Reconciling IPRA with the Regalian Doctrine

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I. INTRODUCTION

The passage of the Indigenous Peoples Rights Act of 1997[1] (IPRA) was intended to herald a new era in the respect and recognition of the much-neglected rights of indigenous peoples in the country. However, barely a year since its promulgation, it has already met with stiff opposition from a well-respected former Supreme Court Justice. This eventually resulted in the case of *Cruz v. DENR Secretary*,[2] a modern day jurisprudential cliffhanger that barely upheld the IPRA's validity after the Supreme Court *en banc* could not break its voting deadlock.[3]

The constitutional challenge in *Cruz* was anchored primarily on the regalian doctrine,[4] a well-entrenched and widely accepted principle of the State's power of dominium over the public domain. It questioned, among others, the grant of ownership over ancestral lands and domains to indigenous

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1. Republic Act No. 8371 (1997).
2. 347 SCRA 128 (2000).
3. Revised Rules of Court, Rule 56, § 7.

   Where the court en banc is equally divided in opinion or the necessary majority cannot be had, the case shall be deliberated on, and if after such deliberation no decision is reached, the original action commenced shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed and on all incidental matters, the petition or motion shall be denied.
4. PHIL. CONST., art. XII, § 2.

communities as violative of the Constitution, considering the scope and extent of these ancestral territories under the IPRA.

Unfortunately, other than dispose of the case and uphold the constitutional validity of the IPRA, *Cruz* did nothing to resolve the other issues of the case. The Supreme Court remained, until the end, an evenly divided court; not even those who voted to uphold the IPRA could agree on their reasons.[5] It made no categorical pronouncement that could be considered as doctrinal or even dispositive of the legal challenges to the IPRA.

To be sure, advocates of indigenous peoples' rights will maintain that the issue has been laid to rest with the application of the doctrine enunciated in the pivotal case of *Cariño v. Insular Government*.[6] Furthermore, for the first time, the jurisprudential pronouncements of this case were finally cited for their true legal import.[7] In a nutshell, *Cariño* enunciated the legal presumption that ancestral lands and domains were not part of the public domain, having maintained their character as private lands of the indigenous peoples since time immemorial.[8] In legal consequence, private land was never subject to the regalian doctrine.[9]

5. *Cruz*, 347 SCRA at 161.

Seven voted to dismiss the petition. Justice Kapunan filed an opinion, which the Chief Justice and Justices Bellosillo, Quisumbing, and Santiago joined, 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 contended 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 reserved judgment on the constitutionality of Sections 58, 59, 65 and 66 of the law, which he believed 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. Justices Melo, Pardo, Buena, Gonzaga-Reyes and De Leon joined in the separate opinions of Justice Panganiban and Vitug.

6. 41 Phil. 935, 212 US 449, 53 L.Ed. 594 (1909). The case involved an appeal made by petitioner Mateo Cariño to the U.S. Supreme Court after the Supreme Court of the Philippine Islands dismissed his original petition for registration. *See* Cariño v. Insular Government, 7 Phil. 132 (1906).

7. Erstwhile, *Cariño* has been quoted out of context in many cases mainly as jurisprudential basis for the concept of acquisitive prescription but not for its recognition of "native title," a first in Philippine legal history. *Cruz*, 347 SCRA at 346 (Puno, J. sep. op).

8. *Cariño*, 41 Phil. at 941, where the Court declared that:

However, as above stated, whether or not *Cruz* fully resolved the constitutional challenge to the recognition and grant of ownership rights over ancestral lands and domains to indigenous peoples remains debatable. While it upheld the validity of the IPRA, a cautious and pragmatic appreciation of *Cruz* suggests that it may still be vulnerable to a potential constitutional challenge given the law's elaborate mode of implementation and the government's inconsistent stand over resource use and allocation. For these reasons, there is still a need to understand the interplay of the IPRA vis-à-vis the regalian doctrine. Offhand, this writer posits that the IPRA can withstand such test and offers four reasons why the regalian doctrine need not be a cause for legal consternation.

Before doing so, however, it bears reiterating that a discussion of the *Cariño* doctrine will not be included.[10] First, a becoming modesty compels this writer to defer a full discussion of the case to others, lest its gems be overlooked or its poetic beauty remain unappreciated. As it is, Justice Puno's separate opinion in *Cruz* has already set the bar for any attempt at doing so. Secondly, the *Cariño* doctrine remains a source of controversy to a number of sectors including some of the current Supreme Court members. Thus, to sidestep this theoretical obstacle, the legal arguments to be discussed will not be explicitly grounded on *Cariño*. These legal theories will not conflict with *Cariño*, but will actually complement the case such that when pitted against the IPRA, the regalian

> 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 from before the Spanish conquest, and never to have been public land.

