gatmaytan, *Ancestral Domain Recognition in the Philippines: Trends in Jurisprudence and Legislation,* 5 Phil. Nat. Res. L.J. No. 1, pp. 47-48 [1992].

Customary law on land rests on the traditional belief that no one owns the land except the gods and spirits, and that those who work the land are its mere stewards.[100] **Customary law has a strong preference for communal ownership,** which could either be ownership by a group of individuals or families who are related by blood or by marriage,[101] or ownership by residents of the same locality who may not be related by blood or marriage. The system of communal ownership under customary laws draws it meaning form the subsistence and highly collectivized mode of economic production. The Kalingas, for instance, who are engaged in team occupation like hunting, foraging for forest products, and swidden farming found it natural that forest areas, swidden farms, orchards, pasture and burial grounds should be communally-owned.[102] For the Kalingas, everybody has a common right to a common economic base. Thus, as a rule, rights and obligations to the land are shared in common.

Although highly bent on communal ownership, customary law on land also sanctions individual ownership. The residential lots and terrace rice farms are governed by a **limited system of individual ownership.** It is limited because while the individual owner has the right to use and dispose of the property, he does not possess all the rights of an exclusive and full owner as defined under the Civil Code.[103] Under Kalinga customary law, the alienation of individually-owned land is strongly discouraged except in marriage and succession and except to meet sudden financial needs due to sickness, death in the family, or loss of crops.[104] Moreover, and to be alienated should first be offered to a clan-member before any village-member can purchase it, and in no case may land be sold to a non-member of the *ili*.[105]

Land titles do not exist in the indigenous peoples' economic and social system. The concept of individual land ownership under the civil law is alien to them. Inherently colonial in origin, our national land laws and governmental policies frown upon indigenous claims to ancestral lands. Communal ownership is looked upon as inferior, if not inexistent.[106]

III. THE IPRA IS A NOVEL PIECE OF LEGISLATION

A. The Legislative History of the IPRA

It was to address the centuries-old neglect of the Philippine indigenous peoples that the Tenth Congress of the Philippines, by their joint efforts, passed and approved **R.A. No. 8371, the Indigenous Peoples Rights Act (IPRA) of 1997.** The law was a consolidation of two Bills --- Senate Bill No. 1728 and House Bill No. 9125.

Principally sponsored by **Senator Juan M. Flavier,[107] Senate Bill No. 1728** was a consolidation of four proposed measures referred to the Committees on Cultural Communities,

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100 Abelardo, Ancestral Domain Rights, supra, at 98-99, citing Ponciano L Bennagan, *Indigenous Attitudes Toward Land and Natural Resources of Tribal Filipinos*, 31 National Council of Churches in the Philippines Newsletter, Oct.-Dec. 1991, at 4-9.

101 Id. At 99, citing June Prill-Brett, Bontok Land Tenure (UP Law library, mimeographed).

102 Ma. Lourdes Aranal-Sereno and Roan Libarios, *The Interface of National Land Law Kalinga Law*, 58 P.L.J. 420, 440-441 [1983].

103 *Ibid.*

104 *Ibid.*

105 *Ibid.*

106 Ma. Lourdes Aranal-Sereno and Roan Libarios, *The Interface*, *supra*, at 420.

107 Senate Bill No. 1728 was co-sponsored by Senator Macapagal-Arroyo and co-authored by Senators Alvarez, Magsaysay, Revilla, Mercado, Enrile, Honasan, Tatad, Maceda, Shahani, Osmena and Romulo.

Environment and Natural Resources, Ways and Means, as well as Finance. It adopted almost en toto the comprehensive version of Senate Bill Nos.1476 and 1486 which was a result of **six regional consultations and one national consultation with indigenous peoples nationwide.**[108] At the Second Regular Session of the Tenth Congress, Senator Flavier, in his sponsorship speech, gave a background on the situation of indigenous peoples in the Philippines, to wit:

> "The Indigenous Cultural Communities, including the Bangsa Moro, have long suffered from the dominance and neglect of government controlled by the majority. Massive migration of their Christian brothers to their homeland shrunk their territory and many of the tribal Filipinos were pushed to the hinterlands. Resisting the intrusion, dispossessed of their ancestral land and with massive exploitation of their natural resources by the elite among the migrant population, they became marginalized. And the government has been an injdispensable party to this insidious conspiracy against the Indigenous Cultural Communities (ICCs). It organized and supported the resettlement of people to their ancestral land, which was massive during the Commonwealth and early years of the Philippines Republic. Pursuant to the Regalian Doctrine first introduced to our system by Spain through the Royal Decree of 13 February 1894 or the Maura Law, the government passed laws to legitimize the wholesale landgrabbing and provide for easy titling or grant of lands to migrant homesteaders within the traditional areas of the ICCs."[109]

Senator Flavier further declared:

> "The IPs are the offsprings and heirs of the peoples who have first inhabited and cared for the land long before any central government was established. Their ancestors had territories over which they ruled themselves and related with other tribes. These territories- the land- include people, their dwelling, the mountains, the water, the air, plants, forest and the animals. This is their environment in their totality. Their existence as indigenous peoples is manifested in their own lives through political, economic, socio-cultural and spiritual practices. The IPs culture is the living and irrefutable proof to this.
>
> Their survival depends on securing or acquiring land rights; asserting their rights to it; and depending on it. Otherwise, IPs shall cease to exist as distinct peoples."[110]

To recognize the rights of the indigenous peoples effectively, Senator Flavier proposed a bill based on **two postulates**: (1) the concept of native title; and (2) the principle of ***parens patriae.***

According to Senator Flavier, "[w]hile our legal tradition subscribes to the Regalian Doctrine reinstated in Section 2, Article XII of the 1987 Constitution," our "decisional laws" and jurisprudence passed by the State have "made exception to the doctrine." This exception was **first laid down** in the case of ***Cariño v. Insular Government*** where:

The Eighth Congress, through Senators Rasul, Estrada and Romulo filed a bill to operationalize the mandate of the 1897 Constitution on indigenous peoples. The bill was reported out, sponsored and interpellated but never enacted into law. In the Ninth Congress, the bill filed by Senators Rasul and Macapagal-Arroyo was never sponsored and deliberated upon in the floor.

108 Sponsorship Speech of Senator Flavier, Legislative History of SBN 1728, Tenth Congress, Second Regular Session, Senate, Oct. 16, pp. 15-16.

109 *Id.* at 12.

110 *Id*. at 17-18.

> "x x x the court has recognized long occupancy of land by an indigenous member of the cultural communities as one of private ownership, which, in legal concept, is termed "native title." This ruling has not been overturned. In fact, it was affirmed in subsequent cases."[111]

Following ***Cariño***, the State passed Act No. 926, Act No. 2874, C.A. No. 141, P.D. 705, P.D. 410, P.D. 1529, R.A. 6734 (the Organic Act for the Autonomous Region of Muslim Mindanao). These laws, explicitly or implicitly, and liberally or restrictively, recognized "native title" or "private right" and the existence of ancestral lands and domains. Despite the passage of these laws, however, Senator Flavier continued:

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

Senate bill No. 1728 seeks to genuinely recognize the IPs right to own and possess their ancestral land. The bill was prepared also under the principle of ***parens patriae*** inherent in the supreme power of the State deeply embedded in Philippine legal tradition. This principle mandates that persons suffering from serious disadvantage or handicap, which places them in a position of actual inequality in their relation or transaction with others, are entitled to the protection of the State.

Senate Bill No. 1728 was passed on Third Reading by twenty-one (21) Senators voting in favor and none against, with no abstention.[112]

House Bill No. 9125 was sponsored by **Rep. Zapata,** Chairman of the Committee on Cultural Communities. It was originally authored and subsequently presented and defended on the floor by **Rep. Gregorio Andolana** of North Cotabato.[113]

Rep. Andolana's sponsorship speech reads as follows:

> "This Representation, as early as in the 8th Congress, filed a bill of similar implications that would promote, recognize the rights of indigenous cultural communities within the framework of national unity and development.
>
> "Apart from this, Mr. Speaker, is our obligation, the government's obligation to assure and ascertain that these rights shall be well preserved and the cultural traditions as well as the indigenous laws that remained long before this Republic was established shall be preserved and promoted. There is a need, Mr. Speaker, to look into these matters seriously and early approval of the substitute bill shall bring into reality the aspirations,

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111 *Id*. at 13.

112 Journal of the Tenth Congress of the Philippines, Senate, Session No. 5, Aug. 5-6, 1997, pp. 86-87.

113 Co-authors of the bill were Reps. Ermita, Teves, Plaza, Calalay, Recto, Fua, Luciano, Abad, Cosalan, Aumentado, de la Cruz, Bautista, Singson, Damasing, Romualdo, Montilla, Germino, Verceles --- Proceedings of Sept. 4, 1997, pp. 00107-00108.

the hope and the dreams of more than 12 million Filipinos that they be considered in the mainstream of the Philippine society as we fashion for the year 2000."[114]

Rep. Andolana stressed that H.B. No. 9125 is based on the policy of preservation as mandated in the Constitution. He also emphasized that the rights of IPs to their land was enunciated in ***Cariño v. Insular Government*** which recognized the fact that they had vested rights prior to the establishment of the Spanish and American regimes.[115]

After exhaustive interpellation, House Bill No. 9125, and its corresponding amendments, was approved on Second Reading with no objections.

IV. THE PROVISIONS OF THE IPRA DO NOT CONTRAVENE THE CONSTITUTION

A. Ancestral Domains and Ancestral Lands are the Private Property of Indigenous Peoples and Do Not Constitute Part of the Land of the Public Domain.

The IPRA grants to ICCs/IPs a distinct kind of ownership over ancestral domains and ancestral lands. Ancestral lands are not the same as ancestral domains. These are defined in Section 3 [a] and [b] of the Indigenous Peoples Act, *viz*:

> "**Sec. 3 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

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114 Sponsorship speech of Rep. Andolana of House Bill No. 9125, March 20, 1997.

115 Interpellation of Aug. 20, 1997, 6:16 p.p., p. 00061.

government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots."

Ancestral domains are all areas belonging to ICCs/IPs 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 until the present, except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or nay other voluntary dealings with government and/or private individuals or corporations. **Ancestral domains comprise lands, inland waters, coastal areas, and natural resources therein and includes ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable or not, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources.** They also include 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.[116]

Ancestral lands are lands held by the ICCs/IPs under the same conditions as ancestral domains except that these are limited to lands and that these lands are not merely occupied and possessed but are also utilized by the ICCs/IPs under claims of individual or traditional group ownership. These lands include but are not limited to residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.[117]

The procedures for claiming ancestral domains and lands are similar to the procedures embodied in Department Administrative Order (DAO) No. 2, series of 1993, signed by then Secretary of the Department of Environment and Natural Resources (DENR) Angel Alcala.[118] DAO No. 2 allowed the delineation of ancestral domains by special task forces and ensured the issuance of Certificates of Ancestral Land Claims (CALC's) and Certificates of Ancestral Domain Claims (CADC's) to IPs.

The identification and delineation of these ancestral domains and lands is a power conferred by the IPRA on the National Commission on Indigenous Peoples (NICP).[119] The guiding principle in identification and delineation is self-delineation.[120] This means that the ICCs/IPs have a decisive role in determining the boundaries of their domains and in all the activities pertinent thereto.[121]

The procedure for the delineation and recognition of **ancestral domains** is set forth in Sections 51 and 52 of the IPRA. The identification, delineation and certification of **ancestral lands** is in Section 53 of said law.

Upon due to application and compliance with the procedure provided under the law and upon finding by the NCIP that the application is meritorious, the NICP shall issue a Certificate of Ancestral Domain Title (CADT) in the name of the community concerned.[122] The allocation of

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116 Section 3 [a], IPRA.
117 Section 3 [b], IPRA.
118 Guide to R.A. 8371, p. 14.
119 Section 44 [e], IPRA.
120 Section 51, IPRA.
121 Guide to R.A. 8371, p. 15.
122 A CADT refers to a title formally recognizing the right of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with the IPRA --- Rule II [c], Rules & Regulations Implementing the IPRA, NICP Admin. Order No. 1.

lands within the ancestral domain to any individual or indigenous corporate (family or clan) claimants is left to the ICCs/IPs concerned to decide in accordance with customs and traditions.[123] With respect to ancestral **lands outside the ancestral domain,** the NCIP issues a Certificate of Ancestral Land Title (CALT).[124]

CADT's and CALT's issued the IPRA shall be registered by the NICP before the Register of Deeds in the place where the property is situated.[125]

(1) Right to Ancestral Domains and Ancestral Lands: How Acquired

The rights of the ICCs/IPs to their ancestral domains and ancestral lands may be acquired in two modes: **(1) by native title over both ancestral lands and domains;** or **(2) by torrens title under the Public Land Act and the Land Registration Act with respect to ancestral lands only.**

(2) The Concept of Native Title

Native title is defined as:

> "Sec. 3 [*l*]. *Native title* --- refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of **private** ownership by ICCs/IPs, have never been public lands and are thus **indisputably presumed** to have been held that way since before the Spanish Conquest."[126]

Native title refers to ICCs/IPs' preconquest rights to lands and domains held under a claim of private ownership as far back as memory reaches. These lands are deemed never to have been public lands and are indisputable presumed to have been held that way since before the Spanish Conquest. The rights of ICCs/IPs to their ancestral **domains** (which also include ancestral **lands**) by virtue of native title shall be recognized and respected.[127] Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognizes the title of the concerned ICCs/IPs over the territories identified and delineated.[128]

Like a torrens title, a CADT is evidence of private ownership of land by native title. **Native title**, however, is a right of private ownership peculiarly granted to ICCs/IPs over their ancestral lands and domains. The IPRA categorically declares ancestral lands and domains held by native title as **never to have been** public land. Domains and lands held under native title are, therefore, indisputably presumed to have never been public lands and are private.

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123 Section 53 [a], IPRA.

124 A CALT refers to a title formally recognizing the rights of the ICCs/IPs over their ancestral lands --- Rule II [d], Implementing Rules, NCIP A.O. No. 1.

125 Section 52 [k], IPRA.

126 Section 3 [l], IPRA.

127 Section 11, IPRA.

128 *Ibid.*

(a) Cariño v. Insular Government[129]

The concept of native title in the IPRA was taken from the 1909 case of ***Cariño v. Insular Government.***[130] ***Cariño*** firmly established a concept of private land title that existed irrespective of any royal grant from the State.

In 1903, Don Mateo Cariño, an Ibaloi, sought to register with the land registration court 146 hectares of land in Baguio Municipality, Benguet Province. He claimed that this land had been possessed and occupied by his ancestors since time immemorial; that his grandfather built fences around the property for the holding of cattle and that his father cultivated some parts of the land. Cariño inherited the land in accordance with Igorot custom. He tried to have the land adjusted under the Spanish land laws, but no document issued from the Spanish Crown.[131] In 1901, Carino obtained a possessory title to the land under the Spanish Mortgage Law.[132] The North American colonial government, however, ignored his possessory title and built a public road on the land prompting him to seek a Torrens title to his property in the land registration court. While his petition was pending, a U.S. military reservation[133] was proclaimed over his land and, shortly thereafter, a military detachment was detailed on the property with orders to keep cattle and trespassers, including Cariño, off the land.[134]

In 1904, the land registration court granted Cariño's application for absolute ownership to the land. Both the Government of the Philippine Islands and the U.S. Government appealed to the C.F.I. of Benguet which reversed the land registration court and dismissed Cariño's application. The Philippine Supreme Court[135] affirmed the C.F.I. by applying the ***Valenton*** ruling. Cariño took the case to the U.S. Supreme Court.[136] On one hand, the Philippine government invoked the Regalian doctrine and contended that Cariño failed to comply with the provisions of the Royal Decree of June 25, 1880, which required registration of land claims within a limited period of time. Cariño, on the other, asserted that he was the absolute owner of the land *jure gentium,* and that the land never formed part of the public domain.

In a unanimous decision written by Justice Oliver Wendell Holmes, the U.S. Supreme Court held:

> "It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those in the

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129 41 Phil. 935 (1909), 212 U.S. 449, 53 L.Ed. 594.

130 Sponsorship speech of Senator Juan Flavier, Leg. History of SBN 1728, Tenth Congress, Second Regular Session, Oct. 16, 1996, p. 13.

131 It was the practice of the Spanish colonial government not to issue titles to Igorots --- Owen J. Lynch, Jr. *Invisible Peoples and a Hidden Agenda: The Origins of contemporary Philippine Land Laws (1990-1913),* 63 P.L.J. 249 [1988] citing the testimony of Benguet Provincial Governor William F. Pack, Records at 47, Cariño.

132 Maura Law or the Royal Decree of Feb. 13, 1894.

133 Later named Camp John Hay.

134 Lynch, *Invisible Peoples, supra,* at 288-289.

135 7 Phil. 132 [1906].

136 In 1901, Cariño had entered into a promissory agreement with a U.S. merchant in Manila. The note obliged Cariño to sell the land at issue "as soon as he obtains form the Government of the United States, or its representatives in the Philippines, real and definite title." See Lynch, Invisible Peoples, supra, at 290, citing Government's Exhibit G, Records, at 137-138, Cariño.

same zone of civilization with themselves. It is true, also, that in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide."[137]

The U.S. Supreme court noted that it need not accept Spanish doctrines. The choice was with the new colonizer. Ultimately, the matter had not be decided under U.S. law.

The ***Cariño*** decision largely rested on the North American constitutionalist's concept of "due process" as well as the pronounced policy "to do justice to the natives."[138] It was based on the strong mandate extended to the Islands via the Philippine Bill of 1902 that "No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." The court declared:

> "The acquisition of the Philippines was not like the settlement of the white race in the United States. Whatever consideration may have been shown to the North American Indians, the dominant purpose of the whites in America was to occupy land. It is obvious that, however stated, the reason for our taking over the Philippines was different. No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, chapter 1369, section 12 (32 Statutes at Large, 691), all the property and rights acquired there by the United States are to be administered 'for the benefit of the inhabitants thereof.' It is reasonable to suppose that the attitude thus assumed by the United States with regard to what was unquestionably its own is also its attitude in deciding what it will claim for its own. The same statute made a bill of rights, embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that 'no life, liberty, or property without due process of law, or deny to nay person therein the equal protection of the laws.' 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, --- of the profoundest factors in human though, --- regarded as their own."[139]

The Court went further:

> "[E]very 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 individual 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

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137 Cariño v. Insular Government, supra, at 939.

138 *Ibid.*

139 *Id*. at 940.

like this, if there is doubt or ambiguity in the Spanish law, we ought to give the application the benefit of the doubt."[140]

The court thus laid down the **presumption** of a certain title held (1) as far back as testimony or memory went, and (2) under a claim of private ownership. Land held by this title is presumed to "never have been public land."

Against this presumption, the U.S. Supreme Court analyzed the Spanish decrees upheld in the 1904 decision of ***Valenton v. Murciano***. The U.S. Supreme Court found **no** proof that the Spanish decrees did **not** honor native title. On the contrary, the decrees discussed in **Valenton** appeared to recognize that the natives owned some land, irrespective of any royal grant. The Regalian doctrine declared in the preamble of the *Recopilacion* was all "theory and discourse" and it was observed that titles were admitted to exist beyond the powers of the Crown, viz:

> "**If the applicant's case is to be tried by the law of Spain, we do not discover such clear proof that it was bad by that law as to satisfy us they he does not own the land. To begin with, the older decrees and laws cited by the counsel for the plaintiff in error seem to indicate pretty clearly that the natives were recognized as owning some lands, irrespective of any royal grant.** In other words, Spain did not assume to convert all the native inhabitants of the Philippines into trespassers or even into tenants at will. For instance, Book 4, title 12, Law 14 of the *Recopilacion de Leyes de las Indias*, cited for a contrary conclusion in Valenton v. Murciano, 3 Philippine 537, while it commands viceroys and others, when it seems proper, to call for the exhibition of grants, directs them to conform those who hold by good grants or *justa prescripcion.* **It is tru that it begins by the characteristic assertion of feudal overlordship and the origin of all titles in the King or his predecessors. That was theory and discourse. The fact was that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books."** (Emphasis supplied).[141]

The court further stated that the Spanish "adjustment" proceedings never held sway over unconquered territories. The wording of the Spanish laws were not framed in a manner as to convey to the natives that failure to register what to them has always been their own would mean loss of such land. The registration requirement was "not to confer title, but simply to establish it;" it was "not calculated to convey to the mind of an Igorot chief the notion that ancient family possessions were in danger, if he had read every word of it."

By recognizing this kind of title, the court clearly **repudiated** the doctrine of ***Valenton***. It was frank enough, however, to admit the possibility that the application might have been deprived of his land under Spanish law because of the inherent ambituity of the decrees and concomitantly, the various interpretations which may be given them. **But precisely because of the ambiguity and of the strong "due process mandate" of the Constitution, the court validated this kind of title.[142]** This title was sufficient, even without government administrative action, and entitled the holder to a Torrens certificate. Justice Holmes explained:

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140 *Id*. at 941.

141 Id. at 941-942.

142 Aranal-Sereno and Libarios, *The Interface Between Kalinga Land Law*, *supra* at 428 --- This article was one of those circulated among the Constitutional Commissioners in the formulation of Sec. 5, Article XII of the 1987 Constitution (4 Record of the Constitutional Commission 33).

"It will be perceived that the rights of the applicant under the Spanish law present a problem not without difficulties for courts of a legal tradition. We have deemed it proper on that account to notice the possible effect of the change of sovereignty and the act of Congress establishing the fundamental principles now to be observed. Upon a consideration of the whole case we are of the opinion that law and justice require that the applicant should be granted what he seeks, and should not be deprived of what, by the practice and belief of those among whom he lived, was his property, through a refined interpretation of an almost forgotten law of Spain."[143]

Thus, the court ruled in favor of Cariño and ordered the registration of the 148 hectares in Baguio Municipality in his name.[144]

Examining **Cariño** closer, the U.S. Supreme Court did not categorically refer to the title it upheld as "native title." It simply said:

"**The Province of Benguet was inhabited by a tribe that the Solicitor-General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish Laws, and which would have made his title beyond question good.** Whatever may have been the technical position of Spain it does not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of **native titles** through 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."[145]

This is the only instance when Justice Holmes used the term "native title" in the entire length of the ***Cariño*** decision. It is observed that the widespread use of the term "native title" may be traced to Professor Owen James Lynch, Jr., a Visiting Professor at the University of the Philippines College of Law form the Yale University Law School. In 1982, Prof. Lynch published an article in the **Philippine Law Journal** entitled ***Native Title, Private Right and Tribal Land Law.*** [146] This article was made after Professor Lynch visited over thirty tibal communities throughout the country and studied the origin and development of Philippine land laws.[147] He discussed ***Cariño*** extensively and used the term "native title" to refer to Cariño's title as discussed and upheld by the U.S. Supreme Court in said case.

(b) Indian Title

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143 Id. at 944.

144 Certificate of Title No. 2 covering the 148 hectare of Baguio Municipality was issued not in the name of Cariño who died on June 6, 1908, but to his lawyers John Hausserman and Charles Cohn and his attorney-in-fact Metcalf Clarke. Hausserman, Cohn and Clarke sold the land to the U.S. Government in a Deed of Quitclaim --- Richel B. Langit, *Igorot Descendants Claim Rights to Camp John Hay*, Manila Times, p.1, Jan. 12, 1998.

145 Id. at 939.

146 57 P.L.J. 267, 293-296f [1982].

147 From 1987 to 1988, Prof. Lynch allowed the P.L.J. to publish parts of his doctoral dissertation at the Yale Law School entitled "Invisible Peoples: A History of Philippine Land Law." Please see *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 P.L.J. 279 [1987]; *Land Rights, Land Laws and Land Usurpation: The Spanish Era (1568-1898)*, 63 P.L.J. 82 [1988]; *The Colonial Dichotomy: Attraction and Disenfranchisement*, 63 P.L.J. 112; *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws (1990-1913)*, 63 P.L.J. 249.

In a footnote in the same article, Professor Lynch stated that the concept of "native title" as defined by Justice Holmes in Cariño "is conceptually similar to "aboriginal title" of the American Indians."[148] This is not surprising, according to Prof. Lynch, considering that during the American regime, government policy towards ICCs/IPs was consistently made in reference to native Americans.[149] This was clearly demonstrated in the case of ***Rubi v. Provincial Board of Mindoro.***[150]

In ***Rubi,*** the Provincial Board of Mindoro adopted a Resolution authorizing the provincial governor to remove the Mangyans from their domains and place them in a permanent reservation in Sitio Tigbao, Lake Naujan. Any Mangyan who refused to comply was to be imprisoned. Rubi and some Mangyans, including one who was imprisoned for trying to escape from the reservation, filed for habeas corpus claiming deprivation of liberty under the Board Resolution. This Court denied the petition on the ground of police power. It upheld government policy promoting the idea that a permanent settlement was the only successful method for educating the Mangyans, introducing civilized customs, improving their health and morals, and protecting the public forests in which they roamed.[151] Speaking through Justice Malcolm, the court said:

> "Reference was made in the President's instructions to the Commission to the policy adopted by the United States for the Indian Tribes. The methods followed by the Government of the Philippine Islands in its dealings with the so-called non-Christian people is said, on argument, to be practically identical with teat followed by the United States Government in its dealings with the Indian tribes. Valuable lessons, it is insisted, can be derived by an investigation of the American-Indian policy.
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> From the beginning of the United States, and even before, the Indians have been treated as "in a state of pupilage." The recognized relation between the Government of the United States and the Indians may be described as that of guardian and ward. It is for the Congress to determine when and how the guardianship shall be terminated. The Indians are always subject to the plenary authority of the United States.[152]
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> x x x.

As to the second point, the facts in the Standing Bear case and the Rubi case are not exactly identical. But even admitting similarity of facts, yet it is known to all that Indian reservations do exist in the United States, that Indians have been taken from different parts of the country and placed on these reservations, without any previous consultation as to their own wishes, and that, when once so located, they have been made to remain on the reservation for their own good and for the general good of the country. If any lesson can be drawn from the Indian policy is for the legislative and executive branches of the government and that when once so decided upon, the courts should not interfere to upset a carefully planned governmental

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148 "Native title" is a common law recognition of pre-existing aboriginal land interests in Australia --- Maureen Tehan, *Customary Title, Heritage Protection, and Property Rights in Australia: Emerging Patterns of Land Use in the Post-Mabo Era*, 7 Pacific Rim Law & Policy Journal, No. 3, p. 765 [June 1998].

149 Lynch, *Native Titles*, *supra*, Note 164, p. 293.

150 39 Phil. 660 [1919].

151 Id. at 712-13.

152 Id. at 694.

system. Perhaps, just as many forceful reasons exist for the segregation of the Manguines in Mindoro as existed for the segregation of the different Indian tribes in the United States.[153]

Rubi applied the concept of Indian grants or reservations in the Philippines. An Indian reservation is a part of the public domain set apart by proper authority for the use and occupation of a tribe or tribes of Indians.[154] It may be set apart by an act of Congress, by treaty, or by executive order, but it cannot be established by custom and prescription.[155]

Indian title to land, however, is not limited to land grants or reservations. It also covers the "aboriginal right of possession or occupancy."[156] The aboriginal right of possession depends on the actual occupancy of the lands in question by the tribe or nation as their ancestral home, in the sense that such lands constitute definable territory occupied exclusively by the particular tribe or nation.[157] It is a right which exists apart from any treaty, statute, or other governmental action, although in numerous instances treaties have been negotiated with Indian tribes, recognizing their aboriginal possession and delimiting their occupancy rights or settling and adjusting their boundaries.[158]

American jurisprudence recognizes the Indians' or native Americans' rights to land they have held and occupied before the "discovery" of the Americas by the Europeans. The earliest definitive statement by the U.S. Supreme Court on the nature of aboriginal title was made in 1823 in *Johnson & Braham's Lessee v. M'Intosh.*[159]

In ***Johnson***, the plaintiffs claimed the land in question under two (2) grants made by the chiefs of two (2) Indian tribes. The U.S. Supreme Court refused to recognize this conveyance, the plaintiffs being private persons. The only conveyance that was recognized was that made by the Indians to the government of the European discoverer. Speaking for the court, Chief Justice Marshall pointed out that the potentates of the old world believed that they had made ample compensation to the inhabitants of the new world by bestowing civilization and Christianity upon them; but in addition, said the court, they found it necessary, in order to avoid conflicting settlements and consequent war, to establish the principle that **discovery gives title to the**

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153 Id. at 700.

154 42 C.J.S., *Indians*, Sec. 29 [1944 ed.].

155 There are 3 kinds of Indian reservations: (a) those created by treaties prior to 1871; (b) those created by acts of Congress since 1871; and (c) those made by Executive Orders where the President has set apart public lands for the use of the Indians in order to keep them within a certain territory --- 42 C.J.S., *Indian*, Sec. 29 citing Sioux Tribe of Indians v. U.S. 94 Ct. Cl. 150, 170, certiorari granted 62 S. Ct. 631, 315 U. S. 790, 86 L. Ed. 1194, affirmed 62 S. Ct. 1095, 316 U.S. 317, 86 L. Ed. 1501. **It is observed that the first two kinds may include lands possessed by aboriginal title. The last kind covers Indian reservations proper.**

Until 1871, Indian tribes were recognized by the United States as possessing the attributes of nations to the extent that treaties were made with them. In that year, however,

Cont…

Congress, by statute, declared its intention thereafter to make the Indian tribes amenable directly to the power and authority of the United States by the immediate exercise of its legislative power over them, instead of by treaty. Since then, Indian affairs have been regulated by acts of Congress and by contract with the Indian tribes practically amounting to treaties --- 41 Am Jur 2d, *Indians*, Sec. 55 [1995 ed.].

156 42 C.J.S., *Indians*, Sec. 28 [1944 ed.].

157 Ibid.; see also U.S. v. Santa Fe Pac. R. Co., Ariz., 62 S. Ct. 248, 314 U.S. 339, 86 L. Ed. 260 [1941].

158 Ibid.

159 8 Wheat 543, 5 L. Ed. 681 [1823].

government by whose subjects, or by whose authority, the discovery was made, against all other European governments, which title might be consummated by possession.[160] The exclusion of all other Europeans gave to the nation making the discovery the sole right of acquiring the soil from the natives and establishing settlements upon it. As regards the natives, the court further stated that:

> "Those relations which were to exist between the discoverer and the natives were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.
>
> In the establishment of these relations, the rights of the **original inhabitants** were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, imapaired. **They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion;** but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the fundamental principle that discovery gave exclusive title to those who made it.
>
> **While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy."**[161]

Thus, the discoverer of new territory was deemed to have obtained the ***exclusive right*** to acquire Indian land and extinguish Indian titles. Only to the discoverer --- whether to England, France, Spain or Holland --- did this right belong and not to any other nation or private person. The mere acquisition of the right nonetheless did not extinguish Indian claims to land. Rather, until the discoverer, by purchase or conquest, exercised its right, the concerned Indians were recognized as the "rightful occupants of the soil, with a legal as well as just claim to retain possession of it." Grants made by the discoverer to her subjects of lands occupied by the Indians were held to convey a title to the grantees, subject only to the Indian right of occupancy. Once the discoverer purchased the land from the Indians or conquered them, it was only then that the discoverer gained an absolute title unrestricted by Indian rights.

The court concluded, in essence, that a grant of Indian lands by Indians could not convey a title paramount to the title of the United States itself to other parties, saying:

> "It has never been contended that the Indian title amounted to nothing. **Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to the exclusive power of acquiring that right"**[162]
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> It has been said that the history of America, from its discovery to the present day, proves

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160 Id. at 680.

161 Id. at 689.

162 Id. at 696; see also 41ALR Fed 425, *Annotation*: Proof and Extinguishment of Aboriginal Title to Indian Lands, Sec. 2 [a] [1979].

the universal recognition of this principle.[163]

The ***Johnson*** doctrine was a compromise. It protected Indian rights and their native lands without to invalidate conveyance made by the government to many U.S. citizens.[164]

Johnson was reiterated in the case of ***Worcester v. Georgia.***[165] In this case, the State of Georgia enacted a law requiring all white persons residing within the Cherokee nation to obtain a license or permit from the Governor of Georgia; and any violation of the law was deemed a high misdemeanor. The plaintiffs, who were white missionaries, did not obtain said license and were thus charged with a violation of the Act.

The U.S. Supreme Court declared the Act as unconstitutional for interfering with the treaties established between the United States and the Cherokee nation as well as the Acts of Congress regulating intercourse with them. It characterized the relationship between the United States government and the Indians as:

> "The Indian nations were, from their situation, necessarily dependent on some foreign potentate for the supply of their essential wants, and for their protection from lawless and injurious intrusions into their country. That power was naturally termed their protector. They had been arranged under the protection of Great Britain; but the extinguishments of the British power in their neighborhood, and the establishment of that of the United States in its place, led naturally to the declaration, on the part of the Cherokees, that they were under the protection of the United States, and of no other power. They assumed the relation with the United States which had before subsisted with Great Britain.
>
> This relation was that of a nation claiming and receiving the protection of one more powerful, not that of individuals abandoning their national character, and submitting as subjects to the laws of a master."[166]

It was the policy of the U.S. government to treat the Indians as nations with distinct territorial boundaries and recognize their right of occupancy over all the lands within their domains. Thus:

> "From the commencement of our government Congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider **the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.**
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> x x x.

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163 Buttz v. Northern Pac.R. Co., Dak., 7S. Ct. 100, 119 U.S. 55, 30 L. Ed. 330, 335 [1886].

164 Lynch, *Native Title, supra,*at 293-294; Cohen, *Original Indian Title*, 32 Minn. L.R. 48-49 [1947].

165 6 Pet 515, 8 L.Ed. 483 [1832].

166 Id. at 499.

> **"The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil from time immemorial,** with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." x x x.[167]
>
> The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States."[168]

The discovery of the American continent gave title to the government of the discoverer as against all other European governments. Designated as the naked fee,[169] this title was to be consummated by possession and was subject to the Indian title of occupancy. The discoverer acknowledged the Indians' legal and just claim to retain possession of the land, the Indians being the original inhabitants of the land. The discoverer nonetheless asserted the exclusive right to acquire the Indians' land --- either by purchase, "defensive" conquest, or cession --- and in so doing, extinguish the Indian title. Only the discoverer could extinguish Indian title because it alone asserted ultimate dominion in itself. Thus, while the different nations of Europe respected the rights of the natives as occupants, they all asserted the ultimate dominion and title to be in themselves.[170]

As early as the 19th century, it became accepted doctrine that although fee title to the lands occupied by the Indians when the colonists arrived became vested in the sovereign --- first the discovering European nation and later the original 13 States and the United States --- a right of occupancy in the Indian tribes was nevertheless recognized. The Federal Government continued the policy of respecting the Indian right of occupancy, sometimes called Indian title, which it accorded the protection of complete ownership.[171] But this aboriginal Indian interest simply constitutes "permission" from the whites to occupy the land, and means mere

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167 Id. at 500.

168 Id. at 501.

169 The title of the government to Indian lands, the naked fee, is a sovereign title, the government having no landlord from whom it holds the fee --- Shoshone Tribe of Indians of Wind River Reservation in Wyoming v. U.S., 85 Ct. Cl. 331, certiorari granted U.S. v. Shoshone Tribe of Indians, 58 S. Ct. 609, 303 U.S. 629, 82 L. Ed. 1090, affirmed 58 S. Ct. 794, 304 U.S. 111, 82 L. Ed. 1213, 1218-1219 [1938].

170 Buttz v. Northern pac. R. Co., Dak., at 30 L. Ed. 330, 335; Beecher v. Wetherby, Wis., 95 U.S. 517, 24 L. Ed. 440, 441 [1877]; see also 42 C.J.S., Indians, Sec. 28 [1944 ed.].

171 Annotation, *Proof and Extinguishment of Aboriginal Title to Indian Lands,* 41 ALR Fed 425, Sec. 2 [b] [1979] --- hereinafter cited as *Aboriginal Title to Indian Lands.*

possession not specifically recognized as ownership by Congress.[172] it is clear that this right of occupancy based upon aboriginal possession is not a property right.[173] **Thus, aboriginal title is not the same as legal title.** Aboriginal title rests on actual, exclusive and continuous use and occupancy for a long time.[175] It entails that land owned by Indian title must be used within the tribe, subject to its laws and customs, and cannot be sold to another sovereign government nor to any citizen.[176] Such title as Indians have to possess and occupy land is in the tribe, and not in the individual Indian; the right of individual Indians to share in the tribal property usually depends upon tribal membership, the property of the tribe generally being held in communal ownership.[177]

As a rule, Indian lands are not included in the term "public lands," which is ordinarily used to designate such lands as are subject to sale or other disposal under general laws. [178] Indian land which has been abandoned is deemed to fall into the public domain.[179] On the other hand, an Indian reservation is a part of the public domain set apart for the use and occupation of a tribe of Indians.[180] Once set apart by proper authority, the reservation ceases to be public land, and until the Indian title is extinguished, no one but Congress can initiate any preferential right on, or restrict the nation's power to dispose of, them.[181]

The American judiciary struggled for more than 200 years with the ancestral land claims of indigenous Americans.[182] And two things are clear. **First,** aboriginal title is recognized. **Second,** indigenous property systems are also recognized. From a legal point of

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172 *Ibid*.; see also Tee Hit Ton Indians v. U.S., 348 U.S. 272, 99 L. De. 314, 320, 75 s. Ct. 313 [1955], reh den 348 U.S. 965, 99 L. Ed. 753, 75 S. Ct. 521.

173 Ibid.; Tee Hit Ton Indians v. U.S., at 99 L. Ed. 320.

175 From compensation under the Indian Claims Commission Act, the proof of aboriginal title rests on actual, exclusive and continuous use and occupancy for a long time prior to the loss of the property. (The Indian Claims Commission Act awards compensation to Indians whose aboriginal titles were extinguished by the government through military conquest, creation of a reservation, forced confinement of Indians and removal of Indians from certain portions of the land and the designation of Indian land into forest preserve, grazing district, etc.) --- *Aboriginal title to Indian Lands, supra*, at Secs. 2 [a], 3 [a], pp. 431, 433, 437.

176 *Aboriginal Title to Indian Lands, supra*, at Sec. 2 [b], p 435.

177 41 Am Jr 2d, *Indians*, Sec. 59 [1995 ed.].

178 An allotment of Indian land contains restrictions on alienation of the land. These restrictions extend to a devise of the land by will --- *Missouri, K. & T. R. Co. v. U.S.*, 235 U.S. 37, 59 L. Ed. 116, 35 S. Ct. 6 [1914]; A railroad land grant that falls within Indian land is null and void --- *Northern* P. R. Co. v. U.S., 227 U.S. 355, 57 L. Ed. 544, 33 S. Ct. 368 [1913]; Portions of Indian land necessary for a railroad right of way were, by the terms of the treaty, declared "public land," implying that land beyond the right of way was private --- *Kindred v. Union* P. R. Co., 225 U.S. 582, 56 L. Ed. 1216, 32 S. Ct. 780 [1912]; see also 41 Am Jur 2d, Indians, Sec. 58 [1995 ed.].

179 *Aboriginal Title to Indian Lands, supra*, at Sec. 2[a], p. 433.

180 42 C.J.S. Indians, Sec. 29 [1944 ed.].

181 *Ibid.*

182 North American Indians have made much progress in establishing a relationship with the national government and developing their own laws. Some have their own government-recognized constitutions. Usually the recognition of Indian tribes depends on whether the tribe has a

view, certain benefits can be drawn from a comparison of Philippine IPs to native Americans.[183] Despite the similarities between native title and aboriginal title, however, there are at present some misgivings on whether jurisprudence on American Indians may be cited authoritatively in the Philippines. The U.S. recognizes the possessory rights of the Indians over their land; title to the land, however, is deemed to have passed to the U.S. as successor of the discoverer. The aboriginal title of ownership is not specifically recognized as ownership by action authorized by Congress.[184] The protection of aboriginal title merely guards against encroachment by persons other than the Federal Government.[185] Although there are criticisms against the refusal to recognize the native Americans' ownership of these lands,[186] the power of the State to extinguish these titles has remained firmly entrenched.[187]

Under the IPRA, the Philippine State is not barred form asserting sovereignty over the ancestral domains and ancestral lands.[188] The IPRA, however, is still in its infancy and any similarities between its application in the Philippines vis-à-vis American Jurisprudence on aboriginal title will depend on the peculiar facts of each case.

(c) Why the Cariño doctrine is unique

In the Philippines, the concept of native title first upheld in ***Cariño*** and enshrined in the IPRA grants ownership, albeit in limited form, of the land to the ICCs/IPs. Native title presumes that the land is private and was never public. ***Cariño* is the only case that specifically and caterogorically recognizes native title. The long line of case citing *Cariño* did not touch on native title and the private character of ancestral domains and lands. *Cariño* was cited by the succeeding cases to support the concept of acquisitive prescription under the Public**

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reservation. North American tribes have reached such an advanced stage that the main issues today evolve around complex jurisdictional and litigation matters. Tribes have acquired the status of sovereign nations within another nation, possessing the right to change and grow --- Jose Paulo Kastrup, *The Internationalization of Indigenous Rights from the Environmental and Human Rights Perspective,* Texas International Law Journal, vol. 32: 97, 104 [1997].

183 Lynch, N*ative Title*, supra, at 293.

184 Dante Gatmaytan, *Ancestral Domain Recognition in the Philippines: Trends in Jurisprudence and Legislation*, 5 Phil. Nat. Res. L.J. No. 1, pp. 43, 40 [Aug. 1992]; see also Tee Hit Ton Indians v. U.S., supra, at 320.

185 *Ibid*.

186 D. Gatmaytan, supra, citing Churchill, *The Earth is Our Mother: Struggles for American Indian Land and Liberation in the Contemporary United States*, The State of Native America: Genocide, Colonization and Resistance 139 (M. Jaimes 1992); and Indian Law Resource Center, *United States Denial of Indian Property Rights: A Study in Lawless Power and Racial Discrimination*, Rethinking Indian Law 15 (National Lawyers Guild, Committee on Native American Struggles 1982).

187 Id., Note 28, stating that some earlier decisions of the U.S. Supreme Court have held that Congress is subject to the strictures of the Constitution in dealing with Indians. When Indian property is taken for non-Indian use, the U.S. government is liable for payment of compensation, and cont.
uncompensated taking may be enjoined. F. Cohen, *Handbook of Federal Indian Law* 217 [1982], citing Shoshone Tribe v. U.S. 299 U.S. 476 [1937]; Choate v. Trapp, 224 U.S. 665 [1912]; and Lane v. Pueblo of Santa Rosa, 249 U.S. 110 [1919].

188 See Discussion, infra, Part IV (c) (2).

Land Act which is a different matter altogether. Under the Public Land Act, land sought to be registered must be **public agricultural land.** When the conditions specified in Section 48 [b] of the Public Land Act are complied with, the possessor of the land is deemed to have acquired, by operation of law, a right to a grant of the land.[189] The land ceases to be part of the public domain,[190] *ipso jure*[191], and is converted to private property by the mere lapse or completion of the prescribed statutory period.

It was only in the case of ***Oh Cho v. Director of Lands***[192] that the court declared that the rule that all lands that were not acquired from the government, either by purchase or grant, belong to the public domain has an exception. This exception would be any land that should have been in the possession of an occupant and of his predecessors-in-interest since time immemorial. It is this kind of possession that would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest.[193] ***Oh Cho*** however, was decided under the provisions of the Public Land Act and ***Cariño*** was cited to support the applicant's claim of acquisitive prescription under the said Act.

All these years, ***Cariño*** had quoted out of context simply to justify long, continuous, open adverse possession in the concept of owner of public agricultural land. It is this long, continuous, open and adverse possession in the concept of owner of thirty years both for ordinary citizens[194] and members of the national cultural minorities[195]

The private character of ancestral lands and domains as laid down in the IPRA is further **strengthened** by the option given to individual ICCs/IPs over their individually-owned ancestral **lands. For purpose of registration under the Public Land Act and theLand Registration Act, the IPRA expressly converts ancestral land into public agricultural land which may be disposed of by the State. The necessary implication is that *ancestral land is private.* It, however*, has to be first converted to public agricultural land simply for registration purposes.*** To wit:

> "*Sec. 12. Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496* --- Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than theirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the

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189 Susi v. Razon, 48 Phil. 424 [1925]; Herico v. Dar, 95 SCRA 437 [1980].

190 *Ibid.*

191 Director of Lands v. Intermediate Appellate Court, 146 SCRA 509 [1986]; Director of Lands v. Buyco, 216 SCRA 78 [1992]; Republic v. Court of Appeals and Lapina, 235 SCRA 567 [1994].

192 75 Phil. 890 [1946].

193 Id. at 892.

194 Sec. 48 [b], C.A. 141.

195 Sec. 48 [c], C.A. 141, as amended. This provision was added in 1964 by R.A. 3872.

provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eithteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this section shall be exercised within twenty (20) years from the approval of this Act.[196]

ICCs/IPs are given the option to secure a torrens certificate of title over their individually-owned ancestral lands. This option is limited to ancestral **lands** only, not domains, and such lands must be individually, not communally, owned.

Ancestral lands that are owned by individual members of ICCs/IPs who, by themselves or throught heir predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial[197] or for a period of not less than 30 years, which claims are uncontested by the members of the same ICCs/IPs, may be registered under C.A. 141, otherwise known as the Public Land Act, or Act 496, the Land Registration Act. For purposes of registration, the individually-owned ancestral lands are classified as alienable and disposable agricultural lands of the public domain, provided, they are agricultural in character and are actually used for agricultural, residential, pasture and tree farming purposes. Tehse lands shall be classified as public agricultural lands regardless of whether they have a slope of 18% or more.

The classification of ancestral land as public agricultural land is in compliance with the requirements of the Public Land Act and the Land Registration Act. C.A. 141, the Public Land Act, deals specifically with lands of the public domain.[198] Its provisions apply to those lands "declared open to disposition or concession "x x x" which have not been reserved for public or quasi-public purposes, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law x x x or which having been reserved or appropriated, have ceased to be so."[199] Act 496, the Lnad Registration Act, allows registration only of private lands and public agricultural lands. **Since ancestral domains and lands are private, if the ICC/IP wants to avail of the benefits of C.A. 141 and Act 496, the IPRA itself converts his ancestral land, regardless of whether the land has a slope of eighteen per cent (18%) or over,[200] from private to public agricultural land for proper disposition.**

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196 Section 12, IPRA.

197 "Time immemorial" refers "to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions." (Sec. 3 [p], IPRA.

198 Section 2, C.A. 141.

199 Section 8, C.A. 141.

200 The Classification of ancestral lands 18% in slope or over as alienable in the IPRA is an exception to Section 15, P.D. 705, the Revised Forestry Code.

The option to register land under the Public Land Act and the Land Registration Act ahs nonetheless a limited period. This option must be exercised within twenty (20) years from October 29, 1997, the date of approval of the IPRA.

Thus, ancestral lands and ancestral domains are not part of the lands of the public domain. They are private and belong to the ICCs/IPs. Section 3 of Article XII on National Economy and Patrimony of the 1987 Constitution classifies lands of the public domain into four categories: (a) agricultural, (b) forest or timber, (c) mineral lands, and (d) national parks. **Section 5** of the **same Article XII** mentions ancestral lands and ancestral domains but it does not classify them under any of the said four categories. **To classify them as public lands under any one of the four classes will render the entire IPRA law a nullity.** The spirit of the IPRA lies in the distinct concept of ancestral domains and ancestral lands. Land and space are of vital convern in terms of sheer survival of the ICCs/IPs.[201]

The 1987 Constitution mandates the State to "protect the rights of indigenous cultural communities to their ancestral lands" and that "Congress provide for the applicability of customary laws x x x in determining the ownership and extent of ancestral domain."[202] It is the recognition of the ICCs/IPs distinct rights of ownership over their ancestral domains and lands that breathes life into this constitutional mandate.

B. <u>The right of ownership and possession by the ICCs/IPs of their ancestral domains is a limited form of ownership and does not include the right to alienate the same.</u>

Registration under the Public Land Act and Land Registration Act recognizes the concept of ownership under the **civil law.** This ownership is based on adverse possession for a specified period, and harkens to Section 44 of the Public Land Act on administrative legalization (free patent) of imperfect or incomplete titles and Section 48 (b) and (c) of the same Act on the judicial confirmation of imperfect or incomplete titles. Thus:

> "*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, 1926 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 eintitled, 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.
>
> **<u>A member of the national cultural minorities</u> 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 sercured or disposable under the provision of the Public Land Law.[203]**

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201 Charles MacDonald, *Indigenous Peoples of the Philippines: Between Segregation and Integration*, Indigenous Peoples of Asia, supra, at pp. 345, 350.

202 Section 5, Article XII, 1987 Constitution.

x x x.

"*Sec. 48*. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefore, under the Land Registration Act, to wit:

(a) [perfection of Spanish titles] x x x.

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this Chapter.

(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."**[204]

Registration under the foregoing provisions presumes that the land was originally public agricultural land but because of adverse possession since July 4, 1955 (free patent) or at least thirty years (judicial confirmation), the land has become private. Open, adverse, public and continuous possession is sufficient, provided, the possessor makes proper application therefore. The possession has to be confirmed judicially or administratively after which a torrens title is issued.

ATorrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the **civil law**. The Civil Code of the Philippines defines ownership in Articles 427, 428 and 429. This concept is based on Roman Law which the Spaniards introduced to the Philippines through the Civil Code of 1889. Ownership, under Roman Law, may be exercised over things or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing includes the right to receive from the thing what it produces,[205] the right to consume the thing by its use,[206] the right to alienate, encumber, transorm or even destroy the thing owned, [207] the right to exclude

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203 Words in bold were amendments introduced by R.A. 3872 in 1964.

204 Words in bold were amendments introduced by R.A. 3872 on June 18, 1964. On January 25, 1977, however, Sec. 48 [b] and 48 [c] were further amended by P.D. 1073 stating that these provisions on cultural minorities apply **only to alienable and disposable lands of the public domain** --- Please see Republic v. CA and Paran, 201 SCRA 1, 10-11 [1991].

205 *Jus utendi, jus fruendi*.

206 *Jus abutendi.*

from the possession of the thing owned by any other person to whom the owner has not transmitted such thing.[208]

1. The Indigenous Concept of Ownership and Customary Law.

Ownership of ancestral domains by native title does not entitle the ICC/IP to a torrens title but to a Certificate of Ancestral Title (CADT). The CADT formally recognizes the **indigenous** concept of ownership of the ICCs/IPS over their ancestral domain. Thus:

> "*Sec. 5. Indigenous concept of ownership*. --- Indigenous concept of ownership sustains the view that ancestral domains 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 ICCs/IPs private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights."

The right of ownership and possession of the ICCs/IPs to their ancestral domains is held under the indigenous concept of ownership. This concept maintains the view that ancestral domains are the ICCs/IPs private but community property. It is private simply because it is not part of the public domain. But its private character ends there. The ancestral domain its owned in common by the ICCs/IPs and not by one particular person. The IPRA itself provides that areas within the ancestral domains, whether delineated or not, are presumed to be communally held.[209] **These communal rights, however, are not exactly the same as co-ownership rights under the Civil code.[210]** Co-ownership gives any co-owner the right to demand partition of the property held in common. The Civil Code expressly provides that "[n]o co-owner shall be obliged to remain in the co-ownership." Each co-owner may demand at any time the partition of the thing in common, insofar as his share is concerned.[211] To allow such a right over ancestral domains may be destructive not only of customary law of the community but of the very community itself.[212]

Communal rights over land are not the same as corporate rights over real property, much less corporate condominium rights. A corporation can exist only for a maximum of fifty (50) years subject to an extension of another firty years in any single instance.[213] Every

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207 *Jus disponendi*.

208 *Jus vindicandi*. Please see Tolentino, Civil Code, vol. II, pp. 45-46 [1992]; see also Tolentino, vol. I, pp. 12-14.

209 Sec. 55, IPRA provides:

"*Sec. 55. Communal rights* --- Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: *Provided*, That communal rights under this Act shall **not** be construed as co-ownership as provided in Republic Act NO. 386, otherwise known as the New Civil Code."

210 *Ibid.*

211 Article 494, Civil Code.

212 Antonio M. La Vina, *Arguments for Communal Title, Part II,* 2 Phil. Nat. Res. L.J. 23 [Dec. 1989].

stockholder has the right to disassociate himself from the corporation.[214] Moreover, the corporation itself may be dissolved voluntarily or involuntarily.[215]

Communal rights to the land are held not only by the present possessors of theland but extends to all generations of the ICCs/IPs, past, present and future, to the domain. This is the reason why the ancestral domain must be dept within the ICCs/IPs themselves. The domain cannot be transferred, sold or conveyed to other persons. It belongs to the ICCs/IPs as a community.

Ancestral lands are also held under the indigenous concept of ownership. The lands are communal. These lands, however, may be transferred subject to the following limitations: (a) only to the members of the same ICCs/IPs; (b) in accord with customary laws and traditions; and (c) subject to the right of redemption of the ICCs/IPs for a period of 15 years if the land was transferred to a non-member of the ICCs/IPs.

Following the constitutional mandate that "customary law govern property rights or relations in determining the ownership and extent of ancestral domains,"[216] **the IPRA, by legislative fiat, introduces a new concept of ownership. This is a concept that has long existed under customary law.[217]**

Custom, from which customary law is derived, is also recognized under the Civil Code as a source of law.[218] Some articles of the Civil Code expressly provide that custom should be applied in cases where no codal provision is applicable.[219] In other words, in the

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213 Section 11, Corporation Code.

214 Sections 60-72, Corporation Code.

215 Section 117, Corporation Code. Please see also La Vina, *Arguments for Communal Title, Part II, supra,* at 23.

216 Section 5, par. 2, Article XII, 1987 Constitution.

217 Customary law is recognized by the Local Government Code of 1991 in solving disputes among members of the indigenous communities, viz:

"*Sec. 412 (c) Conciliation among members of indigenous cultural communities.* --- The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities."

218 Law writes custom into contract --- Hongkong & Shanghai Bank v. Peters, 16 Phil. 284 [1910].

The Civil Code provides:

"Art. 11. Customs which are contrary to law, public order or public policy shall not be countenanced."

"Art. 12. A custom must be proved as a fact, according to the rules of evidence."