9. *Cruz*, 347 SCRA at 269 (Kapunan, J., sep. op.).

This writer wholeheartedly agrees and for this very reason, leaves *Cariño* to be discussed elsewhere where its full legal implications and repercussions can be better savored. A proper discussion of *Cariño* necessitates a discussion of the long history of the indigenous people's struggle for respect and recognition of their rights, against the backdrop of the discriminatory judicial pronouncements such as in the cases of *Rubi v. Provincial Board*, 39 Phil. 550 (1919), or *People v. Cayat*, 68 Phil. 12 (1939). In *Rubi*, the Supreme Court referred to the Manguians of Mindoro as persons of a low degree of civilization and a drag upon the State. On the other hand, in *Cayat*, the Court stated that the classification is germane to the purposes of law cannot be doubted. The prohibition "to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors which the members of such tribes have been accustomed themselves to make prior to the passage of this Act," is unquestionably designed to insure peace and order in and among the non-Christian tribes. It has been the sad experience of the past, as the observations of the lower court disclose, that the free use of highly intoxicating liquors by the non-Christian tribes have often resulted in lawlessness and crimes, thereby hampering the efforts of the government to raise their standard of life and civilization.

10. *See supra* note 9.

doctrine would have lost much of its sting, and *Cariño* can be relished for its true worth.

II. Indigenous Rights and the Constitution

The first problem with pitting the IPRA against the constitutionally entrenched principle of the regalian doctrine is the presumption that the IPRA is not constitutionally grounded. Nothing could be further from the truth. While some critics concede occasional references to respect for indigenous rights, still they argue that references to indigenous peoples' rights remain circumscribed "within the framework of national unity and development,"[11] or hemmed by the phrase, "subject to the provisions of the Constitution and the national development policies and programs."[12] The truth is that the Constitution is replete with provisions which protect and guarantee indigenous peoples rights.

1. Article II, Section 22, which recognizes and promotes the rights of indigenous peoples within the framework of national unity and development, reads as follows:

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

2. Article XII, Section 5, which protects the rights of indigenous peoples to their ancestral lands:

   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.

3. Article XII, Section 6, which speaks of the use of property bearing a social function subject to the duty of the State to promote distributive justice:

   The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good demands.

4. Article XIII, Section 1, which provides for the removal of cultural inequities through the equitable diffusion of wealth and political power for the common good:

   The Congress shall give 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.

11. PHIL. CONST., art. II, § 22.

12. PHIL. CONST., art. XII, § 5(1).

   To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

5. Article XIII, Section 6, which limits the application of the agrarian reform principles with the rights of indigenous communities over their ancestral lands:

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

   The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

6. Article XIV, Section 17, which recognizes, respects, and protects the rights of indigenous peoples to preserve and develop their cultures, traditions, and institutions:

   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.

7. Article XVI, Section 12, which provides for a consultative body to advise the President on policies affecting indigenous peoples:

   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.

Notably, the enumeration above includes only direct references by the Constitution to indigenous peoples' rights, and does not include other applicable constitutional provisions, such as the Preamble[13] which speaks of the need to build a just and humane society; Article XIII, Section 16,[14] on the right of the people and their organizations to participate in all levels of social, political, and economic decision-making; Article II, Section 2,[15] adopting the generally accepted principles of international law a number of which pertain to

13. We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

14. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

15. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

indigenous peoples' rights;[16] and, as will be discussed later, Article III, Section 1,[17] or the due process clause.

With the plethora of provisions pertaining to indigenous peoples' rights, it is evident that the Constitution clearly and distinctly grants recognition and protection to such rights, *as a matter of policy,* notwithstanding the regalian doctrine. A mere quantitative overview would manifest this constitutional weal. Thus, a constitutional challenge against the IPRA must be supported by more than a bare assertion of the regalian doctrine; much is required to overcome these other, equally significant provisions.

If the Constitutional intent was to subsume the recognition of indigenous peoples' rights under another provision such as the regalian doctrine, the Constitution could have easily done so, as it did in several instances.[18] It would not have used the general phrase "provisions of the Constitution" if specificity was the real intention.