219 Article 78 on marriages between Mohammedans or pagans who live in the non-Christian provinces --- this is now Art. 33 of the Family Code; Art. 118, now Art. 74 of the Family Code on property relations between spouses; Art. 577 on the usufructuary of woodland; Art. 657 on easement of right of way for passage of livestock; Art 678, 1315, 1522, 1564 and 1577. Please see Aquino, Civil Code, vol. 1, p. 25.

absence of any applicable provision in the Civil Code, custom, when duly proven, can define rights and liabilities.[220]

Customary law is a **primary**, not secondary, source of rights under the IPRA and uniquely applies to ICCs/IPs. **Its recognition does not depend on the absence of a specific provision in the civil law.** The indigenous concept of ownership under customary law is specifically acknowledged and recognized, and coexists with the civil law concept and the laws on land titling and land registration.[221]

To be sure, **the indigenous concept of ownership exists even without a paper title.** The CADT is merely a "formal recognition" of native title. This is clear from Section 11 of the IPRA, to wit:

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

The moral import of ancestral domain, native land or being native is "belongingness" to the land, being people of the land--- by sheer force of having sprung from the land since time beyond recall, and the faithful nurture of the land by the sweat of one's brow. This is fidelity of usufructuary relation to the land--- the possession of stewardship through perduring, intimate tillage, and the mutuality of blessings between man and land; from man, care for land; from the land, sustenance for man.[222]

C. Sections 7 (a), 7 (b) and 57 of the IPRA Do Not Violate the Regalian Doctrine Enshrined in Section 2, Article XII of the 1987 Constitution.

1. The Rights of ICCs/IPs Over Their Ancestral Domains and Lands

The IPRA grants the ICCs/IPs several rights over their ancestral domains and ancestral lands. Section 7 provides for the rights over ancestral **domains:**

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

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220 Castle Bros. V. Gutierrez Hermanos, 11 Phil. 629 [1908]; In Re: Firm Name of Ozaeta Romulo, 92 SCRA 1 [1979] Yao Kee v. Sy-Gonzales, 167 SCRA 736 [1988]; Please see Aquino, Civil Code, vol. 1, p. 26 for a list of other cases.

221 This situation is analogous to the Muslim Code or the code of Muslim Personal Laws (P.D. 1083) which took effect on February 4, 1977 despite the effectivity of the Civil Code and the Family Code. P.D. 1083 governs persons, family relations and succession among Muslims, the adjudication and settlement of disputes, the organization of the Shari'a courts, etc.

222 Mariflor P. Pagusara, *The Kalinga Ili: Cultural-Ecological Reflections on Indigenous Theora and Praxis of Man-Nature Relationship,* Dakami Ya Nan Dagami, p. 36, Papers and Proceedings of the 1st Cordillera Multi-Sectoral Land Congress, 11-14 March 1983, Cordillera Consultative Committee [1984].

a) *Right of Ownership.* --- The right to claim **ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred place, traditional hunting and fishing grounds, and all improvements made by them** at any time within the domains;

b) *Right to Develop Lands and Natural Resources.*--- **Subject to Section 56 hereof, the right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws;** the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these right;"

c) *Right to Stay in the Territories.*--- The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. x x x;

d) *Right in Case of Displacement.*--- In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: x x x;

e) *Right to Regulate the Entry of Migrants.*--- Right to regulate the entry of migrant settlers and organizations into their domains;

f) *Right to Safe and Clean Air and Water.*--- For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;

g) *Right to Claim Parts of Reservations.*--- The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service;

h) *Right to Resolve Conflict.*--- Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary."

Section 8 provides for the rights over ancestral **lands**:

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

a) Right to transfer land/property.--- Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

b) Right to Redemption.--- In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer."

Section 7 (a) defines the ICCs/IPs the **right of ownership** over their ancestral **domains** which covers (a) lands, (b) bodies of water traditionally and actually occupied by the ICCs/IPs, (c) sacred places, (d) traditional hunting and fishing grounds, and (e) all improvements made by them at any time within the domains. The **right of ownership includes** the following rights: (1) the right to develop lands and natural resources; (b) the right to stay in the territories; (c) the right to resettlement in case of displacement; (d) the right to regulate the entry of migrants; (e) the right to safe and clean air and water; (f) the right to claim parts of the ancestral domains as reservations; and (g) the right to resolve conflict in accordance with customary laws.

Section 8 governs their right to ancestral **lands.** Unlike ownership over the ancestral domains, Section 8 gives the ICCs/IPs also the right to transfer the land or property rights to members of the same ICCs/IPs or non-members thereof. This is in deeping with the option given to ICCs/IPs to secure a torrens title over the ancestral lands, but not to domains.

2. The Right of ICCs/IPs to Develop Lands and Natural Resources Within the Ancestral Domains Does Not Deprive the State of Ownership Over the Natural Resources and Control and Supervision in their Development and Exploitation

The Regalian doctrine on the ownership, management and utilization of natural resources is declared in **Section 2, Article XII or the 1987 Constitution,** viz:

"*Sec. 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, 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 State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow **small-scale utilization of natural resources by Filipino citizens,** as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for **large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils** according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the state shall promote the development and use of loval scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution."[223]

All lands of the public domain and all natural resources --- 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.** The Constitution provides that in the exploration, development and utilization of these natural resources, the State exercises full control and supervision, and may undertake the seam in **Four (4) modes:**

1. The State may directly undertake such activities; or
2. The State may enter into co-production, joint venture or productions haring agreements with Filipino citizens or qualified corporations;
3. Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens;
4. For the large-scale exploration, development and utilization of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations involving technical or financial assistance.

As owner of the natural resources, the State is accorded primary power and responsibility in the exploration, development and utilization of these natural resources. The State may directly undertake the exploitation and development by itself, or, it may allow participation by the private sector through co-production,[224] joint venture,[225] or production-sharing agreements.[226] These agreements may be for a period of 25 years, renewable for another 25 years. The State, through Congress, may allow the small-scale utilization of natural resources

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223 Section 2, Article XII.

224 A "co-production agreement" is defined as one wherein the government provides input ot the mining operation other than the mineral resource --- Section 26 (b), R.A. 7942, the Philippine Mining Act of 1995.

225 A "joint venture agreement" is one where a joint-venture company is organized by the government and the contractor with both parties having equity shares, and the government entitle to a share in the gross output --- Section 26 (c), R.A. 7942.

226 A mineral "production-sharing agreement" is one where the government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor provides the financing, technology, management and personnel necessary for the implementation of the agreement --- Section 26 (a), R.A. 7942.

by Filipino citizens. For the large-scale exploration of these resources, specifically minerals, petroleum and other mineral oils, the State, through the President, may enter into technical and financial assistance agreements with foreign-owned corporations.

Under the Philippine Mining Act of 1995, (R.A. 7942) and the People's Small-Scale Mining Act of 1991 (R.A. 7076) the three types of agreements, i.e., co-production, joint venture and production-sharing, may apply to both large-scale[227] and small-scale mining.[228] "Small-scale mining" refers to "mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment."[229]

Examining the IPRA, there is nothing in the law that grants to the ICCs/IPs ownership over the natural resources within their ancestral domains. The right of ICCs/IPs in their ancestral includes **ownership, but this "ownership" is expressly defined and limited in Section 7 (a)** as:

> "Sec. 7. a) *Right of ownership* --- The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;"

The ICCs/IPs are given the right to claim ownership over "lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." It will be noted that this enumeration does not mention bodies of water not occupied by the ICCs/IPs, minerals, coal, wildlife, flora and fauna in the traditional hunting grounds, fish in the traditional fishing grounds, forest or timber in the sacred places, etc. and all other natural resources found within the ancestral domains. **Indeed, the right of ownership under Section 7 (a) does not cover "waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forest, or timber, wildlife, flora and fauna and all other natural resources" enumerated in Section 2, Article XII of the 1987 Constitution as belonging to the State.**

The non-inclusion of ownership by the ICCs/IPs over the natural resources in Section 7 (a) complies with the Regalian doctrine.

(a) Section 1. Part II, Rule III of the Implementing Rules Goes Beyond the Parameters of Sec. 7 (a) of the IPRA And is Unconstitutional.

The Rules Implementing the IPRA[230] in Section 1, Part II, Rule III reads:

> "*Section 1. Rights of Ownership.* ICCs/IPs have rights of ownership over lands, waters, and natural resources and all improvements made by them at

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227 Section 26, R.A. 7942.

228 Section 3 [d], People's Small-Scale Mining Act of 1991 (R.A. 7076) provides:
"Sec. 3 [d] 'Small-scale mining contract' refers to co-production, joint venture or mineral production sharing agreement between the State and a small-scale mining contractor for the small-scale utilization of a plot of mineral land."

229 Section 3 [b], R.A. 7076.

230 NCIP Administrative Order No. 1, Series of 1998.

> any time within the ancestral domains/lands. These rights shall include, but not limited to, the right over the fruits, the right to possess, the right to use, right to consume, right to exclude and right to recover ownership, and the rights or interests over land and natural resources. The right to recover shall be particularly applied to lands lost through fraud or any form or vitiated consent or transferred for an unconscionable price."

Section 1 of the Implementing Rules gives the ICCs/IPs rights of ownership over "lands, water and natural resources." The term "natural resources" is not one of those expressly mentioned in Section 7 (a) of the law. Our Constitution and jurisprudence clearly declare that the right to claim ownership over land does not necessarily include the right to claim ownership over the natural resources found on or under the land.[231] **The IPRA itself makes a distinction between land and natural resources. Section 7 (a) speaks of the right of ownership only over the land within the ancestral domain. It is Section 7 (b) and 57 of the law that speak of natural resources, and these provisions, as shall be discussed later, do not give the ICCs/IPs the right of ownership over these resources.**

The constitutionality of Section 1, Part II, Rule III of the Implementing Rules was not specifically challenged by petitioners. Petitioners actually assail the constitutionality of the Implementing Rules in general.[232] Nevertheless, to avoid any confusion in the implementation of the law, it is necessary to declare that the inclusion of "natural resources" in Section 1, Part II, Rule III of the Implementing Rules goes beyond the parameters of Section 7 (b) of the law and is **contrary to Section 2, Article XII of the 1987 Constitution.**

(b) <u>The Small-Scale Utilization of Natural Resources In Sec. 7 (b) of the IPRA is Allowed Under Paragraph 3, Section 2 of Article XII of the Constitution.</u>

Ownership over <u>natural resources</u> remain with the State and the IPRA in Section 7 (b) merely grants the ICCs/IPs the right to mange them, *viz*:

> " <u>Sec. 7 (b) Right to Develop Lands and Natural Resources</u> --- Subject to Section 56 hereof, <u>right to develop, control and use lands and territories</u> traditionally occupied, owned, or used; <u>to manage and conserve natural resources</u> within the territories and uphold the responsibilities for future generations; <u>to benefit and share the profits from allocation and utilization</u> of the natural resources found therein; the <u>right to negotiate</u> the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; <u>the right to an informed and intelligent participation</u> in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of

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231 In *Republic v. Court of Appeals*, 160 SCRA 228, 239 [1988], Cruz, J., ponente, it was declared that if a person is the owner of a piece of agricultural land on which minerals are discovered, his ownership of such land does not give him the right to extract or utilize the said minerals without the permission of the State to which such minerals belong --- also cited in H. de Leon, Phil. Constitutional Law, Principles and Cases, vol. 2, pp. 800-801 [1999].

232 See Ground I, Grounds to Issue Writ of Prohibition, Petition, p. 14.

the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;"

The **right to develop lands and natural resources** under Section 7 (b) of the IPRA enumerates the following rights:

a) the right to develop, control and use lands and territories traditionally occupied;
b) the right to manage and conserve natural resources within the territories and uphold the responsibilities for future generations;
c) the right to benefit and share the profits from the allocation and utilization of the natural resources found therein;
d) the right to negotiate the terms and conditions for the exploration of natural resources for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws;
e) the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project;
f) the right to effective measure by the government to prevent any interference with, alienation and encroachment upon these rights.[233]

Ownership over the natural resources in the ancestral domains remains with the State and the ICCs/IPs are merely granted the right to "manage and conserve" them for future generations, "benefit and share" the profits from their allocation and utilization, and "negotiate the terms and conditions for their exploration" for the purpose of "ensuring ecological and environmental protection and conservation measures." It must be noted that the right to negotiate the terms and conditions over the natural resources covers only their exploration which must be for the purpose of ensuring ecological and environmental protection of, and conservation measures in the ancestral domain. It does not extent to the exploitation and development of natural resources.

Simply stated, the ICCs/IPs' rights over the natural resources take the form of management or stewardship. For the ICCs/IPs may use these resources and share in the profis of their utilization or negotiate the term of their exploration. At the same time, however, the ICCs/IPs must ensure that the natural resources within their ancestral domains are conserved for future generations and that the "utilization" of these resources must not harm the ecology and environment pursuant to national and customary laws.[234]

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233 Section 7 (b) is subject to Section 56 of the same law which provides:

"Sec. 56. *Existing Property Rights Regimes.* --- Property rights within the ancestral domains already existing and/or vested upon effectiveity of this Act, shall be recognized and respected."

cont…

The law took effect 15 days upon publication in the O.G. or in any 2 newspapers of general circulation (Sec. 84, IPRA). The IPRA was published in the Chronicle and Malaya on Nov. 7, 1997.

234 Section 9 of the IPRA also gives the ICCs/IPs the ff. responsibilities over their ancestral domains:

(a) *Maintain Ecological Balance* --- To preserve, restore, and maintain a balanced

The limited rights of "management and use" in Section 7 (b) must be taken to contemplate small-scale utilization of natural resources as distinguished from large-scale. Small-scale utilization of natural resources is expressly allowed in the third paragraph of Section 2, Article XII of the Constitution "in recognition of the plight of forest dwellers, gold panners, marginal fishermen and others similarly situated who exploit our natural resources for their **daily sustenance and survival."**[235] **Section 7 (b) also expressly mandates the ICCs/IPs to manage and conserve these resources and ensure environmental and ecological protection within the domains, within duties, by their very nature, necessarily reject utilization in a large-scale.**

(c) <u>The Large-Scale Utilization of Natural Resources In Section 57 of the IPRA Is Allowed Under Paragraphs 1 and 4, Section 2, Article XII of the 1987 Constitution.</u>

Section 57 of the IPRA provides:

> "*Sec. 57. Natural Resources within Ancestral Domains.* --- The ICCs/IPs shall have **<u>priority rights</u>** 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, ahs agreed to allow such operation: *Provided finally,* That the NICP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract."

Section 57 speaks of the **"harvesting, extraction, development or exploitation** of natural resources within ancestral domains" and "gives the ICCs/IPs **'priority rights'** therein." The Terms **"harvesting, extraction, development or exploitation" of any natural resources within the ancestral domains obviously refer to large-scale utilization.** It is utilization not merely for subsistence but for commercial or other extensive use that require technology other than manual labor.[236] The law recognizes the probability of requiring a non-member of the

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ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

(b) *Restore Denuded Areas* --- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable renumeration;

(c) *Observe Laws* --- To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation."

<u>Section 58</u> of the same law also mandates that ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies.

235 Hector S. de Leon, *Textbook on the New Philippine Constitution* pp. 473-474 [1987] citing the 1986 UP Law Constitution Project, The National Economy and Patrimony, p. 11.

ICCs/IPs to participate in the development and utilization of the natural resources and thereby allows such participation for a period of not more than 25 years, renewable for another 25 years. This may be done on condition that a formal written agreement be entered into by the non-members and members of the ICCs/IPs.

Section 57 of the IPRA does not give the ICCs/IPs the right to "manage and conserve" the natural resources. Instead, the law only grants the ICCs/IPs "priority rights" in the development or exploitation thereof. Priority means giving preference. Having priority rights over the natural resources does not necessarily mean ownership rights. **The grant of priority rights implies that there is a superior entity that owns these resources and this entry has the power to grant preferential rights over the resources to whosoever itself chooses.**

Section 57 is not a repudiation of the Regalian doctrine. Rather, it is an affirmation of the said doctrine that all natural resources found within the ancestral domains belong to the State. It incorporates by implication the Regalian doctrine, hence, requires that the provision be read in the light of Section 2, Article XII of the 1987 Constitution. **Interpreting Section 2, Article XII of the 1987 Constitution[237] in relation to Section 57 of IPRA, the State, as owner of these natural resources, may directly undertake the development and exploitation of the natural resources by itself, or in the alternative, it may recognize the priority rights of the ICCs/IPs as owners of the land on which the natural resources are found by entering a co-production, joint venture, or production-sharing agreement with them. The State may likewise enter into any of said agreements with a non-member of the ICCs/IPs, whether natural or juridical, or enter into agreements with foreign-owned corporations involving either technical or financial assistance for the large-scale exploitation, development and utilization of minerals, petroleum, and other mineral oils, or allow such non-member to participate in its agreement with the ICCs/IPs.** If the State decides to enter into an agreement with a non-ICC/IP member, the National Commission on Indigenous Peoples (NCIP) shall ensure that the rights of the ICCs/IPs under the agreement shall be protected. The agreement shall be for a period of 25 years, renewable for another 25 years.

To reiterate, in the large-scale utilization of natural resources within the ancestral domains, the State, as owner of these resources, has four (4) options: (1) it may, of and by itself, directly undertake the development and exploitation of the natural resources; or (2) it may recognize the priority rights of the ICCs/IPs by entering into an agreement with them for such development and exploitation; or (3) it may enter into an agreement with a non-member of the ICCs/IPs, where natural or juridical, local or foreign; or (4) it may allow such non-member to participate in the agreement with the ICCs/IPs.

The rights granted by the IPRA to the ICCs/IPs over the natural resources in their ancestral domains merely gives the ICCs/IPs, as owners and occupants of the land on which the resources are found, the right to the small-scale utilization of these resources, and at the same time, a priority in their large-scale development and exploitation. Section 57 does not mandate the State to automatically give priority to the ICCs/IPs. The State has several options and it is within its discretion to choose which option to pursue. Moreover, there is nothing in the law that gives the ICCs/IPs the right to solely undertake the large-scale development of the natural resources within their domains. The ICCs/IPs must undertake such

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236 Under the Small-Scale Mining Act of 1991, "small-scale mining" refers to "mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment" --- Section 3 [b], R.A. 7076.

237 See infra., pp. 77-79?.

endeavour always **under** State supervision or control. This indicates that the State does not lose control and ownership over the resources even in their exploitation. Sections 7 (b) and 57 of the law simply give due respect to the ICCs/IPs who, as actual occupants of the land where the natural resources lie, have traditionally utilized these resources for their subsistence and survival.

Neither is the State stripped of ownership and control of the natural resources by the following provision:

> "*Section 59. Certification Precondition.* --- All departments and other governmental agencies shall henceforth be strictly enjoined form issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: *Provided,* That no certification shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: *Provided, further,* That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: *Provided, finally,* That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process."

Concession, licenses, lease or production-sharing agreements for the exploitation of natural resources shall not be issued, renewed or granted by all departments and government agencies without prior certification form the NCIP that the area subject of the agreement does not overlap with any ancestral domain. The NCIP certification shall be issued only after a field-based investigation shall have been conducted and the free and prior informed written consent of the ICCs/IPs obtained. Non-compliance with the consultation requirement gives the ICCs/IPs the right to stop or suspend any project granted by any department or government agency.

As its subtitle suggests, this provision requires as a precondition for the issuance of any concession, license or agreement over natural resources, that a certification be issued by the NCIP that the area subject of the agreement does not lie within any ancestral domain. The provision does not vest the NCIP with power over the other agencies of the State as to determine whether to grant or deny any concession or license or agreement. It merely gives the NCIP the authority to ensure that the ICCs/IPs have been informed of the agreement and that their consent thereto ahs been obtained. Note that the certification applies to agreements over natural resources that do not necessarily lie within the ancestral domains. For those that are found within the said domains, Sections 7(b) and 57 of the IPRA apply.

V. THE IPRA IS A RECOGNITION OF OUR ACTIVE PARTICIPATION IN THE INDIGENOUS INTERNATIONAL MOVEMENT.

The indigenous movement can be seen as the heir to a history of anti-imperialism stretching back to prehistoric times. The movement received a massive impetus during the 1960's form two sources. First, the decolonization of Asia and Africa brought into the limelight the possibility of peoples controlling their own destinies. Second, the right of self-determination

was enshrined in the UN Declaration on Human Rights.[238] The rise of the civil rights movement and anti-racism brought to the attention of North American Indians, Aborigines in Australia, and Maori in New Zealand the possibility of fighting for fundamental rights and freedoms.

In 1974 and 1975, international indigenous organizations were founded,[239] and during the 1980's, indigenous affairs were on the international agenda. The people of the Philippine Cordillera were the first Asians to take part in the international indigenous movement. It was the Cordillera People's Alliance that carried out successful campaigns against the building of the Chico River Dam in 1981-82 and they have since become one of the best-organized indigenous bodies in the world.[240]

Presently, there is a growing concern for indigenous rights in the international scene. This came as a result of the increased publicity focused on the continuing disrespect for indigenous human rights and the destruction of the indigenous peoples' environment, together with the national governments' inability to deal with the situation.[241] Indigenous rights came as a result of both human rights and environmental protection, and have become a part of today's priorities for the international agenda.[242]

International institutions and bodies have realized the necessity of applying policies, programs and specific rules concerning IPs in some nations. The World Bank, for example, first adopted a policy on IPs as a result of the dismal experience of projects in Latin America.[243] The World Bank now seeks to apply its current policy on IPs to some of its projects in Asia. This policy has provided an influential model for the projects of the Asian Development Bank.[244]

The 1987 Philippine Constitution formally recognizes the existence of ICCs/IPs and declares as a State policy the promotion of their rights within the framework of national unity and development.[245] The IPRA amalgamates the Philippine category of ICCs with the international category of IPs,[246] and is heavily influenced by both the International Labor Organization (ILO)

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238 Andrew Gray, *The Indigenous Movement in Asia,* Indigenous Peoples of Asia, ed. By Barnes, Gray and Kingsbury, pub. By Ass'n. for Asian Studies, at 35, 42 [1995].

239 E.g. International Indian Treaty Council, World Council of IPs.

240 Gray, *The Indigenous Movement in Asia, supra*, at 44, citing the International Work Group for Indigenous Affairs, 1988.

241 Jose Paulo Kastrup, *The Internationalization of Indigenous Rights from the Environmental and Human Rights Perspective,* 32 Texas International Law Journal 97, 102 [1997].

242 Benedict Kingsbury, "*Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy,* The American Journal of International Law, vol. 92: 414, 429 [1998].

243 The World Bank supported the Chico Dam project. Due to the Kalingas' opposition, the WB pulled out of the project but the conflict between the Philippine government and the natives endured long after --- Marcus Colchester, *Indigenous Peoples' Rights and Sustainable Resource Use in South and Southeast Asia,* Indigenous Peoples of Asia, supra, pp. 59, 71-72.

244 Kingsbury, supra, at 417.

245 Section 22, Article II, 1987 Constitution.

246 Interpellation of Senator Flavier on S.B. No. 1728, Deliberation on Second Reading, November 20, 1996, p. 20.

Convention 169 and the United Nations (UN) Draft Declaration on the Rights of Indigenous Peoples.[247]

ILO Convention No. 169 is entitled the "Convention Concerning Indigenous and Tribal Peoples in Independent Countries"[248] and was adopted on June 27, 1989. It is based on the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and many other international instruments on the prevention of discrimination.[249] ILO Convention No. 169 revise the "Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries" (ILO No. 107) passed on June 26, 1957. Developments in international law made it appropriate to adopt new international standards on indigenous peoples "with a view to removing the assimilationist orientation of the earlier standards," and recognizing the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development."[250]

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247 Guide to R.A. 8371, Coalition for IPs Rights and Ancestral Domains, the International Labor Organization, and the ILO-Bilance-Asia Dep't., p. 3 [1999].

248 Also referred to as the "Indigenous and Tribal Peoples Convention, 1989."

249 See Introduction to ILO Convention No. 169, par. 4.

250 Id., pars, 5 and 6.

CONCLUSION

The struggle of the Filipinos throughout colonial history had been plagued by ethnic and religious differences. These differences were carried over and magnified by the Philippine government through the imposition of a national legal order that is mostly foreign in origin or derivation.[251] Largely unpopulist, the present legal system has resulted in the alienation of a large sector of society, specifically, the indigenous peoples. The histories and cultures of the indigenes are relevant to the evolution of Philippine culture and are vital to the understanding of contemporary problems.[252] It is through the IPRA that an attempt was made by our legislators to understand Filipino society not in terms of myths and biases but through common experience in the course of history. The Philippines became a democracy a centennial ago and the decolonization process still continues. If the evolution of the Filipino people into a democratic society is to truly proceed democratically, i.e., if the Filipinos as a whole are to participate fully in the task of continuing democratization,[253] it is this Court's duty to acknowledge the presence of indigenous and customary laws in the country and affirm their co-existence with the land laws in our national legal system.

With the foregoing disquisitions, I vote to uphold the constitutionality of the Indigenous Peoples Rights Act of 1997.

REYNATO S. PUNO

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251 Perfecto V. Fernandez, *Towards a Definition of National Policy on Recognition of Ethnic Law within the Philippine Legal Order*, 55 P.L.J. 383, 385 [1980].

252 Samuel K. Tan, *A History of the Philippines*, Manila Studies Association, Inc. and the Phil. National Historical Society, Inc., p. 6 [1997].

253 Fernandez, supra, at 385, 391.

G.R. No. 135385 (ISAGANI A. CRUZ, et al. vs. THE SECRETARY OF ENVIRONMENT and NATURAL RESOURCES, et al.)

Promulgated:

DECEMBER 6, 2000

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SEPARATE OPINION

VITUG, J.:

An issue of grave national interest indeed deserves a proper place in any forum and, when it shows itself in a given judicial controversy, the rules of procedures, like *locus standi*, the propriety of the specific remedy invoked, or the principle of hierarchy of courts, that may ordinarily be raised by party-litigants, should not be so perceived as good and inevitable justifications for advocating timidity, let alone isolationism, by the Court.

A cardinal requirement, to which I agree, is that one who invokes the Court's adjudication must have a personal and substantial interest in the dispute;[1] indeed, the developing trend would require a *logical nexus* between the status asserted and the claim sought to be adjudicated in order to ensure that one is the proper and appropriate party to invoke judicial power.[2] The rule requires a party to aptly show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision so as to warrant his invocation of the Court's jurisdiction and to render legally feasible the exercise of the Court's remedial powers in his behalf. If it were otherwise, the exercise of that power can easily become too unwieldy by its sheer magnitude and scope to a point that may, in no small measure, adversely affect its intended essentiality, stability and consequentiality.

Nevertheless, where a most compelling reason exists, such as when the matter is of transcendental importance and paramount interest to the nation, [3] the Court must take the liberal approach that recognizes the legal standing of nontraditional plaintiffs, such as citizens and taxpayers, to raise constitutional issues that affect them. [4] This Court thus did so in a case [5] that involves the conservation of our forests for ecological needs. **Until an exact balance is struck, the Court must accept an eclectic notion that can free itself from the bondage of legal nicety and hold trenchant technicalities subordinate to what may be considered to be of overriding concern.**

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1 People vs. Vera, 65 Phil. 56, 89; Macasiano vs. National Housing Authority, 224 SCRA 236, 244.

2 Am Jur § 189, p. 591, S. v D., 410 US 641, 35 L ed 2d 536, 93 S Ct 1146.

3 Legaspi v. Civil Service Commission, 150 SCRA 530, 540; Tañada vs. Tuvera, 136 SCRA 27, 36, 37.

4 Defensor Santiago, Miriam, Constitutional Law, First Edition, 1994, p.11; see also Rev. Fr. Joaquin Bernas, S.J., on the 1987 Constitution of the Republic of the Philippines, 1996 Ed., pp. 336-337.

5 Oposa vs. Factoran, Jr., 224 SCRA 792.

The petition seeks a declaration by the Court of unconstitutionality of certain provisions of Republic Act No 8371, a law that obviously is yet incapable of exact equation in its significance to the nation and its people now and in the generations yet to come. Republic Act No. 8371, otherwise also known as the Indigenous Peoples Rights Act of 1997 ("IPRA"), enacted into law in 1997 and made effective on 22 November 1997, is apparently intended to be a legislative response to the 1987 Constitution which recognizes the rights of indigenous cultural communities "within the framework of national unity and development" [6] and commands the State, **"subject to the provisions of this Constitution and national development policies and programs,"** to protect the rights of indigenous cultural communities to their ancestral lands in order to ensure their economic, social, and cultural well-being. [7]

Among the assailed provisions in IPRA is its Section 3 (a) which defines "ancestral domains" to embrace **"all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources" including "ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise," over which indigenous cultural communities / indigenous peoples** ("ICCs / IPs") **could exercise virtual ownership and control.**

IPRA effectively withdraws from the public domain the so-called ancestral domains covering literally millions of hectares. The notion of community property would comprehend not only matters of proprietary interest but also some forms of self-governance over the curved-out territory. This concept is elaborated in Section 7 of the law which states that the "rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected," subsumed under which would encompass the **right of ownership** (paragraph a); **the right to develop, control and use lands and natural resources,** including "**the right to negotiate the terms and conditions for the exploration of natural resources** in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures., pursuant to national and customary laws," (par.b); the **right to stay in the territories** (par.c); the **right to return to their abandoned lands in case of displacement** (par.d); **the right to regulate entry of migrants** (par.e); **the right to claim parts of ancestral domains previously reserved** (par. g); **and the right to resolve land conflicts in accordance primarily with customary law** (par. h). Concurrently, Section 57 states that ICCs/IPs shall be given "priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains." **These provisions of IPRA, in their totality, are, I my view, beyond the context of the fundamental law and virtually amount to an undue delegation, if not an unacceptable abdication, of State authority over a significant area of the country and its patrimony.**

Article XII of the 1987 Constitution expresses that 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,"** and, with the exception of agricultural lands, "**shall not be alienated".** It ordains that the **"exploration, development, and utilization of natural resources shall be under the full control and supervision of the State."**[8]

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6 Art. 11, Sec. 22.

7 Art. XII, Sec. 5.

8 Sec.2.

These provisions had roots in the 1935 Constitution which, along with some other specific mandates in the 1935 Constitution, forming Article XII under the title "Conservation and Utilization of Natural Resources", were derived largely from the report of the Committee on Nationalization and Preservation of Lands and other natural Resources. [9] According to the Committee report, among the principles upon which these provisions were based, was "that the land, minerals, forests and other natural resources constitute the exclusive heritage of the Filipino nation," and should thereby "be preserved for those under the sovereign authority of the Nation and for their posterity." [10] The delegates to the 1934 Constitutional Convention were of the unanimous view that the "policy on natural resources, being fundamental to the nation's survival should not be left to the changing mood of the lawmaking body."[11]

The 1987 Constitution, like the precursor provisions in the 1935 and 1973 Constitutions, thus expresses this *regalian doctrine* of the old, and the domainial *doctrine* of the new, that all lands and natural resources belong to the state other than those which it recognizes to be of private ownership. **Except for agricultural lands of the public domain which alone may be alienated, forest or timber, and mineral lands, as well as all other natural resources, of the country must remain with the state, the exploration, development and utilization of which shall be subject to its full control and supervision** albeit allowing it to enter into co-production, joint venture or production-sharing agreements, or into agreements with foreign-owned corporations involving technical or financial assistance for large-scale exploration, development and utilization. [12]

The decision of the United States Supreme Court in *Cariño vs. InsularGovernment,*[13] holding that a parcel of land held since time immemorial by individuals under a claim of private ownership is presumed never to have been public land and cited to downgrade the application of the *religian doctrine*, cannot override the **collective will of the people** expressed in the Constitution. It is in them that sovereignty resides and from them that all government authority emanates.[14] It is not then for a court ruling or any piece of legislation to be conformed to by the fundamental law, but it is for the former to adapt to the latter, and **it is the sovereign act that must, between them, stand inviolate.**

The second paragraph of Section 5 of Article XII of the Constitution allows Congress to provide "for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains." I do not see this statement as saying that Congress may enact a law that would simply express that "customary laws shall govern" and end it there. Had it been so, the Constitution could have itself easily provided without having to still commission Congress to do it. Mr. Chief Justice Davide has explained this authority of Congress, during the deliberations of the 1986 Constitutional Convention, thus:

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9 II Aruego, The Framing of the Philippine Constitution, p. 594.

10 Ibid., p. 595.

11 Ibid., p. 600.

12 CONST., Art. XII, Sec.2; Miners Association of the Philippines, Inc., vs. Factoran, Jr., 240 SCRA 100.

13 41 Phil. 935.

14 CONST., Art. 11, Sec. 1.

> "**Mr. Davide.** x x x Insofar as the application of the customary laws governing property rights of relations in determining the ownership and extent of the ancestral domain is concerned, it is respectfully submitted that the particular matter must be submitted to Congress. I understand that the idea of Comm. Bennagen is for the possibility of the codification of these customary laws. So before these are codified, we cannot now mandate that the same must immediately be applicable. We leave it to Congress to determine the extent of the ancestral domain and the ownership thereof in relation to whatever may have been codified earlier. So, in short, let us not put the cart ahead of the horse."[15]

The constitutional aim, it seems to me, is to get Congress to look closely into the customary laws and, with specificity and by proper recitals, to hew them to, and make them part of, the stream of laws. The "due process clause," as I so understand it in *Tañada vs. Tuvera*[16] would require an apt publication of a legislative enactment before it is permitted to take force and effect. So, also, customary laws, when specifically enacted to become part of statutory law, must first undergo that publication to render them correspondingly binding and effective as such.

Undoubtedly, IPRA has several good points, and I would respectfully urge Congress to re-examine the law. Indeed, the State is exhorted to protect the rights of indigenous cultural communities to their ancestral lands, a task that would entail a balancing of interest between their specific needs and the imperatives of national interest.

WHEREFORE, I vote to grant the petition.

JOSE C. VITUG
Associate Justice

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15 4 Record of the Constitutional Commission 32.

16 146 SCRA 446.

En Banc

G.R. No. 135385 – (ISAGANI CRUZ, ET AL., *petitioners,* v. SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, ET AL., *respondents;* HON. JUAN M. FLAVIER, ET AL., *intervenors;* COMMISSION ON HUMAN RIGHTS, *intervenor;* IKALAHAN INDIGENOUS PEOPLE, ET AL., *intervenors)*

Promulgated:
DECEMBER 6, 2000

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SEPARATE OPINION

MENDOZA, J.:

This suit was instituted to determine the constitutionality of certain provisions of R.A. No. 8371, otherwise known as the Indigenous Peoples Rights Act. Petitioners do not complain of any injury as a result of the application of the statute to them. They assert a right to seek an adjudication of constitutional questions as citizens and taxpayers, upon the plea that the questions raised are of "transcendental importance."

The judicial power vested in this Court by Art. VIII, §1 extends only to cases and controversies for the determination of such proceedings as are established by law for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs.[1]
In this case, the purpose of the suit is not to enforce a property right to petitioners against the government and other respondents or to demand compensation for injuries suffered by them as a result of the enforcement of the law, but only to settle what they believe to be the doubtful character of the law in question. Any judgment that we render in this case will thus not conclude or bind real parties in the future, when actual litigation will bring to the Court the question of the constitutionality of such legislation. Such judgment cannot be executed as it amounts to no more than an expression of opinion upon the validity of the provisions of the law in question. [2]

I do not conceive it to be the function of his Court under Art. VIII, § 1 of the Constitution to determine in the abstract whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the legislative and executive departments in enacting the IPRA. Our jurisdiction is confined to cases or controversies. No one reading Art. VIII, § 5 can fail to note that, in enumerating the matters placed in the keeping of this Court, it uniformly begins with the phrase "all cases…."

The statement that the judicial power includes the duty to determine whether there has been a grave abuse of discretion was inserted in Art. VIII, § 1 not really to give the judiciary a roving commission to right any wrong it perceives but to preclude courts from invoking the

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1 Lopez v. Roxas, 17 SCRA 756, 761 (1966).

2 Muskrat v. United States, 279 U.S. 346, 55 L. Ed.246 (1911)

political question doctrine in order to evade the decision of certain cases even where violations of civil liberties are alleged.

The statement is based on the ruling of the Court in *Lansang v. Garcia*,[3] in which this Court, adopting the submission of the Solicitor General, formulated the following test of its jurisdiction in such cases:

> [J]udicial inquiry into the bases of the questioned proclamation can go no *further* than to satisfy the Court *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act *arbitrarily*.

That is why Art. VII, § 18 now confers on any citizen standing to question the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. It is noteworthy that Chief Justice Roberto Concepcion, who chaired the Committee on the Judiciary of the Constitutional Commission, was the author of the opinions of the Court in *Lopez v. Roxas* and *Lansang v. Garcia.*

Indeed, the judicial power cannot be extended to matters which do not involve actual cases or controversies without upsetting the balance of power among the three branches of the government and erecting, as it were, the judiciary, particularly the Supreme Court, as a third branch of Congress, with power not only to invalidate statutes but even to rewrite them. Yet that is exactly what we would be permitting in this case were we to assume jurisdiction and decide wholesale the constitutional validity of the IPRA contrary to the established rule that a party can question the validity of a statute only if, as applied to him, it is unconstitutional. Here the IPRA is sought to be declared void on its face.

The only instance where a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the over breadth doctrine permits a party to challenge the validity of a statute even though as applied to him it is not unconstitutional but it might be if applied to others not before the Court whose activities are constitutionally protected. Invalidation of the statute "on its face" rather than "as applied" is permitted in the interest of preventing a "chilling" effect on freedom of expression. But in other cases, even if it is found that a provision of a statute is unconstitutional, courts will decree only partial invalidity unless the invalid portion is so far inseparable from the rest of the statute that a declaration of partial invalidity is not possible.

For the Court to exercise its power of review when there is no case or controversy is not only to act without jurisdiction but also to run the risk that, in adjudicating abstract or hypothetical questions, its decision will be based on speculation rather than experience. Deprived of the opportunity to observe the impact of the law, the Court is likely to equate questions of constitutionality with questions of wisdom and is thus likely to intrude into the domain of legislation. Constitutional adjudication, it cannot too often repeated, cannot take place in a vacuum.

Some of the brethren contend that not deciding the constitutional issues raised by petitioners will be a "galling cop out"[4] or an "advocacy of timidity, let alone isolationism." [5] To

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[3] 42 SCRA 448, 481 (1971) (emphasis on the original).

decline the exercise of jurisdiction I this case is no more a "cop out" or a sign of "timidity" than it was for Chief Justice Marshall in *Marbury v. Madison* [6] to hold that petitioner had the right to the issuance of his commission as justice of the peace of the District of Columbia only to declare in the end that after all mandamus did not lie, because § 13 of the Judiciary Act of 1789, which conferred original jurisdiction on the United States Supreme Court to issue the writ of mandamus, was unconstitutional as the court's jurisdiction is mainly appellate.

Today *Marbury v. Madison* is remembered for the institution of the power of judicial review, and so that there can be no doubt of this power of our Court, we in this country have enshrined its principle in Art. VIII, § 1. Now, the exercise of judicial review can result either in the invalidation of an act of Congress or in upholding it. Hence, the checking and legitimating functions of judicial review so well mentioned in the decisions[7] of this Court.

To decline, therefore, the exercise of jurisdiction where there is no genuine controversy is not to show timidity but respect for the judgment of a coequal department of government whose acts, unless shown to be clearly repugnant to the fundamental law, are presumed to be valid. The polestar of constitutional adjudication was set forth by Justice Laurel in the *Angara* case when he said that "this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument of the parties, and limited further to the constitutional question raised or the very *lis mota,* presented."[8] For the exercise of this power is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. [9] Until, therefore, an actual case is brought to test the constitutionality of the IPRA, the presumption of constitutionality, which inheres in every statute, must be accorded to it.

Justice Kapunan, on the other hand, cites the statement in *Severino v. Governor General,* [10] reiterated in Tañada *v. Tuvera,* [11] that "when the question is one of public right and the object of mandamus to procure the enforcement of a public duty, the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient that he is a citizen and as such is interested in the execution of the laws." On the basis of this statement, he argues that petitioners have standing to bring these proceedings. [12]

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4 Panganiban, J., Separate Opinion, p.2.

5 Vitug, J., Separate Opinion, p.1.

6 1 Cranch 137, 2 L. Ed. 60 (1803).

7 Occena v. Commission on Elections; Gonzales v. The National Treasurer, 104 SCRA 1 (1981); Mitra v. Commission on Elections, 104 SCRA 59 (1981).

8 Angara v. Electoral Commission, 63 Phil. 139, 158 (1936).

9 Philippine Association of Colleges and Universities v. Secretary of Education, 97 Phil. 806 (1955).

10 16 Phil. 366 (1913).

11 136 SCRA 27 (1985).

12 Kapunan, J., Separate Opinion, pp. 21-23.

In *Severino v. Governor General*, [13] the question was whether mandamus lay to compel the Governor General to call a special election on the ground that it was his duty to do so. The ruling was that he did not have such a duty. On the other hand, although mandamus was issued in *Tañada v. Tuvera*, it was clear that petitioners had standing to bring the suit, because the public has a right to know and the failure of respondents to publish all decrees and other presidential issuances in the Official Gazette placed petitioners in danger of violating those decrees and issuances. But, in this case, what public right is there for petitioners to enforce when the IPRA does not apply to them except in general and in common with other citizens?

For the foregoing reasons I vote to dismiss the petition in this case.

VICENTE V. MENDOZA
Associate Justice

[13] *Supra* note 10.

En Banc

G.R. No. 135385. – (ISAGANI CRUZ, ET AL., Petitioners, vs. SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, ET AL., Respondents; HON JUAN M. FLAVIER, ET AL., Intervenors; COMMISSION ON HUMAN RIGHTS, Intervenor; IKALAHAN INDIGENOUS PEOPLE, ET AL., Intervenors.)

Promulgated:
DECEMBER 6, 2000

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SEPARATE OPINION

KAPUNAN, J.:

> You ask if we own the land… How can you own that which will outlive you? Only the race own the land because only the race lives forever. To claim a piece of land is a birthright of every man. The lowly animals claim their place; how much more man? Man is born to live. Apu Kabunian, lord of us all, gave us life and placed us in the world to live human lives. And where shall we obtain life? From the land. To work (the land) is an obligation, not merely a right. In tilling the land, you possess it. And so land is a grace that must be nurtured. To enrich it and make it fructify is the eternal exhortation of Apu Kabunian to all his children. Land is sacred. Land is beloved. From its womb springs… life.
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> Macli-ing Dulag, Chieftain of the Kalinga Tribe (quoted in Ponciano L. Bennagen, "Tribal Filipinos" in Indigenous View of Land and the Environment, ed. Shelton H. Davis, the World Bank Discussion Papers, No. 188, pp. 71-72.)

It is established doctrine that a statute should be construed whenever possible in harmony with, rather than in violation of, the Constitution.[1] The presumption that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.[2]

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[1] Teehankee vs. Rovira, 75 Phil. 634 (1945); San Miguel Corporation vs. Avelino, 89 SCRA 69 (1979); Phil. Long Distance Telephone Co. vs. Collector of Internal Revenue, 90 Phil 674 (1952).

[2] In re Guarina, 24 Phil. 37 (1913).

The challenged provisions of the Indigenous Peoples Rights Act (IPRA) must be construed in view of such presumption of constitutionality. Further, the interpretation of these provisions should take into account the purpose of the law, which is to give life to the constitutional mandate that the rights of the indigenous peoples be recognized and protected.

The struggle of our indigenous peoples to reclaim their ancestral lands and domains and therefore, their heritage, is not unique. It is one that they share with the red-skinned "Indians" of the United States, with the aborigines of Australia, the Maori of New Zealand and the Sazmi of Sweden, to name a few. Happily, the nations in which these indigenous peoples live all have enacted measures in an attempt to heal an oppressive past by a promise of a progressive future. Thus has the international community realized the injustices that have been perpetrated upon the indigenous peoples. This sentiment among the family of nations is expressed in a number of documents, the most recent and most comprehensive of which is the Draft United Nations Declaration on the Rights of Indigenous Peoples which was adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities by its resolution on August 26, 1994. Among the rights recognized by the UN Draft is the restitution of lands, territories and even the resources which the indigenous peoples have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without the free and informed consent of the indigenous peoples.

A Historical Backdrop on the Indigenous Peoples

The term "indigenous" traces its origin to the Old Latin word *indu*, meaning "within." In the sense the term has come to be used, it is nearer in meaning to the Latin word *indigenus*, which means "native."[3] " Indigenous" refers to that which originated or has been produced naturally in a particular land, and has not been introduced from the outside[4]. In international law, the definition of what constitutes "indigenous peoples" attains some degree of controversy. No definition of the term "indigenous peoples" has been adopted by the United Nations (UN), although UN practice has been guided by a working definition in the 1986 Report of UN Special Rapporteur Martinez Cobo:[5]

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on

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3 In Philippine Colonial history, the term *indio* applied to indigenous throughout the vast Spanish empire. India was a synonym for all of Asia east of Indus River. Even after it became apparent that the explorer Christopher Columbus was not able to reach territories lying off the east coast of Asia, the Spanish persisted in referring to all natives within their empire *los Indios*. (Owen J. Lynch, Jr., THE PHILIPPINE COLONIAL DICHOTOMY: Attraction and Disenfranchisement, 63 PL J 112 [1988] citing R. BERKHOFER, THE WHITE MAN'S INDIAN: IMAGES OF THE AMERICAN INDIAN FROM COLUMBUS TO THE PRESIDENT 5 [1979].

4 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976), p. 1151.

5 Benedict Kingsbury, "Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy, 92 The American Journal of International Law 414, 419 (1998) citing Jose Martinez Cobo, Study of the Problem of Discrimination against indigenous population, UN Doc. E/CN.4/Sub 2/1986/ 7/ Add. 4, paras. 379-80.

their territories, consider themselves distinct from other sections of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sections of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

(a) Occupation of ancestral lands, or at least of part of them;

(b) Common ancestry with the original occupants of these lands;

(c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.);

(d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);

(e) Residence in certain parts of the country; or in certain regions of the world;

(f) Other relevant facts.[6]

In Philippine constitutional law, the term "indigenous peoples" pertains to those groups of Filipinos who have retained a high degree of continuity from pre-Conquest culture.[7] Philippine legal history, however, has not been kind to the indigenous peoples, characterized them as "uncivilized,"[8] "backward people,"[9] with "barbarous practices" [10] and a low order of intelligence."[11]

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6 Ibid. This definition is criticized for taking the potentially limited, and controversial view of indigenous peoples by requiring "historical continuity with pre-invasion and pre-colonial societies that developed on their territories."

7 4 RECORD OF THE CONSTITUTIONAL COMMISSION 34

8 Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 680 (1919).

9 Hearing before the Committee on the Philippines, United States Senate, Sixty-Third Congress, Third Session on HR 18459, pp. 346, 351. Quoted in Rubi at 686.

10 United States President McKinleys' Instruction to the Philippine Commission, April 7, 1900, quoted in Rubi at 680.

Drawing inspiration from both our fundamental law and international law, IPRA now employs the politically-correct conjunctive term "indigenous peoples/indigenous cultural communities" as follows:

> Sec. 3. Definition of Terms. – For purposes of this Act, the following terms shall mean:
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> xxx
>
> (h) Indigenous peoples / Indigenous cultural communities. – refer to a group of people or homogenous societies identified by self-ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions, and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. Indigenous peoples shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present State boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains x x x.

Long before the Spaniards set foot in these islands, the indigenous peoples were already plowing our soil and hunting in our forests. The Filipinos of Aeta and Malay stock, who were the original inhabitants of our archipelago, were, at that time, practicing a native culture. From the time the Spaniards arrived up to the early part of the American regime, [12] these native inhabitants revisited foreign invasion, relentlessly fighting for their lands. Today, from the remote uplands of Northern Luzon, to Palawan, Mindoro and Mindanao, the indigenous peoples continue to live on and cultivate their ancestral lands, the lands of their forefathers.

Though Filipinos today are essentially of the same stock as the indigenous peoples, our national culture exhibits only the last vestiges of this native culture. Centuries of colonial rule and neocolonial domination have created a discernible distinction between the cultural majority and

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11 US v. Tubban, 29 Phil. 434, 436 (1915)

12 See Owen J. Lynch, Jr., INVISIBLE PEOPLES AND A HIDDEN AGENDA: the Origins of Contemporary Philippine Land Laws (1900-1913), 63 PLJ 249 (1988).

the group of cultural minorities. [13] The extant Philippine national culture is the culture of the majority; its indigenous roots were replaced by foreign cultural elements that are decidedly pronounced, if not dominant. [14] While the cultural of the majority reoriented itself to Western influence, the culture of the minorities has retained its essentially native character.

One of every six Filipinos is a member of an indigenous cultural community. Around twelve million Filipinos are members of the one hundred and ten or so indigenous cultural communities, [15] accounting for more than seventeen per centum of the estimated seventy million Filipinos [16] in our country. Sadly, the indigenous peoples are one of the poorest sectors of Philippine society. The incidence of poverty and malnutrition among them is significantly higher than the national average. The indigenous peoples are also among the most powerless. Perhaps because of their inability to speak the language of law and power, they have been relegated to the fringes of society. They have little, if any, voice in national politics and enjoy the least protection from economic exploitation.

The Constitutional Policies on Indigenous Peoples

The framers of the 1987 Constitution, looking back to the long destitution of our less fortunate brothers, fittingly saw the historic opportunity to actualize the ideals of people empowerment and social justice, and to reach out particularly to the marginalized sectors of society, including the indigenous peoples. They incorporated in the fundamental law several provisions recognizing and protecting the rights and interests of the indigenous peoples, to wit:

> Sec. 22. The State recognizes and promotes the rights of indigenous peoples within the framework of national unity and development. [17]
>
> Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

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13 For an introduction to the chasm that exists between the Philippine Law and Indigenous Custom Law, see Own J. Lynch, Jr., Native Title, private Right and Tribal Land Law: An Introductory Survey 52 PLJ 268 (1982); and the Philippine Indigenous Law Collection: An Introduction and Preliminary Bibliography, 58 PLJ 457 (1983), by the same author.

14 See RENATO CONSTANTINO, THE PHILIPPINES: A PAST REVISITED (1975), pp. 26-41; TEODORO AGONCILLO, A HISTORY OF THE FILIPINO PEOPLE, 8th ed., pp. 5, 74-75.

15 Response of Rep. Gregorio A. Andolana to the interpellation of Rep. John Henry R. Osmeña on House Bill No. 9125,Journal of August 20 and 21, 1997 of the House of Representatives, p. 20.

16 Philippines Yearbook (1998 ed.), p. 366.

17 Article II of the Constitution, entitled State Principles and Policies.

The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domains.[18]

Sec. 1 The Congress shall give the highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the Sate shall regulate the acquisition, ownership, use and disposition of property and its increments.[19]

Sec. 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition and utilization of other natural resources, including lands of the public domain under lease or concession, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.[20]

Sec 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.[21]

Sec. 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.[22]

IPRA was enacted precisely to implement the foregoing constitutional provisions. It provides, among others, that the State shall recognize and promote the rights of indigenous peoples within the framework of national unity and development, protect their rights over the ancestral lands and ancestral domains and recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domains.[23] Moreover, IPRA enumerates the civil and political rights of the indigenous peoples;

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18 Article XII of the Constitution, entitled National Economy and Patrimony.

19 Article XIII of the Constitution, entitled Social Justice and Human Rights.

20 Ibid.

21 Article XIV of the Constitution, entitled Education, Science, Technology, Arts, Culture, and Sports.

22 Article XVI of the Constitution, entitled General Provisions.

23 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;

[24] spells out their social and cultural rights; [25] acknowledges a general concept of indigenous property right and recognizes title thereto; [26] and creates the NCIP as an independent agency under the Office of the President. [27]

Preliminary Issues

A. The petition presents an actual controversy.

The time-tested standards for the exercise of judicial review are: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional

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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.

[24] See Sections 13-20, R.A. 8371.

[25] See Sections 21-37, R.A. 8371.

[26] See Sections 4-12, R.A. 8371.

[27] See Sections 38-50, R.A. 8371.

question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question be passed upon in order to decide the case. [28]

Courts can only decide actual controversies, not hypothetical questions or cases. [29] The threshold issue, therefore, is whether an "appropriate case" exists for the exercise of judicial review in the present case.

An "actual case or controversy" means an existing case or controversy which is both ripe for resolution and susceptible of judicial determination, and that which is not conjectural or anticipatory, [30] or that which seeks to resolve hypothetical or feigned constitutional problems. [31] a petition raising a constitutional question does not present an "actual controversy", unless it alleges a legal right or power. Moreover, it must show that a conflict of rights exists, for inherent in the term "controversy" is the presence of opposing views or contentions. [32] Otherwise, the Court will be forced to resolve issues which remain unfocused because they lack such concreteness provided when a question emerges precisely framed from a clash of adversary arguments exploring every aspect of a multi-faceted situation embracing conflicting and demanding interests. [33] The controversy must also be justiciable; that is, it must be susceptible of judicial determination. [34]

In the case at bar, there exists a live controversy involving a clash of legal rights. A law has been enacted, and the implementing Rules and Regulations approved. Money has been appropriated and the government agencies concerned have been directed to implement the statute. It cannot be successfully maintained that we should await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial resolution. It is precisely the contention of the petitioners that the law, on its face, constitutes an unconditional abdication of State ownership over lands of the public domain and other natural resources. Moreover, when the State machinery is set into motion to implement an alleged unconstitutional statute, this Court possesses sufficient authority to resolve and prevent imminent injury and violation of the constitutional process.

B. Petitioners, as citizens and taxpayers, have the requisite standing to raise the constitutional questions herein.

In addition to the existence of an actual case or controversy, a person who assails the validity of a statute must have a personal and substantial interest in the case, such that, he has

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28 Dumlao v. COMELEC, 95 SCRA 392, 400 (1980), citing People vs. Vera, 65 Phil. 56 (1937).