In fact, a number of these constitutional provisions are interlocking. For instance, while Article XII, Sec. 5[19] provides that the protection of the rights of indigenous peoples to their ancestral lands shall be subject to the provisions of the Constitution and "national development policies and programs," it is equally true that Article XIV, Sec. 17[20] mandates that the same "national plans and policies" take into consideration the rights of indigenous peoples to preserve and develop their cultures, traditions, and institutions.

In sum, the foregoing provisions provide the unquestionable constitutional bases for the IPRA. This being the case, the recognition of indigenous peoples rights and the regalian doctrine cannot be interpreted in isolation of each other.

16. *See e.g.,* U.N. Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/Add 1 (1994); International Labor Organization (ILO) Convention no. 169, 72 ILO Off. Bull 59 (5 September 1991); International Covenant on Civil and Political Rights (19 December 1966), G.A.Res.2200A (XXI), U.N.Doc.A/Res/2200A, 999 U.N.T.S. 171, (1966); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 993 U.N.T.S. 3 (1967).

17. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

18. *See e.g.,* PHIL. CONST., art. XII § 8, in relation to § 7 thereof; PHIL. CONST., art. III, § 3(2) in relation to § 2 thereof; PHIL. CONST., art. XI, § 8(2), in relation to PHIL. CONST. art. IX-A, § 2, among others.

19. The State, subject to the provisions of the Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

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

20. 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.

They belong to the same legal hierarchical order as constitutional provisions, and should be interpreted as a whole giving effect to the entire instrument.

All these considered, one rarely explored option is to analyze how much the regalian doctrine has transformed over the number of constitutional changes this country has experienced. As can be seen, it is not a static, immutable doctrine, but one that has evolved, if not mutated, alongside the constitutions of a changing Philippine society.

III. UNDERSTANDING THE REGALIAN DOCTRINE

A misconception commonly associated with the State's dominium over natural resources is that it is an immutable legal bedrock, such that other legal pronouncements must perforce conform to this "centuries-old principle."[21] As aptly stated by Justice Kapunan in *Cruz,* not only is it well recognized, but it has been regarded, almost with reverence, as the immutable postulate of Philippine land law.[22] Whether or not the nation's adherence to the regalian doctrine truly preceded the Philippine Republic, the fact remains that contrary to this commonly held perception, the regalian doctrine changes with the times.

For instance, despite retaining its nomenclature, it has shed its "regalian" overtones with the adoption of the republican system.[23] It is therefore reasonable to hold that the current regalian doctrine has likewise changed to incorporate the spirit that has propelled the adoption of the Constitution in its latest incarnation. Specifically, the historical events at EDSA that resulted in the 1987 Constitution cannot be overemphasized, as this was a direct exercise of sovereignty by the people. Thus, the revolution ensconced a familiar-looking but inherently different fundamental law.

In fact, the 1935 and 1987 Constitutions provide a rich ground for comparison. The former was fueled by a desire for independence from foreign domination; the latter, though still an attempt at liberation, was this time of the human spirit from the bondage of an oppressive and tyrannical dictatorship. The 1987 Constitution finally recognized the principles of freedom and social justice and, for the first time, explicitly and repeatedly recognized the rights of indigenous groups. Most importantly, at least for this discussion, the very section on the regalian doctrine was not spared this intention.

21. In fact, the length of time this doctrine has been part of the legal system is an even more controversial subject of dispute. This necessarily has legal implications on prior rights particularly to areas considered as public domain.

22. *Cruz,* 347 SCRA at 267.

23. Lee Hong Hok v. David, 48 SCRA 372 (1972).

Whereas the regalian doctrine under the 1935 Constitution[24] sought to nationalize and conserve the nation's natural resources and patrimony from foreign usurpers[25] as a step towards independence, especially with the then prevailing freehold system,[26] today's regalian doctrine is starkly different. It no longer allows licenses, leases or concessions as means of exploration, development, and utilization of natural resources. Currently, these activities can now be undertaken only through the State's direct use of these resources, or by means of co-production, joint venture or production sharing agreements with the private sector. Further, it protected and reserved the nation's marine wealth only to Filipino citizens and expressly allowed small-scale utilization of natural resources to farm out the wealth of the country. It even gave priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

All these developments demonstrate that the regalian doctrine should neither be viewed as insulated and immune from other provisions of the Constitution, nor from the political and social upheavals of our country, as no such intent was envisioned by its framers. The regalian doctrine envisaged by those who refuse to recognize indigenous rights is a relic of the past, which favored the landed gentry, foreign interests, and the politically ensconced to lord over the majority of Filipinos. It is precisely this view that permitted the plunder of the country's resources to its present state of deterioration and environmental and social crises.