29 Subic Bay Metropolitan Authority v. COMELEC, 262 SCRA 492, 513 (1996).

30 Board of Optometry v. Colet, 260 SCRA 88, 104 (1996).

31 Muskrat v. United States, 219 US 346, 362 (1913).

32 WEBSTERS'S THIRD NEW INTERNATIONAL DICTIONARY, 1976, p. 497.

33 United states v. Freuhauf, 365 US 146 (1961).

34 Association of Small Landowners v. Secretary of Agrarian Reform, 175 SCRA 343, 364 (1989); Joya v. PCGG, 225 SCRA 568 (1993).

sustained, or will sustain, a direct injury as a result of its enforcement. [35] Evidently, the rights asserted by petitioners as citizens and taxpayers are held in common by all the citizens, the violation of which may result only in a "generalized grievance". [36] Yet, in a sense, all citizen's and taxpayer's suits are efforts to air generalized grievances about the conduct of government and the allocation of power. [37]

In several cases , the Court has adopted a liberal attitude with regard to standing. [38] The proper Party requirement is considered as merely procedural, [39] and the Court has ample discretion with regard thereto. [40] As early as 1910, the Court in the case of Severino vs. Governor General[41] held:

> x x x [W]hen the relief is sought merely for the protection of private rights, the relator must show some personal or special interest in the subject matter, since he is regarded as the real party in interest and his right must clearly appear. Upon the other hand, **when the question is one of public right** and the object of the mandamus is to procure the enforcement of a public duty, **the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws.[42]**

This Court has recognized that a "public right," or that which belongs to the people at large, may also be the subject of an actual case or controversy. In *Severino*, we ruled that a private citizen may enforce a "public right" in behalf of other citizens. We opined therein that:

> …[T]he right which [petitioner] seeks to enforce is not greater or different form that of any other qualified elector in the municipality of Silay. It is

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35 *People v. Vera*, 65 Phil. 56, 89 (1937).

36 *Lozada v. COMELEC*, 120 SCRA 337, 342 (1983).

37 *US v. Richardson*, 418 US 166, 194 S Ct 2940, 41 L Ed 2d 678 (1974).

38 *Kilosbayan v. Guingona*, 232 SCRA 110, 135 (1994), citing, among others, *Philconsa v. Gimenez*, 15 SCRA 479 (1965); *CLU v. Executive Secretary*, 194 SCRA 317 (1991); *Guingona v. Carague*, 196 SCRA 221 (1991); *Osmena v. COMELEC*, 199 SCRA 750 (1991); *Basco v. PAGCOR*, 197 SCRA 52 (1991); *Carpio v. Executive Secretary*, 206 SCRA 290 (1992).

In *Kilosbayan v. Morato* (250 SCRA 130 [1995]) the Court discoursed on the rule on standing as follows: *taxpayers* may sue on the claim of illegal disbursement of funds, or to assail the constitutionality of a tax measure; *voters* may question the validity of election laws; *citizens* may raise constitutional questions of transcendental importance which must be settled early; and, *legislators* may question the validity of official acts which infringe their prerogatives.

39 Araneta v. Dinglasan, 84 Phil. 368, 373 (1949).

40 *Assn. of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, 175 SCRA 343, 364-365 (1989).

41 16 Phil. 366 (1910), citing HIGH, EXTRAORDINARY LEGAL REMEDIES.

42 Id., at 371.

> also true that the injury which he would suffer in case he fails to obtain the relief sought would not be greater or different from that of the other electors; but **he is seeking to enforce a public right** as distinguished from a private rights. **The real party in interest is the public,** or the qualified electors of the won of Silay. **Each elector has the same right and would suffer the same injury. Each elector stands on the same basis with reference to maintaining a petition** whether or not the relief sought by the relator should be granted.[43]

In Tanada v. Tuvera[44], the Court enforced the "public right" to due process and to be informed of matters of public concern.

In *Garcia vs. Board of Investments*,[45] the Court upheld the "public right" to be heard or consulted on matters of national concern.

In *Oposa v. Factoran*,[46] the Court recognized the "public right" of citizens to a "balanced and healthful ecology which, for the first time in our nation's constitutional history, is solemnly incorporated in the fundamental law."[47] Mr. Justice (now Chief Justice) Hilario G. Davide, Jr., delivering the opinion of the Court, stated that:

> Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation --- aptly and fittingly stressed by predate all governments and constitutions. As a matter of fact, **these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.[48]**

Petitioners, **as citizens,** possess the "public rights" to ensure that the national patrimony is not alienated and diminished in violation of the Constitution. Since the government, as the guardian of the national patrimony, holds it for the benefit of all Filipinos without distinction as to ethnicity, it follows that a citizen has sufficient interest to maintain a suit to ensure that any grant of concession covering the nation economy and patrimony strictly complies with constitutional requirements. Thus, the preservation of the integrity and inviolability of the national patrimony is a proper subject of a citizen's suit.

In addition, petitioners, **as taxpayers,** possess the right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute. It is well-settled that a taxpayer has the right to enjoin public officials from wasting public funds through

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43 Id., at 374-375.

44 136 SCRA 374, 383 (1989).

45 177 SCRA 374, 383 (1989).

46 224 SCRA 792 (1993).

47 Id., at 805.

48 *Ibid*.

implementation of an unconstitutional statute,[49] and by necessity, he may assail the validity of a statute appropriating public funds.[50] The taxpayer has paid his taxes and contributed to the public coffers and, thus, may inquire into the manner by which the proceeds of his taxes are spent. The expenditure by an official of the State for the purpose of administering an invalid law constitutes a misapplication of such funds.[51]

The IPRA appropriates funds as indicated in its title: "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating the National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, **Appropriating Funds Therefor,** and for Other Purposes." In the same manner, Section 79 authorizes for the expenditure of public funds by providing that "the amount necessary to financial [its] initial implementation shall be charged against the current year's appropriation for the Office for Northern Cultural Communities (the "ONCC") and the Office for Southern Cultural Communities (the "OSCC")," [52] which were merged as organic offices of the NCIP.[53] Thus, the IPRA is a valid subject of a taxpayer's suit.

C. The petition for prohibition and mandamus is not an improper remedy.

Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[54] Mandamus, on the other hand, is an extraordinary writ commanding a tribunal, corporation, board, officer or person, immediately or at some other specified time, to do the act required to be done, when said entity or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or when said entity or person unlawfully excludes another from the use and enjoyment of a right of office to which such

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49 Philconsa v. Mathay, 18 SCRA 300, 306 (1966).

50 Philconsa v. Gimenez, 15 SRCA 479, 487 (1965), citing 11 AM JUR 761.

51 Sanidad v. COMELEC, 73 SCRA 333, 358-359 (1976); Pascual v. Secretary of Public Words, 110 Phil. 331 (1960); Tan v. Macapagal, 43 SCRA 677, 680 (1972).

52 Section 79. *Appropriation* --- The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

53 Section 74. *Merger of ONCC/OSCC* --- The Office for Northern Cultural Communities (ONCC) and the Office of the Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structure to achieve the objectives of the NCIP x x x.

54 Section 2, Rule 65, 1997 RULES OF CIVIL PROSECURE.

other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[55]

In this case, the petitioners pray that respondents be restrained from implementing the challenged provisions of the IPRA and its Implementing Rules and the assailed DENR Circular No. 2, series of 1998, and that the same officials be enjoined from disbursing public funds for the implementation of the said law and rules. They further ask that the Secretary of the DENR be compelled to perform his duty to control and supervise the activities pertaining to natural resources.

Prohibition will lie to restrain the public officials concerned from implementing the questioned provisions of the IPRA and from disbursing funds in connection therewith if the law is found to be unconstitutional. Likewise, *mandamus* will lie to compel the Secretary of the DENR to perform his duty to control and supervise the exploration, development, utilization and conservation of the country's natural resources. Consequently, the petition for prohibition and *mandamus* is not an improper remedy for the relief sought.

D. Notwithstanding the failure of petitioners to observe the hierarchy of courts, the Court assumes jurisdiction over the petition in view of the importance of the issues raised therein.

Between two courts of concurrent original jurisdiction, it is the lower court that should initially pass upon the issues of a case. That way, as a particular case goes through the hierarchy of courts, it is shorn of all but the important legal issues or those of first impression, which are the proper subject of attention of the appellate court. This is a procedural rule borne of experience and adopted to improve the administration of justice.

This Court has consistently enjoined litigants to respect the hierarchy of courts. Although this Court has concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction,[56]

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55 Section 3, Rule 65, 1997 RULES OF CIVIL PROCEDURE.

56 Article VIII of the Constitution state:

Sec. 5. The Supreme Court shall have the following powers:
(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls , and over petitions for *certiorari*, prohibition, *mandamus, quo warranto,* and *habeas corpus.*

x x x

Batas Pambansa Blg. 129 (B.P. 129), as amended, provides:

Sec. 9. Jurisdiction --- The Court of Appeals shall exercise:
(1) Original jurisdiction to issue writs of mandamus, prohibition, *certiorari, habeas corpus, and quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

x x x

Sec. 21. Original jurisdiction in other cases --- Regional Trial Courts shall exercise original jurisdiction:

such concurrence does not give a party unrestricted freedom of choice of court forum. The resort to this Court's primary jurisdiction to issue said writs shall be allowed only where the desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify such invocation.[57] We held in *People v. Cuaresma*[58] that:

> A becoming regard for judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only where there are special and important reasons therefore, clearly and specifically set out in the petition.** This is established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket x x x.[59] (Emphasis supplied.)

IPRA aims to rectify the historical injustice inflicted upon indigenous peoples. Its impact upon the lives not only of the indigenous peoples but also upon the lives of all Filipinos cannot be denied. The resolution of this case by the Court at the earliest opportunity is necessary if the aims of the law are to be achieved. This reason is compelling enough to allow petitioners' invocation of this Court's jurisdiction in the first instance.

Substantive Issues

The issue of prime concern raised by petitioners and the Solicitor General revolves around the constitutionality of certain provisions of IPRA, specifically Sections 3(a), 3(b), 5, 6, 7, 8, 57, 58 and 59. These provisions allegedly violate Section 2, Article XII of the Constitution, which states:

> Sec. 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

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(1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions; and

(2) In actions affecting ambassadors and other public ministers and consuls.

57 Tano vs. Socrates, 278 SCRA 154, 173-174 (1997).

58 172 SCRA 415 (1989).

59 Id., at 424.

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 State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress, may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperation fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Under IPRA, indigenous peoples may obtain the recognition of their right of ownership[60] over ancestral lands and ancestral domains by virtue of native title.[61] The term **"ancestral lands"** under the statute refers to **lands** occupied by individuals, families and clans who are members of indigenous cultural communities, including residential lots, rice terraces or paddies, private forests, swidden farms and tree lots. These lands are required to have been "occupied, possessed and utilized" by them or through their ancestors "since time immemorial, continuously to the present". [62] On the other hand, **"ancestral**

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[60] Section 7. *Rights to Ancestral Domains*.--- The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

(a) *Right of Ownership* --- The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional

(b) hunting and fishing grounds, and all improvements made by them at any time within the domains;

[61] Section 3 (l) Native Title --- refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest; x x x

Section 3(p) Time Immemorial --- refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owners, and utilized a defined territory devolved to them, by operation of customary law or inherited form their ancestors, in accordance with their customs and traditions.

[62] Section 3 (b) Ancestral Lands – Subject to Section 56 hereof, refers to **land** occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through theit predecessors-in-interest, under claims of individual or traditional group ownership, continuously to the present

domains" is defined as **areas** generally belonging to indigenous cultural communities, including ancestral lands, forests, pasture, residential and agricultural lands, hunting grounds, worship areas, and lands no longer occupied exclusively by indigenous cultural communities but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators. Ancestral domains also include inland waters, coastal areas and natural resources therein. [63] Again, the same are required to have been "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." [64] Under Section 56, property rights within the ancestral domains already existing and / or vested upon effectivity of said law "shall be recognized and respected."

Ownership is the crux of the issue of whether the provisions of IPRA pertaining to ancestral lands, ancestral domains, and natural resources are unconstitutional. The fundamental queastion is, who, between the State and the indigenous peoples, are the rightful owners of these properties?

It bears stressing that a statute should be construed in harmony with, and not in violation, of the fundamental law.[65] The reason is that the legislature, in enacting the statute, is assumed to have acted within its authority and adhered to the constitutional limitations. Accordingly, courts should presume that it was the intention of the legislature to enact a valid, sensible, and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.[66]

A. The provisions of IPRA recognizing the ownership of indigenous peoples over the ancestral lands and ancestral domains are not unconstitutional.

In support of their theory that ancestral lands and ancestral domains are part of the public domain and, thus, owned by the State, pursuant to Section 2, Article XII of the Constitution, petitioners and the Solicitor General advance the following arguments:

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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 the government and private individuals / corporations, including, but not limited to, **residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;**

63 Section 3 (a) Ancestral Domain – 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 indigenous peoples, 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 the 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 resources, and lands which may no longer be exclusively be occupied by indigenous peoples** 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.

64 Ibid.

65 Herbon v. Reyes, 104 Phil. 175 (1958); San Miguel Corporation v. Avelino, 89 SCRA 69.

66 In re Guarina, 24 Phil 37 (1913).

First, according to petitioners, the King of Spain under international law acquired exclusive dominion over the Philippines by virtue of discovery and conquest. They contend that the Spanish King under the theory of jura regalia, which was introduced in to Philippine law upon Spanish conquest in 1521, acquired title to all lands in the archipelago.

Second, petitioners and the Solicitor General submit that the ancestral lands and ancestral domains are owned by the State. They invoke the theory of jura regalia which imputes to the State the ownership of all lands and makes the State the original source of all private titles. They argue that the Philippine State, as successor to Spain and the United States, is the source of any asserted right of ownership in land.

Third, petitioners and the Solicitor General concede that the Cariño doctrine exists. However, petitioners maintain that the doctrine merely states that the title to lands of the public domain may be acquired by prescription. The Solicitor General, for his part, argues that the doctrine applies only to alienable lands of the public domain and, thus, cannot be extended to other lands of the public domain such as forest or timber, mineral lands, and national parks.

Fourth, the Solicitor General asserts that even assuming that native title over ancestral lands and ancestral domains existed by virtue of the Cariño doctrine, such native title was extinguished upon the ratification of the 1935 Constitution.

Fifth, petitioners admit that Congress is mandated under Section 5, Article XII of the Constitution to protect that rights of indigenous peoples to their ancestral lands and ancestral domains. However, they contend that the mandate is subject to Section 2, Article XII and the theory of jura regalia embodied therein. According to petitioners, the recognition and protection under R.A 8371 of the right of ownership over ancestral lands and ancestral domains is far in excess of the legislative power and constitutional mandate of Congress.

Finally, on the premise that ancestral lands and ancestral domains are owned by the State, petitioners posit that R.A 8371 violates Section 2, Article XII of the Constitution which prohibits the alienation of non-agricultural lands of the public domain and other natural resources.

I am not persuaded by these contentions.

Undue reliance by petitioners and the Solicitor General on the theory of jura regalia is understandable. Not only is the theory well recognized in our legal system; it has been regarded, almost with reverence, as the immutable postulate of Philippine land law. It has been incorporated into our fundamental law and has been recognized by the court.[67]

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67 See Lee Hong Hok vs. David, 48 SCRA 372 (1972).

Generally, under the concept of jura regalia, private title to land must be traced to some grant, express or implied, from the Spanish Crown or its successors, the American Colonial government, and thereafter, the Philippine Republic. The belief that the Spanish Crown is the origin of all land titles in the Philippines has persisted because title to land must emanate from some source for it cannot issue forth from nowhere.[68]

In its broad sense, the term *"jura regalia"* refers to royal rights, [69] or those rights which the king has by virtue of his prerogatives. [70] In Spanish law, it refers to a right which the sovereign has over anything in which a subject has a right of property or *propriedad.* [71] These were rights enjoyed during feudal times by the king as the sovereign.

The theory of the feudal system was that title to all lands was originally held by the King, and while the use of lands was granted out to others who were permitted to hold them under certain conditions, the King theoretically retained the title. [72] By fiction of law, the King was regarded as the original proprietor of all lands, and the true and only source of title, and from him all lands were held. [73] The theory of *jura regalia* was therefore nothing more than a natural fruit of conquest. [74]

The Regalian theory, however, does not negate native title to lands held in private ownership since time immemorial. In the landmark case of *Cariño vs. Insular Government* [75] the United States Supreme Court, reversing the decision [76] of the pre-war Philippine Supreme Court, made the following pronouncement:

> X X X Every presumption is and ought to be taken 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**

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68 PEÑA, REGISTRATION OF LAND TITLES AND DEEDS, 1994 rev. ed., p. 15.

69 1 BOUVIER'S LAW DICTIONARY, 3rd revision, p. 1759.

70 BLACK'S LAW DICTIONARY, 6th ed., p. 1282.

71 76 CORPUS JURIS SECUNDUM, citing Hart v. Burnett, 15 Cal. 530, 566.

72 WASHBURN, p. 44; see also WILLIAMS, PRINCIPLES OF THE LAW ON REAL PROPERTY, 6th ed. (1886), p. 2; BIGELOW, p.2.

73 WARVELLE, ABSTRACTS AND EXAMINATION OF TITLE TO REAL PROPERTY (1907), p. 18.

74 1 DICTIONARY OF ENGLISH LAW (Jowitt, ed.), p. 797.

75 41 Phil. 935, 212 U.S. 449, 53 L Ed. 594 (1909).

76 *Cariño vs. Insular Government,* 7 Phil. 132 (1906). The Philippine Supreme Court in this case held that in the Philippines, there is no conclusive presumption of a grant of title to land from the Government founded merely upon long possession of the same by the applicant.

from before the Spanish conquest, and never to have been public land. X X X. [77] (Emphasis supplied.)

The above ruling institutionalized the recognition of the existence of native title to land, or ownership of land by Filipinos by virtue of possession under a claim of ownership since time immemorial and independent of any grant from the Spanish Crown, as an exception to the theory of *jura regalia.*

In Cariño, an Igorot by the name of Mateo Cariño applied for registration in his name of an ancestral land located in Benguet. The applicant established that he and his ancestors had lied on the land, had cultivated it, and had used it as far as they could remember. He also proved that they had all been recognized as owners, the land having been passed on by inheritance according to native custom. However, neither he nor his ancestors had any document of title from the Spanish Crown. The government opposed the application for registration, invoking the theory of *jura regalia.* On appeal, the United States Supreme Court held that the applicant was entitled to the registration of his native title to their ancestral land.

Cariño was decided by the U.S. Supreme Court in 1909, at a time when decisions of the U.S. Court were binding as precedent in our jurisdiction. [78] We applied the *Cariño* doctrine in the 1946 case of *Oh Cho vs. Director of Lands,* [79] where we stated that "[a]ll lands that were not acquired from the Government either by purchase or by grant, belong to the public domain, but [a]n exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest. [80]

Petitioners however aver that the U.S. Supreme Court's ruling in *Cariño* was premised on the fact that the applicant had compiled with the requisites of acquisitive prescription, having established that he and his predecessors-in-interest had been in possession of the property since time immemorial. In effect, petitioners suggest that title to the ancestral land applied for by Cariño was transferred from the State, as original owner, to Cariño by virtue of prescription. They conclude that the doctrine cannot be the basis for decreeing "by mere legislative fiat… that ownership of vast tracts of land belongs to [indigenous peoples] without judicial confirmation." [81]

The Solicitor general, for his part, claims that the *Cariño* doctrine applies only to alienable lands of the public domain and, as such, cannot be extended to other lands of the public domain such as forest or timber, mineral lands, and national parks.

There is no merit in these contentions.

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77 *Cariño vs. Insular Government,* supra note 75, at 941.

78 Section 10, Philippine Bill of 1902.

79 75 Phil 890 (1946).

80 Id., at 892.

81 Memorandum of Petitioners, Rollo, p. 861.

A proper reading of *Carinño* would show that the doctrine enunciated therein applies only to **lands which have always been considered as private,** and not to lands of the public domain, whether alienable or otherwise. A distinction must be made between ownership of land under native title and ownership by acquisitive prescription against the State. Ownership by virtue of native title presupposes that the land has been held by its possessor and his predecessors-in-interest in the concept of an owner since time immemorial. The land is not acquired from the State, that is, Spain or its successors-in-interest, the United States and the Philippine Government. There has been not ransfer of title from the State as the land has been regarded as private in character as far back as memory goes. In contrast, ownership of land by acquisitive prescription against the State involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person. Since native title assumes that the property covered by it is private land and is deemed never to have been part of the public domain, the Solicitor General'sthesis that native title under *Cariño* applies only to lands of the public domain into agricultural, forest or timber, mineral lands, and national parks under the Constitution [82] is irrelevant to the application of the *Cariño* doctrine because the Regalian doctrine which vests in the State ownership of lands of the public domain does not cover ancestral lands and ancestral domains.

Legal history support the *Cariño* doctrine.

When Spain acquired sovereignty over the Phillippines by virtue of its discovery and occupation thereof in the 16th century and the Treaty of Tordesillas of 1494 which it entered into with Portugal, [83] the continents of Asia, the Americas and Africa were considered as *terra nullius* although already populated by other peoples. [84] The discovery and occupation by the European States, who were then considered as the only members of the international community of civilized nations, of lands in the said continents were deemed sufficient t create title under international law. [85]

Although Spain was deemed to have acquired sovereignty over the Philippines, this did not mean that it acquired title to **all** lands in the archipelago. By virtue of the colonial laws of Spain, the Spanish Crown was considered to have acquired **dominion** only over the unoccupied and unclaimed portions of our islands. [86]

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82 Section 3, Article XII, CONSTITUTION.

83 Under the Treaty of Tordesillas, the world was divided between Spain and Portugal, with the former having exclusive power to claim all lands and territories west of the Atlantic Ocean demarcation line (Lynch, *The Legal Bases of Philippine Colonial Sovereignty,* 62 Phil. L J 279, 283 [(1987)].

84 See AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW, 5th ed., 142-143.

85 See CRUZ, INTERNATIONAL LAW, 1996 ed., pp. 106-107.

86 *Cariño v. Insular Government, supra note* 75, at 939.

> This point finds significance in light of the distinction between sovereignty and dominion. **Sovereignty** is the right to exercise the functions of a State to the exclusion of any other State (Case Concerning the Island of Las Palmas [1928], UNRIAA II 829, 838). It is often referred to as the power of *imperium,* which is defined as the government authority possessed by the State (BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY VOL. 2, p. 419). On the

In sending the first expedition to the Philippines, Spain did not intend to deprive the natives of their property. Miguel Lopez de Legazpi was under instruction of the Spanish King to do no harm to the natives and to their property. In this regard, an authority on the early Spanish colonial period in the Philippines wrote:

> The government of [the King of Spain] Philip II regarded the Philippines as a challenging opportunity to avoid a repetition of the sanguinary conquests of Mexico and Peru. In his written instructions for the *Adelantado* Legazpi, who commanded the expedition, Philip II envisaged a bloodless pacification of the archipelago. This extraordinary document could have been lifted almost verbatim from the lectures of the Dominican theologian, Francisco de Vitoria, delivered in the University of Salamanca. The King instructed Legazpi to inform the natives that the Spaniards had come to do no harm to their persons or to their property. The Spaniards intended to live among them in peace and in friendship and "to explain to them the law of Jesus Christ by which they will be saved." Although the Spanish expedition could defend themselves if attacked, the royal instructions admonished the commander to commit no aggressive act which might arouse native hostility. [87]

Spanish colonial laws recognized and respected Filipino landholdings including native land occupancy.[88] thus, the recopilatcion de Leyes de las Indias expressly conferred ownership of

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other hand, **dominion,** or *dominium*, is the capacity of the State to own or acquire property such as lands and natural resources.

Dominium was the basis for the early Spanish decrees embracing the theory of *jura regalia.* The declaration in Section 2, Article XII of the 1987 Constitution that all lands of the public domain are owned by the State is likewise founded on *dominium* (Ibid.). If *dominium* not *imperium,,* is the basis of the theory of *jura regalia,* then the lands which Spain acquired in the 16th century were limited to non-private lands, because it could only acquire lands which were not yet privately-owned or occupied by the Filipinos. Hence, Spain acquired title only over lands which were unoccupied and unclaimed, i.e. public lands.

PHILIPPINES: A commentary Vol. 2, p. 419). On the other hand, **dominion**, or dominium, is the capacity of the State to own or acquire property such as lands and natural resources.

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87 PHELAN, THE HISPANIZATION OF THE PHILIPPINES: SPANISH AIMS AND FILIPINOS RESPONSES, 1565-1700 (1959), pp. 8-9.

88 Cariño vs. insular Government, supra note 75, at 943.

lands already held by the natives.[89] The royal decrees of 1880 and 1894 did not extinguish native title to land in the Philippines. The earlier royal decree, dated June 25, 1880, provided that all those in "unlawful possession of royal lands" must legalize their possession by means of adjustment proceedings,[90] and within the period specified. The later royal decree, dated February 13, 1894, otherwise known as the Maura Law, declared that titles that were capable of adjustment under the royal decree of 1880, but for which adjustment was not sought, were forfeited. Despite the harsh wording of the Maura Law, it was held in the case of *Cariño* that the royal decree of 1894 should not be construed as confiscation of title, but merely as the withdrawal of the privilege of registering such title. [91]

Neither was native title disturbed by the Spanish cession of the Philippines tot eh United States, contrary to petitioner's assertion that the US merely succeeded to the rights of Spain, including the latter's rights over lands of the public domain. [92] Under the Treaty of Paris of December 10, 1898, the cession of the Philippines did not impair any right to property existing at

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89 Book 4, Title 12, Law 9, decreed by Philip II, 1 June 1594. We order that grants of farms and lands to Spaniards be without injury to the Indians and that those which have been granted to their loss and injury, be returned to the lawful owners.

Book 4, Title 12, Law 14. 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 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 according as they belong to us, in order that x x x after distributing to the natives what may be necessary for tillage and pasteurage, **confirming them in what they now have B** and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we wish. [Quoted in *Valenton v. Murciano,* 3 Phil. 537, 542-543 (1904).] (Emphasis supplied.)

Book 6, Title 1, Law 15, decreed by King Philip II, at Madrid, 7 November 1574. We command that in the Philippine Islands the Indians not be removed from one to another settlement by force and against their will.

Book 6, Title 1, law 23, otherwise known as Ordinance 10 of 1609 decreed by Philip III. It is right that time should be allowed the Indians to work their own individual lands and those of the community.

Book 6, Title 1, Law 32, decreed by Philip II, 16 April 1580. We command the Viceroys, presidents, and Audiencias that they see to it that the Indians have complete liberty in their dispositions.

Royal Cedula of October 15, 1754. Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that **ancient possession, as a valid title by prescription;** x x x . [Quoted in *Valenton v. Murciano, supra,* at 546.] (Emphasis supplied.)

90 Article 6 of the royal decree of June 25, 1880, quoted in *Valenton v. Murciano. Supra note* 89 at 549.

91 *Cariño v. Insular Government, supra note* 75, at 944.

92 Memorandum of Petitioners, par. 3.4, *Rollo,* pp. 845-846.

the time. [93] During the American colonial regime, native title to land was respected, even protected. The Philippine Bill of 1902 provided that property and rights acquired by the US through cession from Spain were to be administered for the benefit of the Filipinos. [94] In obvious adherence to libertarian principles, McKinley's instructions, as well as the Philippine Bill of 1902, contained a bill of rights embodying the safeguards of the US Constitution. One of these rights, which served as an inviolable rule upon every division and branch of the American colonial government in the Philippines, [95] was that " no person shall be deprived of life, liberty, or property without due process of law." [96] These vested rights safeguarded by the Philippine Bill of 1902 were in turn expressly protected by the due process clause of the 1935 Constitution. Resultantly, property rights of the indigenous peoples over their ancestral lands and ancestral domains were firmly established in law.