The regalian doctrine is no longer the same legal principle found in old Philippine constitutions. It must be interpreted in harmony with the principles of justice and equity that breathe through and permeate each provision of the new Constitution.

24. 1935 PHIL. CONST., art. XIII, § 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.

25. 2 JOSE M. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION (1937).

26. Philippine Bill of 1902, § 21.

IV. THE REGALIAN DOCTRINE AND OTHER LAWS

One approach to understand the IPRA and the regalian doctrine is to contextualize the issue in relation to other existing laws. The premise is this: if rights enumerated under the IPRA had previously existed under analogous antecedent laws, then the IPRA is strengthened by the presumptive validity of these laws.

With regard to the *free, prior, and informed consent of indigenous peoples* under the IPRA,[27] the Philippine Environmental Policy,[28] the Environmental Impact Statement System,[29] and more recently, the Local Government Code,[30] recognized and granted these rights to indigenous groups, albeit without specifically referring to them. But with the passage of the Philippine Mining Act of 1995, specific reference was made through the provision which prohibited mining activities from being undertaken within ancestral territories without their prior and informed consent.[31] With respect to exploration activities, the Mining Act requires that "if private or other parties are affected, the permittee shall first discuss with the said parties the extent, necessity, and manner of his entry, occupation, and exploration"[32] – a precursor to Sec. 7(b) of the IPRA. Moreover, the National Integrated Protected Areas System (NIPAS) Act[33] provides that "[a]ncestral lands and customary rights and interests arising shall be accorded due recognition."[34]

On the issue of *use of natural resources*, a comparison with other laws supports the notion that there is nothing novel in the grant of ownership and control of natural resources to indigenous peoples. Even the Civil Code grants the same concessions over natural resources to Filipinos, indigenous and non-indigenous alike. Its provisions on Property state that to the owner belongs all natural, industrial and civil fruits.[35] Natural fruits are the spontaneous products

27. R.A. 8371, § 3(g).

Free and Prior Consent – as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, and coercion and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.

28. Presidential Decree No. 1151 (1977).

29. Establishing an Environmental Impact Statement System, Including other Environmental Management Related Measures and For Other Purposes, P.D. 1586 (1978) as implemented by DENR Administrative Order 37, series of 1996.

30. The Local Government Code, Republic Act No. 7610, §§ 2(c), 26, & 27 (1991).

31. An Act Instituting a New System of Mineral Resources, Exploration, Development, Utilization and Conservation, Republic Act No. 7942, § 16 (1995).

32. *Id. at* § 23.

33. Republic Act No. 7586 (1992).

34. *Id.* at § 13.

35. Civil Code, art. 441.

of the soil, the young and other products of animals.[36] On the other hand, industrial fruits are those produced by lands of any kind through cultivation and labor.[37]

The same is true under the People's Small-Scale Mining Act of 1991[38] with respect to minerals, and the Philippine Fisheries Code of 1998[39], for aquatic resources. As early as the 1900s, under the Public Land Act,[40] the State disposed much of its land to homesteaders. More recently, under the Comprehensive Agrarian Reform Law (CARL),[41] the State not only gave away suitable government lands, but even acquired large private landholdings for distribution to qualified beneficiaries, using billions of pesos obtained from sequestered assets and other ill-gotten wealth.[42] This gesture of the Philippine government was not limited to agricultural lands alone. As earlier discussed, under the People's Small-Scale Mining Act, mineral lands were set aside for small-scale miners.[43] With regard to bodies of water where the State has an absolute claim,[44] hundreds of thousands of hectares were designated as "municipal waters" both through the Local Government Code[45] and the Philippine Fisheries Code of 1998,[46] and set aside solely for the benefit of municipal fishing communities.

A common thread among these enumerations is the government's willingness to equitably diffuse its wealth to marginalized sectors of Philippine society, in accord with the dictates of the Constitution.[47] The IPRA is no

36. *Id.* art. 442 (1).

37. *Id.* art. 442 (2).

38. An Act Creating a People's Small Scale Mining Program and for Other Purposes, Republic Act No. 7076 (1991).

39. An Act Providing for the Development, Management, & Conservation of the Fisheries and Aquatic Resources, Integrating all Laws Pertinent Thereto, and for other purposes, Republic Act No. 8550 (1998).

40. Act No. 926 (1903).

41. An Act Instituting a Comprehensive Agrarian Reform Program to promote social justice and Industrialization, Providing the Mechanism for its Implementation, and for other purposes, Republic Act No. 6657 (1988).

42. Instituting a Comprehensive Agrarian Reform Program, Proc. No. 131 (1987).

43. R.A. 7076, §§ 5 & 6 (1991).

44. PHIL. CONST., art. XII, § 2(2); Civil Code, art. 424; A Decree Instituting a Water Code, thereby revising and consolidating the laws governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation, and Protection of Water Resources, Presidential Decree No. 1067, §§3-7 (1976).

45. R.A. 7160, §§ 447 (a)(1)(vi), (2)(xi), &(5)(iii).

46. R.A. 8850, art. 1, §§ 16-25.

47. PHIL. CONST. art. XII, § 1(1).

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

different. Thus, the regalian doctrine should not be construed in a literal and restrictive sense. Otherwise, no activity involving the use and enjoyment of natural resources could ever take place except under the full control and supervision of the State, or under a production-sharing, co-production or joint venture scheme.

A close scrutiny of Article XII, Sec. 2 of the Constitution actually reveals that it is incorrect to hold that a utilization of natural resources not undertaken by the State is confined solely to co-production, joint venture or production-sharing agreements. The present regalian doctrine has changed to allow other forms of utilization. As earlier mentioned, this provision reserves the use and enjoyment of its waters exclusively to Filipino citizens and recognizes the small-scale utilization of natural resources by Filipino citizens. Moreover, under the new article on social justice and human rights, the Constitution mandates Congress to give the highest priority to the enactment of measures that protect and enhance the right of all 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 State is called upon to regulate the acquisition, ownership, use, and disposition of property and its increments.[48]

It is important to note that the size of the ancestral domain is not necessarily equivalent with the degree of utilization of natural resources by indigenous peoples. Indigenous groups are not automatically granted the right to engage in large-scale utilization of natural resources, merely because ancestral domains are extensive. There must still be compliance with the legal safeguards provided under existing laws.[49]

Considering the foregoing, it cannot be argued that when the IPRA included these natural resources as part of ancestral lands and domains, it signified a violation of the Constitution. On the contrary, it gave life to another equally important mandate of the Constitution — social justice.

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.

PHIL. CONST. art. XIII, § 1(1).

The Congress shall give 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.

48. PHIL. CONST. art. XIII.

49. Among these are the Environmental Impact Statement (EIS) system, Presidential Decree 1586 (1978), and R.A. 8371, § 57.

V. Two Concepts of Ownership

Finally, in understanding the interplay between the IPRA and the regalian doctrine, it must be recognized that the IPRA legally acknowledged the existence of an alternative concept of ownership long been practiced by indigenous cultural communities. Previously, the notion of ownership has been confined to the definition provided by the New Civil Code.[50] With the advent of the IPRA, an attempt to capture an existing, albeit threatened, form of ownership was made — the indigenous concept of ownership.

Traditionally, ownership was defined by its attributes: *jus utendi, jus abutendi, jus fruendi, jus possidendi, jus vindicandi* and *jus disponendi.* On the other hand, the IPRA dispensed with these Latin tongue-twisters and eloquently described the indigenous concept of ownership as "sustain[ing] the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity."[51] This concept finds basis in Article XII, Sec. 5(2) of the Constitution, which states that "Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain."[52] The two concepts of ownership have been adopted by Justices Kapunan and Puno in *Cruz.*[53]

The distinction between the civil and indigenous concepts are starkly clear. Compared to the civil concept of ownership, the latter embodies a unique bond between the owner and the natural resources found in these ancestral territories, so much so that it defines in a dynamic and evolving process their cultural identity as a people. On the other hand, in the former, the relationship of the civil law owner to the natural resources, particularly its natural or industrial fruits, is both individualistic and utilitarian, if not outright commercial.[54] Indigenous peoples value each and every facet of their surroundings as part of their day-to-day living, as source of their livelihood and subsistence and as the wellspring of their faith and sense of being. Whereas contemporary Filipino society has adopted Western values and thinking by compartmentalizing distinct places for work, worship, and leisure, indigenous communities still find all these in the natural environment.