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93 The Treaty of Paris reads in part:

> Article III. Spain cedes to the United States the archipelago known as the Philippine Islands, x x x.
>
> The United States will pay to Spain the sum of twenty million dollars, within three months after the exchange of the ratification s of the present treaty.
>
> x x x
>
> Article VIII. In conformity with the provisions of Articles One, Two, and Three of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands of the West Indies, in the Island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belong to the public domain and as such belong to the Crown of Spain.
>
> And it is hereby declared that the relinquishment or **cession** , as the case may be, to which the preceding paragraph refers, **can not in any respect impair the property or rights which by law belong to the peaceful possession of property** of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

94 The statute reads in part:

> Section 12. That **all the property and rights which may have been acquired in the Philippine Islands under the treaty of peace** with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the government of the United States, **are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof,** except as provided by this Act.

95 McKinley's instructions to the Second Philippine Commission, in MENDOZA, FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION: DOCUMENTS ON THE PHILIPPINE CONSTITUTIONAL SYSTEM (1978) p. 71.

96 Id., at 65-75; Section 5, Philippine Bill of 1902.

Nonetheless, the Solicitor General takes the view that the vested rights of indigenous peoples to their ancestral lands and ancestral domains were "abated by the direct act by the sovereign Filipino people of ratifying the 1935 Constitution." [97] He advances the following arguments:

> The Sovereign, which is the source of all rights including ownership, has the power to restructure the consolidation of rights inherent in ownership in the State. Through the mandate of the Constitutions that have been adopted, the State has wrested control of those portions of the natural resources it deems absolutely necessary for social welfare and existence. It has been held that the State may impair vested rights through a legitimate exercise of police power.
>
> Vested rights do not prohibit the Sovereign from performing acts not only essential to but determinative of social welfare and existence. To allow otherwise is to invite havoc in the established social system. x x x
>
> Time-immemorial possession does not create private ownership in cases of natural resources that have been found from generation to generation to be critical to the survival of the Sovereign and its agent, the State. [98]

Stated simply, the Solicitor General's argument is that the State, as the source of all titles to land, had the power to re-vest in itself, through the 1935 Constitution, title to all lands, including ancestral lands and ancestral domains. While the Solicitor General admits that such a theory would necessarily impair vested rights, he reasons out that even vested rights of ownership over ancestral lands and ancestral domains are not absolute and may be impaired by the legitimate exercise of police power.

I cannot agree. The text of the provision of the 1935 Constitution invoked by the Solicitor General, while embodying the theory of *jura regalia,* is too clear for any misunderstanding. It simply declares that "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." [99] Nowhere does it state that certain lands

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97 Solicitor General's Memorandum, *Rollo,* p. 668-669.

98 Id., at 668.

99 Section 1, Article XII, 1935 Constitution reads:

> 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,

which are "absolutely necessary for social welfare and existence," including those which are **not** part of the public domain, shall thereafter be owned by the State. If there is any room for constitutional construction, the provision should be interpreted in favor of the preservation, rather than impairment or extinguishments, of vested rights. Stated otherwise, Section 1, Article XII of the 1935 Constitution cannot be construed to mean that vested right which had existed when were extinguished and that the landowners were divested of their lands, all in the guise of "wrest[ing] control of those portions of the natural resources [which the State] deems absolutely necessary for social welfare and existence." On the contrary, said Section restated the fundamental rule against the diminution of existing rights by expressly providing that the ownership of lands of the public domain and other natural resources by the State is "subject to any existing right, grant, lease, or concessions." The "existing rights" that were intended to be protected must, perforce, include the **right of ownership** by indigenous peoples over their ancestral lands and domains. The words of the law should be given their ordinary or usual meaning, [100] and the term "existing rights" cannot be assigned an unduly restrictive definition.

Petitioners concede that Congress is mandated under Section 5, Article XII of the 1987 Constitution [101] to protect the rights of indigenous peoples to their ancestral lands and ancestral domains. Nonetheless, they contend that the recognition and protection under IPRA of the right of ownership of indigenous peoples over ancestral lands and ancestral domains are far in excess of the legislative power and constitutional mandate of the Congress, [102] since such recognition and protection amount to the alienation of lands of the public domain, which is proscribed under Section 2, Article XII of the Constitution.

Section 5, Article XII of the Constitution expresses the sovereign intent to "protect the **rights** of indigenous peoples to their ancestral lands." In its general and ordinary sense, the term "right" refers to any legally enforceable claim. [103] it is a power, privilege, faculty or demand inherent in one person and incident upon another. [104] When used in relation to property, "right" includes any interest in or title to an object, or any just and legal claim to hold, use and enjoy it.[105] Said provision in the Constitution cannot, by any reasonable construction, be interpreted to exclude the protection of the **right of ownership** over such ancestral lands. For this reason, Congress cannot be said to have exceeded its constitutional mandate and power in

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renewable for another 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 limit of the grant.

100 *Central Azucarera Don Pedro v. Central Bank,* 104 Phil 598 (1954).

101 Sec. 5, Article XII. 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 and relations in determining the ownership and extent of ancestral domains.

102 See Memorandum of Petitioners, *Rollo,* pp. 863-864.

103 SIBAL, PHILIPPINE LEGAL ENCYCLOPEDIA, p. 893.

104 BLACK'S LAW DICTIONARY, 5th ed., p. 1189.

105 Ibid.

enacting the provisions of IPRA, specifically Sections 7 (a) and 8, which recognize the right of ownership of the indigenous peoples over ancestral lands.

The second paragraph of Section 5, Article XII also grants Congress the power to "provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains." In light of this provision, does Congress have the power to decide whether ancestral domains shall be private property or part of the public domain? Also, does Congress have the power to determine whether the "extent" of ancestral domains shall include the natural resources found therein?

It is readily apparent from the constitutional records that the framers of the Constitution did not intend Congress to decide whether ancestral domains shall be public or private property. Rather, they acknowledged that ancestral domains shall be treated as private property, and that customary laws shall merely determine whether such private ownership is by the entire indigenous cultural community, or by individuals, families, or clans within the community. The discussion below between Messrs.Regalado and Bennagen and Mr. Chief Justice Davide. then members of the 1986 Constitutional Commission, is instructive:

> MR. REGALADO. Thank you, Madame President.may I seek some clarifications from either Commissioner Bennagen or Commissioner Davide regarding this phrase "CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS in determining the ownership and extent of the ancestral domain." because ordinarily it is the law on ownership and the extent thereof which determine the property rights or relations arising therefrom. On the other hand, in this proposed amendment the phraseology is that it is the property rights or relations which shall be used as the basis in determining the ownership and extent of the ancestral domain. I assume there must be a certain difference in the customary laws and our regular civil laws on property.
>
> MR. DAVIDE. That is exactly the reason, Madam President, why we will leave it to Congress to make the necessary exception to the general law on property relations.
>
> MR. REGALADO. I was thinking if Commissioner Bennagen could give us an example of such a customary law wherein it is the property rights and relations that determine the ownership and the extent of that ownership, unlike the basic fundamental rule that it is the ownership and the extent of ownership which determine the property rights and relations arising therefrom and consequent thereto. Perhaps these customary laws may have a different provision or thrust so that we could make the corresponding suggestions also by way of an amendment.
>
> MR. DAVIDE. That is exactly my own perception.
>
> MR. BENNAGEN. Let me put it this way.
>
> There is a range of customary laws governing certain types of ownership. **There would be ownership based on individuals, on clan or lineage, or on community.** And the thinking expressed in the consultation is that this should be

codified and should be recognized in relation to existing national laws. That is essentially the concept. [106] (Emphasis supplied.)

The intention to treat ancestral domains as private property is also apparent from the following exchange between Messrs. Suarez and Bennagen:

> MR. SUAREZ. When we speak of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain, are we thinking in terms of the tribal ownership or community ownership or of private ownership within the ancestral lands or ancestral domain?
>
> MR. BENNAGEN. **The concept of customary laws is that it is considered as ownership by private individuals, clans and even communities.**
>
> MR. SUAREZ. So, there will be two aspects to this situation. This means that the State will set aside the ancestral domain and there is a separate law for that. Within the ancestral domain it could accept more specific ownership in terms of individuals within the ancestral lands.
>
> MR. BENNAGEN. Individuals and groups within the ancestral domain.[107] (Emphasis supplied.)

It cannot be correctly argued that, because the framers of the Constitution never expressly mentioned *Cariño* in their deliberations, they did not intend to adopt the concept of native title to land, or that they were unaware of native title as an exception to the theory of *jura regalia.* [108] The framers of the Constitution, as well as the people adopting it, were presumed to be aware of the prevailing judicial doctrines concerning the subject of constitutional provisions, and courts should take these doctrines into consideration in construing the Constitution. [109]

Having thus recognized that ancestral domains under the Constitution are considered as private property of indigenous peoples, the IPRA, by affirming or acknowledging such ownership through its various provisions, merely abides by the constitutional mandate and does not suffer any vice of unconstitutionality.

Petitioners interpret the phrase "subject to the provisions of this Constitution and national development policies and programs" in Section 5, Article XII of the Constitution to mean "as subject to the provision of Section 2, Article XII of the Constitution," which vests in the State ownership of all lands of the public domain, mineral lands and other natural resources. Following

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106 4 RECORD OF THE CONSTITUTIONAL COMMISSION 32.

107 Id., at 37.

108 Solicitor General's memorandum, *Rollo,* p. 665.

109 *Torres v. Tan Chim,* 69 Phil 518 (1940); *CIR v. Guerrero,* 21 SCRA 180 (1967).

this interpretation, petitioners maintain that ancestral lands and ancestral domains are the property of the State.

This proposition is untenable. Indeed, Section2, Article XII reiterates the declarations made in the 1935 and 1973 Constitutions on the state policy of conservation and nationalization of lands of the public domain and natural resources, and is of paramount importance to our national economy and patrimony. A close perusal of the records of the 1986 Constitutional Commission reveals that the framers of the Constitution inserted the phrase "subject to the provisions of this Constitution" mainly to prevent the impairment of Torrens titles and other prior rights in the determination of what constitutes ancestral lands and ancestral domains, to wit:

> MR. NATIVIDAD. Just one question. I want to clear this section protecting ancestral lands. How does this affect the Torrens title and other prior rights?
>
> MR. BENNAGEN. I think that was also discussed in the committee hearings and we did say that in cases where due process is clearly established in terms of prior rights, these two have to be respected.
>
> MR. NATIVIDAD. The other point is: How vast is this ancestral land? Is it true that parts of Baguio City are considered as ancestral lands?
>
> MR. BENNAGEN. They could be regarded as such. If the Commissioner still recalls, in one of the publications that I provided the Commissioners, the parts could be considered as ancestral domain in relation to the whole population of Cordillera but not in relation to certain individuals or certain groups.
>
> MR. NATIVIDAD. The Commissioner means that the whole Baguio City is considered as ancestral land?
>
> MR. BENNAGEN. Yes, in the sense that it belongs to Cordillera or in th same manner that Filipinos can speak of the Philippine archipelago as ancestral land, but not in terms of the right of a particular person or particular group to exploit, utilize, or sell it.
>
> MR. NATIVIDAD. But it is clear that the prior rights will be respected.
>
> MR. BENNAGEN. Definitely. [110]

Thus, the phrase "subject to the provisions of this Constitution" was intended by the framers of the Constitution as a reiteration of the constitutional guarantee that no person shall be deprived of property without due process of law.

There is another reason why Section 5 of Article XII mandating the protection of rights of the indigenous peoples to their ancestral lands cannot be construed as subject to Section 2 of the same Article ascribing ownership of all public lands to the State. The Constitution must be construed as a whole. It is a rule that when construction is proper, the whole Constitution is

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[110] 4 RECORD OF THE CONSTITUTIONAL COMMISSION 36.

examined in order to determine the meaning of any provision. That construction should be used which would give effect to the entire instrument. [111]

Thus, the provisions of the Constitution on State ownership of public lands, mineral lands and other natural resources should be read together with the other provisions thereof which firmly recognize the rights of the indigenous peoples. These, as set forth hereinbefore, [112] include: **Section 22, Article II,** providing that the State recognizes and promotes the rights of indigenous peoples within the framework of national unity and development; **Section 5, Article XII,** calling for the protection of the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being, and for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domains; **Section 1, Article XIII,** directing the removal or reduction of social, economic, political and cultural inequities and inequalities by equitably diffusing wealth and political power for the common good; **Section 6, Article XIII,** directing the application of the principles of agrarian reform or stewardship in the disposition and utilization of other natural resources, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands; **Section 17, Article XIV,** decreeing that the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions; and **Section 12, Article XVI,** authorizing the Congress to create a consultative body to advise the President on policies affecting indigenous cultural communities.

Again, as articulated in the Constitution, the first goal of the national economy is the **more equitable distribution of opportunities, income, and wealth.** [113] Equity is given prominence as the first objective of national economic development. [114] The framers of the

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111 See 1 COOLEY, CONST., LIMITATIONS, 8th ED., pp. 127-129.

112 See pp. 8-9 of this Opinion for the full text of the constitutional provisions mentioned.

113 Section 1, Article XII provides:

> **The goals of the national economy are a more equitable distribution of opportunities, income, and wealth;** a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.
>
> The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.
>
> In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives and similar collective organizations, shall be encouraged to broaden the base of their ownership. (Emphasis supplied.)

114 BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS, p. 800, citing the sponsorship speech of Dr. Bernardo Villegas, Chairman of the Committee on National Economy and Patrimony.

Constitution did not, by the phrase "subject to the provisions of this Constitution and national development policies and programs," intend to establish a hierarchy of constitutional norms. As explained by then Commissioner (now Chief Justice) Hilario G. Davide, jr., it was not their objective to make certain interests primary or paramount, or to create absolute limitations or outright prohibitions; rather, the idea is towards the balancing of interests:

> BISHOP BACANI. In Commissioner Davide's formulation of the first sentence, he says: "The State, SUBJECT TO THE provisions of this Constitution AND shall guarantee the rights of cultural or tribal communities to their ancestral lands to ensure their economic, social and cultural well-being." There are at least two concepts here which receive different weights very often. They are the concepts of national development policies and programs, and the rights of cultural or tribal communities to their ancestral lands, etcetera. I would like to ask: When the Commissioner proposed this amendment, which was the controlling concept? I ask this because sometimes the rights of cultural minorities are precisely transgressed in the interests of national development policies and programs. Hence, I would like to know which is the controlling concept here. Is it the rights of indigenous peoples to their ancestral lands or is it national development policies and programs.
>
> MR. DAVIDE. **it is not really a question of which is primary or which is more paramount. The concept introduced here is really the balancing of interests.** That is what we seek to attain. We have to balance the interests taking into account the specific needs and the specific interests also of these cultural communities in like manner that we did so in the autonomous regions. [115] (Emphasis supplied.)

B. The provisions of R.A 8371 do not infringe upon the State's ownership over the natural resources within the ancestral domains.

Petitioners posit that IPRA deprives the State of its ownership over mineral lands of the public domain and other natural resources,[116] as well as the State's full control and supervision over the exploration, development and utilization of natural resources.[117] Specifically, petitioners and the Solicitor General assail Sections 3 (a),[118] 5,[119] and 7[120] violative of Section 2, Article XII

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115 4 RECORD OF THE CONSTITUTIONAL COMMISSION 34.

116 Petition, Rollo, pp. 18-19.

117 Id., at 20.

118 Section 3. Definition of Terms. –For the Purposes of this Act, the following terms shall mean:

> a) Ancestral Domains. –Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individual since time immemorial, continuously to the present except when

of the Constitution which states, in part, that "[a]|| 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."[121] They would have the Court declare as unconstitutional Section 3(a) of IPRA because the inclusion of natural resources in the definition of ancestral domains purportedly results in the abdication of State ownership over these resources.

I am not convicted.

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interrupted by was, 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.

[119] Section 5. Indigenous Concept of Ownership –Indigenous concept of ownership sustains the view that ancestral domains 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 ICCs/IPs private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

[120] Section 7. Rights to Ancestral Domains. –The **rights of ownership** and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

(a) Right of Ownership. –The **right to claim ownership** over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

(b) Right to Develop Lands and Natural Resources. –Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conversion measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral; domains and to receive just and fair compensation for any damages which they may sustain as a result of eh project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights; x x x (Emphasis supplied.) (c)

[121] Section 2, Article XII, CONSTITUTION.

Section 3(a) merely defines the coverage of ancestral domains, and describes the extent, limit and composition of ancestral domains by setting forth the standards and guidelines in determining whether a particular area is to be considered as part of and within the ancestral domains. In other words, Section 3(a) serves only as a yardstick which points out what properties are within the ancestral domains. It does not confer or recognize any right of ownership over the natural resources to the indigenous peoples. Its purpose is definitional and not declarative of a right or title.

The specification of what areas belong to the ancestral domains is, to our mind, important to ensure that no unnecessary encroachment on private properties outside the ancestral domains will result during the delineation process. The mere fact that section 3(a) defies ancestral domains to include the natural resources found therein does not ipso facto convert the character of such natural resources as private property of the indigenous peoples. Similarly, Section 5 in relation to Section 3(a) cannot be construed as a source of ownership rights of indigenous people over the natural resources simply because it recognizes ancestral domains as their "private but community property."

The phrase "private but community property" is merely descriptive of the indigenous peoples' concept of ownership as distinguished from that provided in the Civil Code. In Civil Law, " ownership" is the "independent and general power of a person over a thing for purposes recognized by law and within the limits established thereby."[122] The civil law concept of ownership has the following attributes: jus utendi or the right to receive from the thing by its use, jus disponendi or the power to alienate, encumber, transform and even destroy that which is owned and jus vidicandi or the right to exclude other persons from the possession the thing owned.[123] in contrast, the indigenous peoples' concept of ownership emphasizes the importance of communal or group ownership. By virtue of the communal character of ownership, the property held in common "cannot be sold, disposed or destroyed"[124] because it was meant to benefit the whole indigenous community and not merely the individual member.[125]

That IPRA is not intended to bestow ownership over natural resources to the indigenous peoples is also clear from the deliberations of the bicameral conference committee on Section 7 which recites the rights of indigenous peoples over their ancestral domains, to wit:

> CHAIRMAN FLAVIER. Accepted. Section 8[126] rights to ancestral domain, this is where we transferred the other provision but here itself ---

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122 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. II, p. 42 (1983); see also Articles 427 and 428, Civil Code.

123 Id., at 43.

124 Section 5, R.A. 8371.

125 Ibid.

126 Should be Section 7. The transcript of Session Proceedings of eh deliberations of the Bicameral Conference Committee on national Cultural Communities regarding house bill No. 9125 refers to section 8 but the Committee was actually discussing Section 7 on Rights to Ancestral Domains

HON. DOMINGUEZ. Mr. Chairman, if I maybe allowed to make a very short Statement. Earlier, Mr. Chairman, **we have decided to remove the provisions on natural resources because we all agree that that belongs to the State.** Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras. So, if there could be, if our lawyers or the secretariat could just propose a provision for incorporation here so that maybe the right to consultation and the right to be compensated when there are damages within their ancestral lands.

CHAIRMAN FLAVIER. Yes, very well taken but to the best of my recollection both are already considered in subsequent sections which are now looking for.

HON. DOMINGUEZ. Thank you.

CHAIRMAN FLAVIER. First of all there is a line that gives priority use for the indigenous people where they are. Number two, in terms of eh mines there is a need for prior consultation of source which is here already. So, anyway it is on the record that you want to make sure that the secretariat takes note of those two issues and my assurance is that it is already there and will make sure that they cross check.

HON. ADAMAT. I second that, Mr. Chairman.

CHAIRMAN FLAVIER. Okay, thank you. So we move to Section 8, there is a senate version you do not have and if you agree we will adopt that.[127] (Emphasis supplied.)

Further, Section 7 makes no mention of any right of ownership of the indigenous peoples over the natural resources. In fact, Section 7(a) merely recognizes the "right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." Neither does Section 7(b), which enumerates certain rights of the indigenous peoples over the natural resources found within their ancestral domains, contain any recognition of ownership vis-avis the natural resources.

What is evident is that the IPRA protects the indigenous peoples' rights and welfare in relation to the natural resources found within their ancestral domains,[128] including the preservation of the ecological balance therein and the need to ensure that the indigenous peoples

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127 Transcript of Session Proceedings, bicameral Conference Committee on national Cultural Communities, October 9, 1997, XIV-2.

128 Sections 7(b) and Section 57, R.A 8371.

will not be unduly displace when State-approved activities involving the natural resources located therein are undertaken.

Finally, the concept of native title to **natural resources**, unlike native title to **land**, has not been recognized in the Philippines. NCIP and Flavier, et al. invoke the case of Reavies v. Fianza[129] in support of their thesis that native title to natural resources has been upheld in this jurisdiction.[130] They insist that "it is possible for rights over natural resources to vest on a private (as opposed to a public) holder if these were held prior to the 1935 Constitution."[131] However, a judicious examination of Reavies reveals that, contrary to the position of NCIP and Flavier, et al., the Court did not recognize native title to natural resources. Rather it merely upheld the right of the indigenous peoples to claim ownership of minerals **under the Philippine Bill of 1902**.

While as previously discussed, native title to **land** or private ownership by Filipinos of land by virtue of time immemorial possession in the concept of an owner was acknowledged and recognized as far back during the Spanish colonization of eth Philippines, there was no similar favorable treatment as regards natural resources. The unique value of natural resources has been acknowledged by the State and is the underlying reason for its consistent assertion of ownership and control over said natural resources from the Spanish regime up to the present. [132] Natural

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129 40 Phil. 1017 (1909), 215 US 16, 54 L Ed 72.

130 Ibid. The facts of the case were discussed in Fianza vs. Reavies, (7 Phil. 610 [1909]) thus,: Jose Fianza, et al ., members of the Igorot tribe, claimed that he and his predecessors had, for more than fifty years prior to 1901, possessed a certain parcel of mineral land on which where found two gold mines. The same parcel of land was also claimed by an American, J.F. Reavies, who entered the land in 1901 and proceeded to locate mining claims according to the mining laws of the United States. The Philippines Supreme Court held that Fianza, et al. were the rightful owners of the mineral lands pursuant to Section 45of the Philippine Bill of 1902 which in sum states that where a person have held or worked on their mining claims for a period equivalent to ten years, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto. On appeal, the United States Supreme Court affirmed the decision of eh Philippine Supreme Court and held that the indigenous peoples were the rightful owners of the contested parcel of land, stating that the possession and working by Fianza, et al. of he mining claim in the Philippine Islands for the time required under the Section 45 of the Philippine Bill of 1902 to establish the right to a patent, need not have been under a claim of title.

131 MEMORANDUM OF INTERVENORS FLAVIER, et al., Rollo, p. 918.

132 Article I of the Decree of Superior Civil Government of January 29, 1864 provided that " The Supreme ownership of mines throughout the kingdom belongs to the crown and the king. They shall not be exploited except by persons who obtained special grant from this superior government and by those who may secure it thereafter, subject to this regulation." (FRANCISCO, PHILIPPINE LAWS ON NATURAL RESOURCES, 2nd ed. [1956], p. 14, citing the unpublished case of Lawrence v. Garduno, G.R. No.19042.)

Article 2 of the Royal Decree of May 14, 1867 (the Spanish Mining Law), the law in force at the time of the cession of the Philippines to the United States contained a similar declaration, thus:

> The ownership of the substances enumerated in the preceding article (among them those of inflammable nature) belongs to the state, and they cannot be disposed of without an authorization issued by the Superior Civil Governor.

The Spanish Civil code contained the following analogous provisions affirming the State's ownership over minerals:

> Art. 339. Property of public dominium is--
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> xxx
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> 2. That belonging exclusively to the State which, without being of general public use, is employed in some public service, or in the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until granted to private individuals.
>
> Art. 350. The proprietor of land is the owner of eh surface and of everything under it and may build, plant or excavate thereon, as he may see fit, subject to any existing easements and to the provisions of the Laws on Mines and Waters and to police regulations.

After the Philippines was ceded to Spain, the Americans continue to adhere to the concept of State-ownership of natural resources. However, the open and free exploration, occupation and purchase of mineral deposits and the land where they may be found were allowed under the Philippine Bill 1902. Section 21 thereof stated:

> Sec. 21. That all valuable mineral deposits in public lands in the Philippine islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation and purchase, and the land in which they are found, to occupation and purchase, by citizens of he United States, or of said islands: Provided, That when on any lands on said islands entered and occupied as agricultural lands under the provisions of this act, but no patented, mineral deposits have been found, the working of such mineral deposits is hereby forbidden person, association, or corporation who or which has entered and is occupying such lands shall have paid to the Government of said islands such additional sum or sums as will make the total amount paid for the mineral claim or claims in which said deposits are located equal to the amount charged by the Government for the same as mineral claims.

Other natural resources such as water and forests were similarly regarded as belonging to the State during both the Spanish and American rule in the Philippines, viz:

Article 33 of the Law of Waters of August 3, 1866 defined waters of public ownership as (1) the waters springing continuously or intermittent from lands of the public domain; (2) the waters of rivers; and (3) the continuous or intermittent waters of springs and creeks running through their natural channels.

Article 1 of the same law states:

> The following are also part of the national domain open to public use:
>
> 1. The coasts or maritime frontiers of the Philippine territory with their coves, inlets, creeks, roadsteads, bays and ports.
> 2. The coast of the sea, that is, the maritime zone encircling the coasts, to the full width recognized by international law. The state provides for and regulates the police supervision and the uses of this zone as well as the right of refuge and immunity therein, in accordance with law and international treaties.

resources especially minerals, were considered by Spain as an abundant source of revenue to finance its battles in wars against other nations. Hence, Spain, by asserting its ownership over minerals wherever these may be found, whether in public or private lands, recognized the separability of title over lands and that over minerals which may be found therein.[133]

On the other hand, the United States viewed natural resources as a source of wealth for its nationals. As the owner of natural resources over the Philippines after the latter's cession from Spain, the United States saw it fit to allow both Filipino and American citizens to explore and exploit minerals in public lands, and to grant patents to private mineral lands. A person who acquired ownership over parcel of private mineral land pursuant to the laws then prevailing could exclude other person, event he State, from exploiting minerals from his property.[134] Although the United States made a distinction between minerals found in the public lands and those found in private lands, title in these minerals was in all cases sourced from the State. The framers of the

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With respect to forests, there are references made regarding State-ownership of forest lands in Supreme Court decisions (See Director of Forestry vs. Munoz, 23 SCRA vs. Insular Government, 12 Phil. 572, 584 [1909]).

The State's ownership over natural resources was embodied in the 1935, 1973 and 1987 Constitutions. Section 1, Article XII of the 1935 Constitution declared:

> All agricultural, timber and mineral lands of the public domain, waters, minerals, coal, petroleum sand other mineral oils, all forces of potential energy, and other natural resources of eth 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 al 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, or utilization of any of the natural resources shall be granted for a period of 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 measured and the limit of the grant.

Section 8, Article XIV of the 1973 Constitution provided:

> All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, 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, or 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 fore irrigation water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and limit of the grant.

133 NOBLEJAS, PHILIPPINE LAW ON NATURAL RESOURCES 1961 Revised Ed., p. 6

134 See LAUREL (ED.), PROCEEDINGS OF THE PHILIPPINE CONSTITUTIONAL CONVENTION, VOL. VI, pp.494-495.

1935 Constitution found it necessary to maintain the State's ownership over natural resources to ensure their conservation f or future generations of Filipinos, to prevent foreign control of the country through economic domination; and to avoid situations whereby the Philippines would become a source of international conflicts, thereby posing danger to its internal security and independence.[135] The declaration of State ownership and control over minerals and other natural resources in the 1935 Constitution was reiterated in both the 1973[136] and 1987 Constitutions.[137]

Having ruled that the natural resources which may be found within the ancestral domains belong to the State, the Court deems it necessary to clarify that the jurisdiction of the NCIP with the respect to ancestral domains under section 52 [I] of IPRA extends only to the **lands** and not to the **natural resources** therein.

Section 52 [I] provides:

> Turnover of Areas Within Ancestral domains Managed by Other Government Agencies. – the Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed.
>
> Undoubtedly, certain areas that are claimed as ancestral domains may still be under the administration of other agencies of the Government, such as the Department of Agrarian reform, with the respect to agricultural lands, and the Department of Environment and Natural Resources with respect to timber, forests and mineral lands.

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135 Explanatory Note of the Committee on nationalization of Lands and Natural Resources, September 14, 1934, reproduced in LAUREL (ED.), PROCEEDINGS OF THE PHILIPPINE CONSTITUTIONAL CONVENTION, VOL, II, pp. 464-468; see also DE LEON AND DE LEON, JR., PHILIPPINE CONSTITUTIONAL LAW: PRINCIPLES AND CASES, VOL. 2, pp. 801-802.

136 Section 8, Article XIV, see note 139 for the full text of the provision.

137 Paragraph 1, Section 2, Article XII of the 1987 Constitution provides:

> 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 the 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 and 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 rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit if the grant.

> Upon the certification of these areas as ancestral domain following the procedure outlined in Sections 51 to 53 of the IPRA, jurisdiction of eh government agency or agencies concerned over **lands** forming part thereof ceases. Nevertheless, the jurisdiction of government agencies over the **natural resources** within the ancestral domains does not terminate by such certification because said agencies are mandated under existing laws to administer the natural resources for the State, which is owned thereof. To construe Section 52[I] as divesting the State, through the government agencies concerned, of jurisdiction over the natural resources within the ancestral domains would be inconsistent with the establish doctrine that all natural resources are owned by the State.

C. The provisions of IPRA pertaining to the utilization of natural resources are not unconstitutional.

The IPRA provides that indigenous peoples shall have the right to manage and conserve the natural resources found on the ancestral domains, to benefit from and in the profits from the allocation and utilization of these resources, and to negotiate the terms and conditions for the exploration of such natural resources.[138] The statute also grants them priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains.[139] Before the NCIP can issue a certification for the renewal, or grant of any concession, license or lease, or for the perfection of any production-sharing agreement the prior informed

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

x x x

b) Right to Develop Lands and Natural Resources. – Subject to Section 56 hereof, right to develop, control nd use lands and territories traditionally occupied, owned, or used; **to manage and conserve natural resources** within the territories and uphold the responsibilities for future generations; **to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas** for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interface with, alienation and encroachment upon these rights;

139 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.

written consent of the indigenous peoples concerned must be obtained.[140] In return, the indigenous peoples are given the responsibility to maintain, develop, protect and conserve the domains or portions thereof which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation.[141]

The Solicitor General argues that these provisions deny the State an active and dominant role in the utilization of our country's natural resources. Petitioners, on the other hand, allege that under the Constitution the exploration, development and utilization of natural resources may only be undertaken by the State, either directly or indirectly through co-production, joint venture, or production-sharing agreements.[142] to petitioners, no other method is allowed by the Constitution. They likewise submit that by vesting ownership of ancestral lands and ancestral domains in the indigenous peoples, IPRA necessarily gives them control over the use and enjoyment of such natural resources, to the prejudice of the State.[143]

Section 2, Article XII of the Constitution provides in paragraph 1 thereof that the exploration, development and utilization of natural resources must be under the full control and supervision of the State, which may directly undertake such activities or enter into co-production, joint venture, or production-sharing agreements. This provision, however, should not be read in isolation to avoid a mistaken interpretation that any and all forms of utilization of natural

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140 Section 59. Certification Precondition – All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domain Office of the area concerned: Provided, **that no certification shall be issued by the NCIP without the free and prior informed and written consent of Indigenous peoples concerned**: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirements of this consultation process.

141 Section 58. Environmental Considerations. – Ancestral domains or portions thereof, which are found to be necessary for critical watersheds mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestations determined by the agencies with the full participation of the indigenous peoples concerned shall be maintained, managed and developed for such purposes. **The Indigenous peoples concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies.** Should the Indigenous peoples decided to transfer the responsibility over the areas, said decision must be made in writing. The consent of the indigenous peoples should be arrived at in accordance with its customary laws without prejudice to the basis requirements of existing laws on free and prior informed consent: provided, that the transfer shall be temporary and will ultimately revert to the Indigenous peoples shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

142 Citing Section 2, Article XII of eh Constitution.

143 MEMORANDUM OF PETITIONERS, Id., at 840-841.

resources other than the foregoing are prohibited. The Constitution must be regarded as consistent with itself throughout.[144] No constitutional provision is to be separated from all the others, or to be considered alone, all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the fundamental law.[145]

In addition to the means of exploration, development and utilization of the country's natural resources stated in paragraph 1, Section 2 of Article XII, the Constitution itself states in the third paragraph of the same section that Congress may, by law, allow **small-scale utilization of natural resources** by its citizens.[146] Further, Section 6, Article XIII, directs the State, in the disposition and **utilization** of natural resources, to apply the principles of agrarian reform or stewardship.[147] Similarly, Section 7, Article XIII mandates the State to protect the rights of subsistence fishermen to the **preferential use** of maritime and fishing resources.[148] Clearly, Section 2, Article XII, when interpreted in view of he pro-Filipino, pro-poor philosophy of our fundamental law, and in harmony with the other provisions of the Constitution rather as a sequestered pronouncement,[149] Cannot be construed as a prohibition against any and all forms of utilization of natural resources without the State's direct participation.

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144 State v. Lathrop, 93 Ohio St 79, 112 NE 209, cited in 16 AM JUR 2d, Constitutional Law, § 100.

145 Old Wayne Mutual Life Assn. v. McDonough, 204 US 8, 51 LED 345, cited in 16 AM JUR 2d Constitutional Law, § 100.

146 Third paragraph, Section 2, Article XII, Constitution --

> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

147 Section 6, Article XIII, Constitution --

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

148 Section 7, Article XIII, Constitution --

> The state shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

149 Bower v. Big Horn Canal Assn. (Wyo) 307 P2d 593, cited in 16 AM JUR 2d Constitutional Law, § 100.

Through the imposition of certain requirements and conditions for the exploration, development and utilization of the natural resources under existing laws,[150] the State retains full control over such activities, whether done on small-scale basis[151] or otherwise.

The rights given to the indigenous peoples regarding the exploitation of natural resources under Sections 7(b) and 57 of IPRA amplify what has been granted to them under existing laws, such as the Small-Scale Mining Act of 1991 (R.A. 7076) and the Philippine Mining Act of 1995 (R.A. 7076 expressly provides that should an ancestral land be declared as a peoples small-scale mining area, the members of the indigenous peoples living within said area shall be given **priority in the awarding of small-scale mining contracts**.[152] R.A 7942 declares that **no ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned**[153] and in the event that the members of such indigenous cultural community give their consent to mining operations within their ancestral land, **royalties shall be paid to them** by the parties to the mining to the contract.[154]

In any case, a careful reading of Section 7(b) would reveal that the rights given to the indigenous peoples are duly circumscribed. These rights are limited only to the following: "**to manage and conserve** natural resources within territories and **uphold** it for future generations; **to benefit and share the profits** from allocation and utilization of the natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; **to an informed and intelligent participation** in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to **receive just and fair compensation** for any damages which they may sustain as a result of the project, and the right **to effective measures** by the government to prevent any interface with, alienation and encroachment of these rights."

It must be noted that the right to negotiate terms and conditions granted under Section 7(b) pertains only to the **exploration of** natural resources. The term "exploration" of natural resources, or any other means for the purpose of determining the existence and the feasibility of mining them for profit.[155] The exploration, which is merely a preliminary activity, cannot be equated with the entire process of "exploration, development and utilization" of natural resources which under the Constitution belong to the State.

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150 Republic Act No. 7076 (the Small-Scale Mining Act of 19912), Republic Act No. 7942 (the Philippine Mining Act of 1995).

151 Section 3(b) of R.A 7076 defines "small-scale mining" as referring to ming activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment.

152 Section 7, R.A. 7076 provides:

> Ancestral lands. – No ancestral land may be declared as a people's small-scale mining area without prior consent of the cultural communities concerned: Provided, That, if ancestral lands are declared as people's small-scale mining areas, the members of the cultural communities therein shall be given priority for awarding of a people's small-scale mining contract.

153 Section 16, R.A. 7492

154 Section 17, R.A. 7492

155 Sec. 3(q), Chapter 1, Republic Act No. 7942 (the Philippine Mining Act of 1995).

Section 57, on the other hand, grants the indigenous peoples "priority rights" in the utilization of natural resources and not absolute ownership thereof. Priority rights does not mean exclusive rights. What is granted is merely the right of preference or first consideration in the award of privileges provided by existing laws and regulations, with due regard to the needs and welfare of indigenous peoples living in the area.

There is nothing on the assailed law which implies an automatic or mechanical character in the grant of concessions. Nor does the law negate the exercise of sound discretion by government entities. Several factors still have to be considered. For example, the extent and nature of utilization and the consequent impact on the environment and on the indigenous peoples' way of life are important considerations. Moreover, the indigenous peoples must show that they live in the area and that they are in the best position to undertake the required utilization.

It must be emphasized that the grant of said priority rights to indigenous peoples is not a blanket authority to disregard pertinent laws and regulations. The utilization of said natural resources is always subject to compliance by the indigenous peoples with existing laws, such as R.A. 7076 and R.A. 7942 since it is not they but the State, which owns these resources.

It also bears stressing that the grant of priority rights does not preclude the State from undertaking activities, or entering into co-production, joint venture or production-sharing agreements with private entities, to utilize the natural resources which may be located within the ancestral domains. There is no intention, as between the State and the indigenous peoples, to create a hierarchy of values; rather, the object is to balance the interests of the State for national development and those of the indigenous peoples.

Neither does the grant of priority rights to the indigenous peoples exclude non-indigenous peoples from undertaking the same activities within the ancestral domains upon authority granted by the proper government agency. To do so would unduly limit the ownership rights of eh State over the natural resources.

To be sure, the act of the State of giving preferential right to a particular sector in the utilization of natural resources is nothing new. As previously mentioned, Section 7, Article XIII of the Constitution mandates the protection by the State of "the rights of subsistence fishermen, especially of local communities, to the preferential use of communal marine and fishing resources, both inland and offshore."

Section 57 further recognizes the possibility that the exploration and exploitation of natural resources with in the ancestral domains may disrupt the natural environment as well as the traditional activities of the indigenous peoples therein. Hence, the need for the prior informed consent of the indigenous peoples before any search for or utilization of the natural resources within their ancestral domains is undertaken.

In a situation where the State intends directly or indirectly undertake such activities, IPRA requires that the prior informed consent of the indigenous peoples be obtained. The State must, as a matter of policy and law, consult the indigenous peoples in accordance with the intent of the framers of the Constitution that national development policies and programs should involve a systematic consultation to balance local needs as well as national plans. As may be gathered from the discussion of the framers of the Constitution on this point, the national plan presumably

takes into account the requirements of the region after thorough consultation.[156] To this end, IPRA grants to the indigenous peoples the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, and the right not to be removed therefrom without their free and prior informed consent.[157] As to non-members, the prior informed consent takes the form of a formal and written agreement between the indigenous peoples and non-members under the proviso in Section 57 in case the State enters into a co-production, joint venture, or production-sharing agreement with the Filipino citizens, or corporations. This requirement is not peculiar to IPRA. Existing laws and regulations such as the Philippine Environmental Policy,[158] the Environmental impact System,[159] The Local Government Code[160] and the Philippine Mining Act of 1995[161] already required increased consultation and participation of stakeholders, such as indigenous peoples, in the planning of activities with significant environment impact.

The requirement in Section 59 that prior written informed consent of the indigenous peoples must be procured before the NCIP can issue a certification for the "issuance, renewal, or grant of any concession, license or lease, or to the perfection of any product-sharing agreement," must be interpreted, not as a grant of the power to control the exploration, development and utilization of natural resources, but merely the imposition of an additional requirement for such concession or agreement. The clear intent of the law is to protect the rights and interests of the indigenous peoples which may be adversely affected by the operation of such entities or licensees.

Corollary Issues

A. IPRA does not violate the Due Process clause

The first corollary issue raised by petitioners is whether IPRA violates Section 1, Article III of the Constitution, which provides that "no person shall be deprived of life, liberty, or property without the due process of law, nor shall any person be deprived the equal protection of the laws."

Petitioners maintain that the broad definition of ancestral lands and ancestral domains under Section 3(a) and 3(b) of IPRA includes private lands. They argue that the inclusion of private lands in the ancestral lands and ancestral domains violates the due process clause.[162] Petitioners' contention is erroneous.

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156 4 RECORDOF THE CONSTITUTIONAL COMMISSION 37.

157 Sections 7(a) and (b), R.A. 8371.

158 Presidential Decree No. 1151 (1971).

159 Presidential Decree No. 1586 (1978) and DENR Administrative Order No. 37 (1996).

160 Republic Act No. 7160 (1991).

161 Republic Act No. 7942.

162 Petition, Rollo, pp. 23-25.

Sections 3(a) and 3(b) expressly provide that the definition of ancestral lands and ancestral domains are "subject to Section 56," which reads:

> **Sec. 56.** Existing Property Rights Regimes. –Property rights within the ancestral domains already existing and/or vested upon effectively of this Act, shall be recognized and protected.

Petitioners, however, contend that Section 56 aims to protect only the vested rights of indigenous peoples, but not those who are not members od such communities. Following their interpretation, IPRA, under Section 56, recognizes the rights of indigenous peoples to their ancestral lands and ancestral domains, **subject to the vested rights of the same communities to such ancestral lands and domains.** Such interpretation is obviously incorrect.

The "property rights" referred in Section 56 belong to those acquired by individuals, whether indigenous or non-indigenous peoples. Said provision makes no distinction as to the ethnic origins of the ownership of theses "Property rights." The IPRA thus recognizes and respects "vested rights" regardless of whether they pertain to indigenous or non- indigenous peoples. Where the law does not distinguish.[163] What IPRA only requires is that these "property rights" already exists and/or vested upon its effectivity.

Further, by the enactment of IPRA, Congress did not purport to annul any and all Torrens titles within areas claimed as ancestral lands or ancestral domains. The statute imposes strict procedural requirements for the proper delineation of ancestral lands and ancestral domains as safeguards against the fraudulent deprivation of any landowner of his land, whether or not he is member of an indigenous cultural community. In all proceedings for delineation of ancestral lands and ancestral domains, the Director of Lands shall appear to represent the interests of the Republic of the Philippines.[164] With regard to **ancestral domains,** the following procedure is mandatory: **first**, petition by an indigenous cultural community, or motu propio by the NCIP; **second**, investigation and census by the Ancestral Domains Office ("ADO") of the NCIP; **third**, preliminary report by the ADO; **fourth**, posting and publication; and lastly, evaluation by the NCIP upon submission of he final report of the ADO.[165] With regard to **ancestral lands,** unless such lands are within an ancestral domain, the statute imposes the following procedural requirements: **first**, application; **second**, posting and publication; **third**, evaluation by the NCIP upon the submission of a report by the ADO; **fourth**, delineation; lastly, evaluation by the NCIP upon submission of report by the ADO.[166] Hence, we cannot sustain tehj arguments of the petitioners that the law affords no protection to those who are not indigenous peoples.

Neither do the questioned sections of IPRA on the composition and powers and jurisdiction of the NCIP[167] and the application of customary law,[168] violate the due process clause of the Constitution.

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163 Ramirez v. CA, 248 SCRA 590, 596 (1995).

164 Section 53 (f), R.A. 8371.

165 Section 52, R.A. 8371.

166 Section 53, R.A. 8371.

Petitioners point out that IPRA provides that the NCIP shall be composed exclusively of members of indigenous peoples,[169] and that the NCIP shall have jurisdiction over all claims and disputes involving indigenous peoples,[170] including even disputes between a member of such communities and one who is not a member, as well as over disputes in the delineation of ancestral domains. [171]Petitioners clarify that they do not claim that the members of the NCIP are incapable of being fair and impartial judges. They merely contend that the NCIP will not **appear** to be impartial, because a party who is not member of an indigenous cultural community "who must defend his case against [one who is] before judges who are all members of [indigenous peoples] cannot but harbor a suspicion that they do not have the cold neutrality of an impartial judge."[172]

In addition, petitioners claim that the IPRA prescribes that customary laws shall be applied first in disputes involving property, succession and land,[173] and such laws shall likewise

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167 Section 40, 51, 52, 53, 54, 62 and 66, R.A. No. 8371.

168 Section 63 and 65, R.A. No. 8371.

169 Section 40. Composition. –The NCIP shall be an independent agency under the Office of eh President and shall be composed of seven(7) Commissioners belonging to the ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommendees submitted by authentic ICCs/IPs: Provided, that the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas, Region 1 and the Cordilleras; Region II, the rest of Luzon, Island Groups including Mindoro, Palawan, Romblon, Panay, and the rest of the Visayas; Northern and Western Mindanao: Provided, That at least two (2) of the seven (7) Commissioners shall be women.

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

171 Section 62. Resolution of Conflicts. –In cases of conflicting interests, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

172 Memorandum of Petitioners, Rollo, pp. 873-874.

173 Section 3 (f). Customary Laws – refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;

be used in disputes involving indigenous peoples.[174] They asserted that "[w]hen the dispute involves a member of an [indigenous cultural community and another who is not], a resolution of such a dispute based on customary laws. . . would clearly be a denial of due process. . . [because those who are not indigenous peoples] do not know what these customary laws are."[175]

Petitioners' concerns are unfounded. The fact that the NCIP is composed of members of the indigenous peoples does not mean that it (the NCIP) is incapable, or will appear to be so incapable, of delivering justice to the non- indigenous peoples. A person's possession of the trait of impartiality desirable of a judge has nothing to do with his or her ethnic roots. In this wise, the indigenous peoples are as capable of rendering justice as the non-indigenous peoples for, certainty, the latter have no monopoly of the concept of justice.

In any case, there are sufficient checks in the law against any abuse by the NCIP of its quasi-judicial powers. Section 67 states that the decision of the NCIP shall be appealable to the Court of Appeals by petition or review. The regular remedies under our rules of procedure are likewise available to any party aggrieved by the decision of the NCIP.

Anent the use of customary laws in determining the ownership and extent of ancestral domains, suffice it to say that such is allowed under paragraph 2, Section 5 of Article XII of the Constitution. Said provision states, "The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of the ancestral domains." Notably, use of customary laws under IPRA is not absolute, for the law speaks merely of **primacy of uses**.[176] The IPRA prescribes the application of such customary laws where these present a workable solution acceptable to the parties, who are members of the same indigenous group. This interpretation is supported by Section 1, Rule IX of the Implementing Rules which states:

> RULE IX. JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS
>
> Section 1. Primacy of Customary Law. All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary

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x x x

> Sec 63. Applicable Laws. –Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs.

174 Sec. 65. Primacy of Customary Laws and Practices. – When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

175 Memorandum of Petitioners, Rollo, pp. 875-876.

176 R.A. 8371 states:

> Sec. 65. Primacy of Customary Laws and Practices. –When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or lands is located.

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

The application of customary law is **limited to disputes concerning property rights or relations in determining the ownership and extent of the ancestral domains**, [177] where all the parties involved are members of indigenous peoples,[178] specifically, of the same indigenous group. It therefore follows that when one of the parties to a dispute is a non-member of an indigenous group, or when the indigenous peoples involved belong to different groups, the application of customary law is not required.

Like any other law, the objective of IPRA in prescribing the primacy of customary law in disputes concerning ancestral lands and domains where all parties involved are indigenous peoples is justice. The utilization of customary laws is in line with the constitutional policy of recognizing the application thereof through legislation passed by Congress.

Furthermore, the recognition and use of customary law is not a novel idea in this jurisdiction. Under the Civil Code, use of customary law is sanctioned, as long as it is proved as a fact according to the rules of evidence,[179] and it is not contrary to law, public order or public policy.[180] Moreover, the local Government Code of 1991 calls for the recognition and application of customary laws to the resolution of issues involving members of indigenous peoples. This law admits the operation of customary laws in the settling of disputes if such are ordinary used in barangays where majority of the inhabitants are members of indigenous peoples.[181]

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177 See Secs. 62 and 63, R.A. 8371.

178 Sec. 65, R.A. 8371.

179 The Civil Code provides:

> Article 12. A custom must be proved as a fact, according to the rules of evidence.

180 The Civil Code provides:

> Article 11. Customs are contrary to law, public order or public policy shall not be countenanced.

181 R.A. No. 7160 reads:

> Sec. 399. Lupong Tagapamayapa. –
> x x x
> (f) In barangays where majority of the inhabitants are members of indigenous peoples, local systems of settling disputes of indigenous peoples, local system of settling disputes through their councils of datus or elders shall be recognized without prejudice to the applicable provisions of this Code.

B. Section 1, Part II, Rule VII of the implementing Rules of IPRA does not infringe upon the President's power of control over the Executive Department.

The second corollary issue id whether the Implementing Rules of IPRA violate Section 17, Article VII of the Constitution, which provides that:

> The president shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

The assailed provision of the Implementing Rules provides:

> **Rule VII**. The National Commission on Indigenous Peoples (NCIP)
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>
> **Part II**: NCIP as an Independent Agency Under the Office of the President
>
> **Section 1**. The NCIP is the primary agency of government for the formulation and implementation of policies, plans and programs to recognize, promote and shall be an independent agency under the Office of the President. **As such, the administrative relationship of the NCIP to the Office of the President is characterized as a lateral but autonomous relationship for purposes of policy and program coordination**. This relationship shall be carried out through a system of periodic reporting. Matters of day-to-day administration or all those pertaining to internal operations shall be left to the discretion of the Chairperson of the Commission, as the Chief Executive Officer.

Petitioners asseverate that the aforecited rule infringes upon the power of control of the President over the NCIP by characterizing the relationship of NCIP to the Office of the President as "lateral but autonomous…for purposes of policy and program coordination."

Although both Section 40 of the IPRA and Section 1, Part II, Rule VII of the Implementing Rules characterize the NCIP as an independent agency under the Office of the President, such characterization does not remove said body from the President's control and supervision.

The NCIP has been designated under IPRA as the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well being of the indigenous peoples and the recognition of their ancestral domain as well as their rights thereto. [182] It has been granted administrative,[183] quasi-legislative[184] and quasi-judicial powers[185] to carry out its mandate. The diverse nature of the NCIP's function renders it impossible to place said agency entirely under the control of only one branch of government and this, apparently, is the reason for its characterization by Congress as an independent agency. An "independent agency" is defined as an administrative body independent

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182 Sec. 38, R.A. 8371

183 Secs. 44 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), R.A. 8371.

184 Sec. 44 (o), R.A. 8371.

185 Secs. 44 (e), 51-54, 62, R.A. 8371.

of the executive branch or one not subject to a superior head of department, as distinguished from a "subordinate agency" or an administrative body whose action is subject to administrative review or revision.[186]

That Congress did not intend to place the NCIP under the control of the President in all instances is evident in the IPRA itself, which provides that the decisions of the NCIP in the exercise of its quasi-judicial functions shall be appealable to the Court of Appeals,[187] like those of the National Labor Relations Commission (NLRC) and the Securities and Exchange Commission (SEC). Nevertheless, the NCIP, although independent to a certain degree, was placed by Congress "under the office of the President" and, as such, is still subject to the President's power of control and supervision granted under Section 17, Article VII of the Constitution[188] with respect to its performance of administrative functions, such as the following: (1) the NCIP must secure the President's approval in obtaining loans to finance its projects;[189] (2) it must obtain the President's approval for any negotiation for funds and for the acceptance of gifts and/or properties in whatever from and from whatever source;[190] (3) the NCIP shall submit annual reports of its operations and achievements to the President, and advise the latter on all matters relating to the indigenous peoples;[191] and (4) it shall exercise such other powers as may be directed by the President.[192] The President is also given the power to appoint the Commissioners of the NCIP[193] as well as to remove them from office for cause motu propio or upon the recommendation of any indigenous community.[194]

To recapitulate:

(1) The provisions of the IPRA (specifically Sections 3, paragraphs (a) and (b), 5, 6, 7, and 8) affirming the ownership by the indigenous peoples of their ancestral lands and domains by virtue of native title do not diminish the State's ownership of lands of the public domain, because said ancestral lands and domains are considered as private land, and never to have been part of the public domain, following the doctrine laid down in Cariño vs. Insular Government;[195]

(2) The constitutional provision vesting ownership over minerals, mineral lands and other natural resources in the State is not violate by Sections3, 5, 7, 56, 58 and 59 of the IPRA which

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186 1 Am JUR 2D, Administrative Law, § 55.

187 Sec. 62, R.A. 8371.

188 Sec. 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

189 Sec. 44(f), R.A. 8371.

190 Sec. 44 (g), R.A. 8371.

191 Sec. 44 (j), R.A. 8371.

192 Sec. 44 (p), R.A. 8371.

193 Sec. 40, R.A. 8371.

194 Sec. 42, R.A. 8371.

195 Supra note 75.

grant certain rights to the indigenous peoples over the natural resources found within the ancestral domains, e.g., to benefit from and share in the profits from the allocation and utilization of the same, as well as priority rights in the harvesting, extraction, development or exploitation thereof. The State retains full control over the exploration, development and utilization of natural resources even with the grant of said rights to the indigenous peoples, through the imposition of requirements and conditions for the utilization of natural resources under existing laws, such as the Small-Scale Mining Act of 1991[196] and the Philippine Mining Act of 1995.[197] Moreover, the rights granted to the indigenous peoples for the utilization of natural resources within their ancestral domains amplify what has been earlier granted to them under the afforested laws;

(3) While the IPRA recognizes the rights of indigenous peoples with regard to their ancestral lands and domains, it also protects the vested rights or persons, whether indigenous or non- indigenous peoples, who may acquired rights of ownership lands or rights to explore and exploit natural resources within the ancestral lands and domains;[198]

(4) The due Process Clause of the Constitution is not violated by the provisions (Sections 40, 51-54, 62, 63, 65 and 66) of the IPRA which, among others, establish the composition of the NCIP, and prescribe the application of customary law in certain disputes involving indigenous peoples. The fact the NCIP is composed wholly of indigenous peoples does not mean that it is incapable of being impartial. Moreover, the use of customary laws is sanctioned by paragraph 2, Section 5 of Article XII of the Constitution; and

(5) The provision of the Implementing Rules characterizing the NCIP as an independent agency under the Office of the President does not infringe upon the President's power of control under Section 17, Article VII of the Constitution, since said provision as well as Section 40 of the IPRA expressly places the NCIP under the Office of the President, and therefore under the President's control and supervision with respect to its administrative functions. However, insofar as the decisions of the NCIP in the exercise of its quasi-judicial powers are concerned, the same are reviewable by the Court of Appeals, like those of the NLRC and the SEC.

In the view of the foregoing, I vote to **DISMISS** the petition.

SANTIAGO M. KAPUNAN
Associate Justice

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196 R.A. 7076.

197 R.A. 7942x.

198 Section 56, R.A. 8371.

EN BANC

G.R. No. 135385 --- ISAGANI CRUZ and CESAR EUROPA v. SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, SECRETARY OF BUDGET AND MANAGEMENT and CHAIRMAN AND COMMISSSIONERS OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES.

Promulgated on:

DECEMBER 6, 2000

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SEPARATE OPINION
(CONCURING AND DISSENTING)

PANGANIBAN, J,:

I concur with the draft *ponencia* of Mr. Justice Santiago M. Kapunan in its well-crafted handling of the procedural or preliminary issues. In particular, I agree that petitioners have shown an actual case or controversy involving at least two constitutional questions of transcendental importance,[1] which deserve judicious disposition on the merits directly by the highest court of the land.[2] Further, I am satisfied that the various aspects of this controversy have been fully presented and impressively argued by the parties. Moreover, prohibition and mandamus are proper legal remedies[3] to address the problems raised by petitioners. In any event, this Court has given due course to the Petition, heard oral arguments and required the submission of memoranda. Indeed, it would then be a galling copout for us to dismiss it on mere technical or procedural grounds.

Protection of Indigenous Peoples' Rights Must Be Within the Constitutional Framework

With due respect, however, I dissent form the *ponencia's* resolution of the two main substantive issues, which constitute the core of this case. Specifically, I submit that Republic Act (RA) No. 8371, otherwise known as the Indigenous Peoples' Rights Act (IPRA) of 1997, violates and contravenes the Constitution of the Philippines insofar as ---

1. It recognizes or, worse, grants rights of ownership over "lands of the public domain, waters, x x x and other natural resources" which, under Section 2, Article XII of the Constitution, "are owned by the State" and "shall not be alienated." I respectfully reject the

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1 *Kilosbayan v. Morato,* 250 SCRA 130, 140, November 16, 1995; *Association of Small Landowners v. Secretary of Agrarian Reform,* 175 SCRA 343, 365, July 14, 1989; *Antonio v. Dinglasan,* 84 Phil 368 (1949).

2 *Tañada v. Angara,* 272 SCRA 18, 46, May 2, 1997; *Santiago v. Comelec,* 270 SCRA 106, 123-24, March 19, 1997; *Basco v. PAGCOR,* 197 SCRA 52, 60, May 14, 1991.

3 *Tañada v. Angara,* ibid.

contention that "ancestral lands and ancestral domains are not public lands and have never been owned by the State." *Such sweeping statement places substantial portions of Philippine territory outside the scope of the Philippine Constitution and beyond the collective reach of the Filipino people. As will be discussed later, these real properties constitute an third of the entire Philippine territory; and the resources, 80 percent of the nation's natural wealth.*

2. It defeats, dilutes or lessens the authority of the State to oversee the "exploration, development, and utilization of natural resources," which the Constitution expressly requires to "be under the *full* control and supervision of the State."

True, our fundamental law mandates the protection of the indigenous cultural communities' right to their ancestral lands, but such mandate is "subject to the provisions of this Constitution."[4] I concede that indigenous cultural communities and indigenous peoples (ICCs/IPs) may be accorded preferential rights to the beneficial use of public domains, as well as priority in the exploration, development and utilization of natural resources. Such privileges, however, must be subject to the fundamental law.

Consistent with the social justice principle of giving more in law to those who have less in life, Congress in its wisdom may grant preferences and prerogatives to our marginalized brothers and sisters, subject to the irreducible caveat that the Constitution must be respected. I personally believe in according every benefit to the poor, the oppressed and the disadvantaged, in order to empower them to *equally* enjoy the blessings of nationhood. *I cannot, however, agree to legitimize perpetual inequality of access to the nation's wealth or to stamp the Court's imprimatur on a law that offends and degrades the repository of the very authority of this Court --- the Constitution of the Philippines.*

The Constitution
Is a Compact

My basic premise is that the Constitution is the fundamental law of the land, to which all other laws must conform.[5] It is the people's quintessential act of sovereignty, embodying the principles upon which the State and the government are founded.[6] Having the status of a supreme and all-encompassing law, it speaks for all the people all the time, not just for the majority or for the minority at intermittent times. Every constitution is a compact made by and among the citizens of a State to govern themselves in a certain manner.[7] Truly, the Philippine Constitution is a solemn covenant made by all the Filipinos to govern themselves. No group, however blessed, and no sector, however distressed, is exempt from its compass.

RA 8371, which defines the rights of indigenous cultural communities and indigenous peoples, admittedly professes a laudable intent. It was primarily enacted pursuant to the state policy enshrined in our Constitution to "recognize and promote the rights of indigenous cultural

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4 §5, Art. XII, 1987 Constitution.

5 16 CJS §3.

6 16 Am Jur 2d §2.

7 Ibid.

communities within the framework of national unity and development."[8] Though laudable and well-meaning, this statute, however, has provisions that run directly afoul of our fundamental law form which it claims origin and authority. More specifically, Sections 3(a) and (b), 5, 6, 7(a) and (b), 8 and other related provisions contravene the Regalian Doctrine --- the basic foundation of the State's property regime.

Public Domains and Natural Resources Are Owned by the State and Cannot Be Alienated or Ceded

Jura regalia was introduced into our political system upon the "discovery" and the "conquest" of our country in the sixteenth century. Under this concept, the entire earthly territory known as the Philippine Islands was acquired and held by the Crown of Spain. The King, as then head of State, had the supreme power or exclusive dominion over all our lands, waters, minerals and other natural resources. By royal decrees, though, private ownership of real property was recognized upon the showing of (1) a title deed; or (2) ancient possession in the concept of owner, according to which a title could be obtained by prescription.[9] Refusal to abide by the system and its implementing laws meant the abandonment or waiver of ownership claims.

By virtue of the 1898 Treaty of Paris, the Philippine archipelago was ceded to the United States. The latter assumed administration of the Philippines and succeeded to the property rights of the Spanish Crown. But under the Philippine Bill of 1902, the US Government allowed and granted patents to Filipino and US citizens for the "free and open x x x exploration, occupation and purchase [of mines] and the land in which they are found."[10] To a certain extent, private individuals were entitled to own, exploit and dispose of mineral resources and other rights arising from mining patents.

This US policy was, however, rejected by the Philippine Commonwealth in 1935 when it crafted and ratified our first Constitution. Instead, the said Constitution embodied the Regalian Doctrine, which more definitively declared as belonging to the State all lands of the public domain, waters, minerals and other natural resources.[11] Although respecting mining patentees under the Philippine Bill of 1902, it restricted the further exploration, development and utilization of natural resources, both as to who might be entitled to undertake such activities and for how long. The pertinent provision reads:

> "SECTION 1 [Art. XIII]. 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

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8 §22, Art. II of the Constitution.

9 *Abaoag v. Director of Lands*, 45 Phil 518 (1923), cited in petitioners' Memorandum.

10 Soledad m. Cagampang-de Castro, "The Economic Policies on Natural Resources Under the 1987 Constitution Revisited," *Journal of the Integrated Bar of the Philippines,* Vol. XXV, Nos. 3 & 4 (1999), p. 51.

11 In a republican system of government, the concept of *jura regalia* is stripped of royal overtones; ownership is vested in the State, instead. (Joaquin g. Bernas, SJ, *The Constitution of the Republic of the Philippines: A commentary*, 1996 ed., p. 1009-1010.)

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 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, renewable for another 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."

The concept was carried over in the 1973 and the 1987 Constitutions. Hence, Sections 8 and 9, Article XIV of the 1973 Constitution, state:

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

"SEC. 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines 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. The National Assembly, in the national inters, may allow such citizens, corporations, or associations to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, technical, management, or other forms of assistance are hereby recognized as such."

Similarly, Section 2, Article XII of the 1987 Constitution, provides:

"SEC. 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 State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

"The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays and lagoons.

"The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

"The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution."

The adoption of the Regalian Doctrine by the Philippine Commonwealth was initially impelled by the desire to preserve the nation's wealth in the hands of the Filipinos themselves. Nationalism was fervent at the time, and our constitutional framers decided to embody the doctrine in our fundamental law. Charging the State with the conservation of the national patrimony was deemed necessary for Filipino posterity. The arguments in support of the provision are encapsulated by Aruego as follows; "[T]he natural resources, particularly the mineral resources which constituted a great source of wealth, belonged not only to the generation then but also to the succeeding generation and consequently should be conserved for them."[12]

Thus, after expressly declaring that all lands of the public domain, waters, minerals, all forces of energy and other natural resources belonged to the Philippine State, the Commonwealth absolutely prohibited the alienation of these natural resources. Their disposition, exploitation, development and utilization were further restricted only to Filipino citizens and entities that were 60 percent Filipino-owned. The present Constitution even goes further by declaring that such activities "shall be under the full control and supervision of the State." Additionally, it

[12] II Aruego, The Framing of the Philippine Constitution 603, quoted in Bernas, supra, p. 1010.

enumerates land classifications and expressly states that only agricultural lands of the public domain shall be alienable. We quote below the relevant provision:[13]

> "SEC. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be further devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. x x x."

Mr. Justice Kapunan upholds private respondents and intervenors in their claim that all ancestral domains and lands are outside the coverage of public domain; and that these properties --- including forests, bodies of water, minerals and parks found therein --- are private and have never been part of the public domain, because they have belonged to the indigenous people's ancestors since time immemorial.

I submit, however, that all Filipinos, whether indigenous or not, are subject to the Constitution. Indeed, no one is exempt from its all-encompassing provisions. Unlike the 1935 Charter, which was subject to "any existing right, grant, lease or concession," the 1973 and the 1987 Constitutions spoke in absolute terms. Because of the State's implementation of policies considered to be for the common good, all those concerned have to give up, under certain conditions, even vested rights of ownership.

In *Republic v. Court of Appeals,*[14] this Court said that once minerals are found even in private land, the State may intervene to enable it to extract the minerals in the exercise of its sovereign prerogative. The land is converted into mineral land and may not be used by any private person, including the registered owner, for any other purpose that would impede the mining operations. Such owner would be entitled to just compensation for the loss sustained.

In *Atok Big-Wedge Mining Company v. IAC,*[15] the Court clarified that while mining claim holders and patentees have the exclusive right to the possession and enjoyment of the located claim, their rights are not absolute or strictly one of ownership. Thus, failure to comply with the requirements of pertinent mining laws was deemed abandonment or a waiver of the claim.

Verify, as petitioners undauntedly point out, four hundred years of Philippine political history cannot be set aside or ignored by IPRA, however well-intentioned it may be. The perceived lack of understanding of the cultural minorities cannot be remedied by conceding the nation's resources to their exclusive advantage. They cannot be more privileged simply because they have chosen to ignore state laws. For having chosen not to be enfolded by statutes on perfecting land titles, ICCs/IPs cannot now maintain their ownership of lands and domains by

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13 §3, Art. XII, 1987 Constitution.

14 160 SCRA 228, 239, April 15, 1988.

15 261 SCRA 528, September 9, 1996.

insisting on their concept of "native title" thereto. It would be plain injustice to the majority of Filipinos who have abided by the law and, consequently, deserve equal opportunity to enjoy the country's resources.

Respondent NCIP claims that IPRA does not violate the Constitution, because it does not grant ownership of public domains and natural resources to ICCs/IPs. "Rather, it recognizes and mandates respect for the rights of indigenous peoples over their ancestral lands and domains that had never been lands of the public domain."[16] I say, however, that such claim finds no legal support. Nowhere in the Constitution is there a provision that exempts such lands and domains from its coverage. Quite the contrary, it declares that *all* lands of the public domain and natural resources "are owned by the State"; and "with the exception of agricultural lands, all other natural resources shall not be alienated."

As early as *Oh Cho v. Director of Lands,*[17] the Court declared as belonging to the public domain all lands not acquired form the government, either by purchase or by grant under laws, orders or decrees promulgated by the Spanish government; or by possessory information under Act 496 (Mortgage Law).

On the other hand, Intervenors Flavier et al.[18] differentiate the concept of ownership of ICCs/IPs from that which is defined in Articles 427 and 428 of the Civil Code. They maintain that "[t]here are variations among ethnolinguistic groups in the Cordillera, but a fair synthesis of these refers to 'x x x the tribal right to use the land or to territorial control x x x, a collective right to freely use the particular territory x x x [in] the concept of trusteeship."

In other words, the "owner" is not an individual. Rather, it is a tribal community that preserves the property for the common but nonetheless exclusive and perpetual benefit of its members, without the attributes of alienation or disposition. *This concept, however, still perpetually withdraws such property from the control of the State and from its enjoyment by other citizens of the Republic. The perpetual and exclusive character of private respondents' claims simply makes them repugnant to basic fairness and equality.*

Private respondents and intervenors trace their "ownership" of ancestral domains and lands to the pre-Spanish conquest. I should say that, at the time, their claims to such lands and domains was limited to the surfaces thereof since their ancestors were agriculture-based. This must be the continuing scope of the indigenous groups' ownership claims: limited to land, excluding the natural resources found within.

In any event, if all that the ICCs/IPs demand is preferential *use --- not ownership*--- of ancestral domains, then I have no disagreement. Indeed, consistent with the Constitution is IPRA's Section 57[19] --- without the too-broad definitions under Section 3 (a) and (b) --- insofar as

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16 NCIP's Memorandum, p. 24.

17 75 Phil 890, August 31, 1946.

18 Intervenors' Memorandum, pp. 33 et seq.

19 "SEC. 57. N*atural 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. x x x."

it grants them priority rights in harvesting, extracting, developing or exploiting natural resources within ancestral domains.

The concerted effort to malign the Regalian Doctrine as a vestige of the colonial past must fail. Our Constitution vests the ownership of natural resources, not in colonial masters, but in *all the Filipino people. As the protector of the Constitution, this Court has the sworn duty to uphold the tenets of that Constitution --- not to dilute, circumvent or create exceptions to them.*

Cariño v. Insular Government
Was Modified by the Constitution

In this connection, I submit that *Cariño v. Insular Government*[20] has been modified or superseded by our 1935, 1973, and 1987 Constitutions. Its *ratio* should be understood as referring only to a means by which public agricultural land may be acquired by citizens. I must also stress that the claim of Petitioner Cariño refers to land ownership only, not to the natural resources underneath or to the aerial and cosmic space above.

Significantly, in *Director of Land Management v. Court of Appeals,*[21] a Decision handed down after our three Constitutions had taken effect, the Court rejected a cultural minority member's registration of land under CA 141, Section 48 (c). [22] The reason was that the property fell within the Central Cordillera Forest Reserve. This Court Quoted with favor the solicitor general's following statements:

> "3. The construction given by respondent Court of Appeals to the particular provision of law involved, as to include even forest reserves as susceptible to private appropriation, is to unconstitutionally apply such provision. For, both the 1973 and present Constitutions do not include timber or forest lands as alienable. Thus, Section 8, Article XIV of 1973 Constitution states that 'with the exception of agricultural, industrial or commercial, residential and resettlement lands of the public domain, natural resources shall not be alienated.' The new Constitution, in its Article XII, Section 2, also expressly states that 'with the exception of agricultural lands, all other natural resources shall not be alienated'."

Just recently, in *Gordula v. Court of Appeals,*[23] the Court also stated the "forest land is

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20 41 Phil 935, February 23, 1909.

21 172 SCRA 455, 463, April 18, 1989, per Gutierrez Jr., J.

22 "(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 subsection (b) hereof. (As amended by R.A. No. 3872, Section 1, approved June 18, 1964)."

23 284 SCRA 617, 633, January 2, 1998, per Puno, J.

incapable of registration, and its inclusion in a title nullifies that title. To be sure, the defense of indefeasibility of a certificate of title issued pursuant to a free patent does not lie against the state in an action for reversion of the land covered thereby when such land is a part of a public forest or of a forest reservation, the patent covering forest land being void ab initio."

RA 8371 Violates the Inalienability of Natural Resources and of Public Domains

The *ponencia* theorizes that RA 8371 does not grant to ICCs/IPs ownership of the natural resources found within ancestral domains. However, a simple reading of the very wordings of the law belies this statement.

Section 3 (a)[24] defines and delineates ancestral domains as "all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal area, and *natural resources* therein, held under a claim or 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 x x x. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds x x x bodies of water, *mineral and other natural resources* x x x." (Emphasis ours.)

Clearly, under the above-quoted provision of IPRA, ancestral domains of ICCs/IPs encompass the natural resources found therein. And Section 7 guarantees recognition and protection of their *rights of ownership and possession* over such domains.

The indigenous concept of ownership, as defined under Section 5 of the law, "holds that ancestral domains are the ICCs/IPs private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed." Simply put, the law declares that ancestral domains, including the natural resources found therein, are *owned* by ICCs/IPs and cannot be sold, disposed or destroyed. Not only does it vest ownership, as understood under the Civil Code; it adds perpetual exclusivity. This means that while ICCs/IPs could own vast ancestral domains, the majority of Filipinos who are not indigenous can never own any part thereof.

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[24] "a) Ancestral Domains --- Subject to Section 56 hereof, refers 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 amjeure* 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 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."

On the other hand, Section 3 (b)[25] of IPRA defines ancestral lands as referring to "lands occupied, possessed and utilized by individuals, families and clans of the ICCs/IPs since time immemorial x x x, under claims of individual or traditional group ownership, x x x including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots." Section 8 recognizes and protects "the right of ownership and possession of ICCs/IPs to their ancestral lands." Such ownership need not be by virtue of certificate of title, but simply by possession since time immemorial.

I believe these statutory provisions directly contravene Section 2, Article XII of the Constitution, more specifically the declaration that the State owns all lands of the public domain, minerals and natural resources --- one of which, except agricultural lands, can be alienated. In several cases, this Court has consistently held that non-agricultural land must first be reclassified and converted into alienable or disposable land for agricultural purposes by a positive act of the government.[26] Mere possession or utilization thereof, however long, does not automatically convert them into private properties.[27] The presumption is that "all lands not appearing to be clearly within private ownership are presumed to belong to the State. Hence, x x x all applicants in land registration proceedings have the burden of overcoming the presumption that the land thus sought to be registered forms part of the public domain. Unless the applicant succeeds in showing by clear and convincing evidence that the property involved was acquired by him or his ancestors either by composition title from the Spanish Government or by possessory information title, or any other means for the proper acquisition of public lands, the property must be held to be part of the public domain. The applicant must present competent and persuasive proof to substantiate his claim; he may not rely on general statements, or mere conclusions of law other than factual evidence of possession and title."[28]

Respondents insist, and the *ponencia* agrees, that paragraphs (a) and (b) of Sections 3 are merely definitions and should not be construed independently of the other provisions of the law. But, precisely, a definition is "a statement of the meaning of a word or word group."[29] It determines or settles the nature of the thing or person defined.[30] Thus, after defining a term as encompassing several items, one cannot thereafter say that the same term should be interpreted as

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25 "b) *Ancestral Lands* --- Subject to Section 56 hereof, refers to lands 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."

26 *Director of Lands and Director of Forest Development v. Intermediate Appellate Court,* March 2, 1993; *Sunbeam Convenience Foods, Inc. v. Court of Appeals,* January 29, 1990.

27 Ibid., *Margolles v. Court of Appeals,* February 14, 1994; *Gordula v. Court of Appeals,* supra.

28 *Republic v. Sayo,* October 31, 1990, per Narvasa, J. (later CJ). See also *Republic v. Court of Appeals,* supra.

29 Webster's Third New International Dictionary; Petitioners' Memorandum, p. 41.

30 Ibid.

excluding one or more of the enumerated items in its definition. For that would be misleading the people who would be bound by the law. In other words, since RA 8371 defines ancestral domains as including the natural resources found therein and further states that ICCs/IPs own these *ancestral domains*, then it means that ICCs/IPs can own natural resources.

In fact, Intervenors Flavier et al. submit that *everything above and below* these ancestral domains, with no specific limits, likewise belongs to ICCs/IPs. I say that this theory directly contravenes the Constitution. Such outlandish contention further disregards international law which, by constitutional fiat, has been adopted as part of the law of the land.[31]

No Land Area Limits Are Specified by RA 8371

Under Section 3, Article XII of the Constitution, Filipino citizens may acquire no more than 12 hectares of alienable public land, whether by purchase, homestead or grant. More than that, but not exceeding 500 hectares, they may hold by lease only.

RA 8371, however, speaks of no area or term limits to ancestral lands and domains. In fact, by their mere definitions, they could cover vast tracts of the nation's territory. The properties under the assailed or through their ancestors, communally or individually since time immemorial." It also includes all "lands which may no longer be exclusively occupied by [them] 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."

Nomadic groups have no fixed area within which they hunt or forage for food. As soon as they have used up the resources of a certain area, they move to another place or go back to one they used to occupy. From year to year, a growing tribe could occupy and use enormous areas, to which they could claim to have had "traditional access." If nomadic ICCs/IPs succeed in acquiring title to their enlarging ancestral domain or land, several thousands of hectares of land may yet be additionally delineated as their private property.

Similarly, the Bangsa Moro people's claim to their ancestral land is not based on compounded or consolidated title, but "on a collective strake to the right to claim what their forefathers secured for them when they first set foot on our country."[32] They trace their right to occupy what they deem to be their ancestral lands way back to their ancient sultans and datus, who had settled in many islands that have become part of Mindanao. This long history of occupation is the basis of their claim to their ancestral lands.[33]

Already, as of June 1998, over 2.5 million hectares have been claimed by various ICCs/IPs as ancestral domains; and over 10 thousand hectares, as ancestral lands.[34] Based on

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31 §2, Art. II of the Constitution.

32 Cecilio R. Laurente, "The King's Hand: The Regalian Doctrine as a Contributing Factor in the Mindanao Conflict," *Human Rights Agenda,* Vol. 5, Issue No. 7, July and August 2000, pp. 6-7.

33 Ibid.

34 Solicitor General's Memorandum, p. 3; Rollo, p. 651.

ethnographic surveys, the solicitor general estimates that ancestral domains cover 80 percent of our mineral resources and between 8 and 10 million of the 30 million hectares of land in the country.[35] *This means that four fifths of its natural resources and one third of the country's land will be concentrated among 12 million Filipinos constituting 110 ICCs,*[36] *while over 60 million other Filipinos constituting the overwhelming majority will have to share the remaining.* These figures indicate a violation of the constitutional principle of a "more equitable distribution of opportunities, income, and wealth" among Filipinos.

RA 8371 Abdicates the State Duty to Take Full Control and Supervision of Natural Resources

Section 2, Article XII of the Constitution, further provides that "[t]he exploration, development, and utilization of natural resources shall be under the full control and supervision of the State." The State may (1) directly undertake such activities; or (2) enter into co-production, joint venture or production-sharing agreements with Filipino citizens or entities, 60 percent of whose capital is owned by Filipinos.[37] Such agreements, however, shall not exceed 25 years, renewable for the same period and under terms and conditions as may be provided by law.

But again, RA 8371 relinquishes this constitutional power of *full control* in favor of ICCs/IPs, insofar as natural resources found within their territories are concerned. Pursuant to their rights of ownership and possession, they may develop and manage the natural resources, benefit from and share in the profits from the allocation and the utilization thereof.[38] And they may exercise such right without any time limit, unlike non- ICCs/IPs who may do so only for a period not exceeding 25 years, renewable for a like period.[39] Consistent with the Constitution, the rights of ICCs/IPs to exploit, develop and utilize natural resources must also be limited to such period.

In addition, ICCs/IPs are given the right to negotiate directly the terms and conditions for the exploration of natural resources,[40] a right vested by the Constitution only in the State. Congress, through IPRA, has in effect abdicated in favor of a minority group the State's power of ownership and full control over a substantial part of the national patrimony, in contravention of our most fundamental law.

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35 Ibid., pp. 4-5

36 Ibid. See also Datu Vic Saway, "Indigenous Peoples and the Uplands: A Situationer," *Proceedings of the 6th Upland NGO Consultative Conference, 23-27 August 1998, p. 30.*

37 Or (3) in case of large-scale exploration, development and utilization of minerals, enter --- through the President --- into "agreements with foreign-owned corporations involving either technical or financial assistance." (*Miners Association of the Philippines v. Factoran Jr.*, 240 SCRA 100, January 16, 1995.)

38 §7 (b), RA 7381.

39 §57, ibid.

40 §7 (b), ibid.

I make clear, however, that to the extent that ICCs/IPs may undertake small-scale utilization of natural resources and cooperative fish farming, I absolutely have no objection. These undertakings are certainly allowed under the third paragraph of Section 2, Article XII of the Constitution.

Having already disposed of the two major constitutional dilemmas wrought by RA 8371 --- (1) ownership of ancestral lands and domains and the natural resources therein; and (2) the ICCs/IPs' control of the exploration, development and utilization of such resources --- I believe I should no longer tackle the following collateral issues petitioners have brought up:

1. Whether the inclusion of private lands within the coverage of ancestral domains amounts to undue deprivation of private property

2. Whether ICCs/IPs may regulate the entry/exit of migrants

3. Whether ancestral domains are exempt from real property taxes, special levies and other forms of exaction

4. Whether customary laws and traditions of ICCs/IPs should first be applied in the settlements of disputes over their rights and claims

5. Whether the composition and the jurisdiction of the National Commission of Indigenous Peoples (NCIP) violate the due process and equal protection clauses

6. Whether members of the ICCs/IPs may be recruited into the armed forces against their will

I believe that the first three of the above collateral issues have been rendered academic or, at least, no longer of "transcendental importance," in view of my contention that the two major IPRA propositions are based on unconstitutional premises. On the other hand, I think that in the case of the last three, it is best to await specific cases filed by those whose rights may have been injured by specific provisions of RA 8371.

Epilogue

Section 5, Article XII of the Constitution, provides:

> "SEC. 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 and relations in determining the ownership and extent of ancestral domain."

Clearly, there are two parameters that must be observed in the protection of the rights of ICCs/IPs: (1) the provisions of the 1987 Constitution and (2) national development policies and programs.

Indigenous peoples may have long been marginalized in Philippine policies and society. This does not, however, give Congress any license to accord them rights that the Constitution withholds from the rest of the Filipino people. I would concede giving them *priority* in the use, the enjoyment and the preservation of their ancestral lands and domains.[41] But to grant *perpetual* ownership and control of the nation's substantial wealth to them, to the exclusion of other Filipino citizens who have chosen to live and abide by our previous and present Constitutions, would be not only unjust but also subversive of the rule of law.

In giving ICCs/IPs rights in derogation of our fundamental law, Congress is effectively mandating "reverse discrimination." In seeking to improve their lot, it would be doing so at the expense of the majority of the Filipino people. Such short-sighted and misplaced generosity will spread the roots of discontent and, in the long term, fan the fires of turmoil to a conflagration of national proportions.

Peace cannot be attained by brazenly and permanently depriving the many in order to coddle the few, however disadvantaged they may have been. Neither can a just society be approximated by maiming the healthy to place them at par with the injured. Nor can the nation survive by enclaving its wealth for the exclusive benefit of favored minorities.

Rather, the law must help the powerless by enabling them to take advantage of opportunities and privileges that are open to all and by preventing the powerful from exploiting and oppressing them. This is the essence of social justice --- empowering and enabling the poor to be able to compete with the rich and, thus, equally enjoy the blessings of prosperity, freedom and dignity.

WHEREFORE, I vote to partially GRANT the Petition and to DECLARE as UNCONSTITUTIONAL Sections 3 (a) and (b), 5, 6, 7 (a) and (b), 8 and related provisions of RA 8371.

ARTEMIO V. PANGANIBAN
Associate Justice

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[41] As stated earlier, Sec. 57 of IPRA, insofar as it grants them such priority, is constitutional.