Two important clarifications ought to be made. *First,* attempts to describe the indigenous concept of ownership through the attributes of the aforementioned civil concept are misplaced. While there may be some

50. Civil Code, arts. 427-429.

51. R.A. 8371, § 5.

52. PHIL. CONST. art. XII, § 5.

53. *Cruz,* 347 SCRA at 347 (Puno, J., sep. op.), 347 SCRA at 287 (Kapunan, J., sep. op.).

54. Modern society can in fact be defined by its ability to replace natural environment with every artificial gadget or amenity invented, from swimming pools, air conditioners or CDs as substitutes for clean lakes and ponds, fresh air and sound of wildlife.

similarities or differences, these are mere approximations of the actual characteristics of the indigenous concept. Such efforts to transplant the civil concept exist only due to better familiarity with the traditional notions of ownership. However, it will become clearer over time that the civil concepts of ownership do not appropriately describe the nature of indigenous ownership.

Second, it is important to note that Sec. 5 of the IPRA should not be viewed as a definitive statement of the indigenous concept of ownership, but merely descriptive of its features. Each indigenous culture will manifest their respective definitions of their forms of ownership, distinct from other indigenous groups, at their own pace and at their own time, in line with the principle of self-determination.

In consequence, the inclusion of natural resources within the definition of ancestral lands and domains is neither a mere superfluity nor a subtle attempt at material gain. Rather, as the indigenous concept of ownership states, their entire culture is embodied in a material form among the natural resources found in these ancestral lands, given the bond that they have with these resources. For these reasons, it is not proper to compare the civil concept of ownership with the indigenous concept. Neither is there reason to be apprehensive with the projected expanse of the ancestral domains because, again, unlike the civil concept of ownership, these areas are not considered as mere assets or landholdings to be accumulated, fenced, and enclosed from outsiders.

Neither should the encumbrances[55] against indigenous peoples under the IPRA be considered as equivalent to onerous obligations as defined under the Civil Code. From the indigenous people's perspective, it is in their interest that the natural resources encompassed by their ancestral domains be preserved and protected. In so doing, they are ensuring not only the ecological sustainability of particular area, but the very survival of their culture and the restoration of their human dignity.

VI. Conclusion

The IPRA's constitutional validity is not diminished even by a full application of the regalian doctrine. The new Constitution's commitment to social justice

55. R.A. 8371, § 9. *Responsibilities of ICCs/IPs to their Ancestral Domains.* – ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

Maintain Ecological Balance – To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

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 remuneration; and

Observe Laws – To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

and human dignity seeps through each and every provision of this fundamental law. The IPRA is an expression of such intent. Today's regalian doctrine is no longer the archaic reminder or stubborn remnant of an exploitative past. It is a flexible and dynamic principle that accommodates the demands of equity and justice, not of greed or exploitation.

An understanding of the close connection between the land and the people among indigenous cultures reveals that what is at stake is not just a piece of property but the very life and survival of a people, played against the urgent themes of human rights and social justice. This being the case, when the regalian doctrine is held up against indigenous peoples' rights, it is actually being pitted against the due process clause of the Constitution, which states that no person shall be deprived of life without due process of law.[56] This right to life is not just freedom from bodily restraint but the right to have a full life.[57] For an indigenous community, this right to life is necessarily tied up to a healthy and balanced ecology[58] and self-determination.[59] To the extent, therefore, that the regalian doctrine is construed as a limitation upon the right of the indigenous cultural communities to exist and preserve their culture in today's society, then it must perforce give way.[60]

56. PHIL. CONST., art. III, § 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

57. JOAQUIN BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 102 (1996).

58. PHIL. CONST., art. II, § 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

59. PHIL. CONST., art. XIV, §§ 17, 22.

60. Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc., 50 SCRA 189 (1973).

Did the Domestic Adoption Act of 1998 alter the Law on Succession? A Perspective

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I. INTRODUCTION

The societal attitude towards adoption has changed remarkably over the past decades; hence, the evolution of Philippine Adoption laws. From the early statutory provisions embodied in the Code of Civil Procedure,[1] it has evolved and been replaced by the provisions contained in the 1940 Rules of Court,[2] New Civil Code,[3] Child and Youth Welfare Code,[4] Family Code, and presently, Republic Act No. 8552,[5] otherwise known as the Domestic Adoption Act (hereinafter the Act).

With the introduction of certain substantive and procedural amendments by the Act, opinions differ with respect to the successional rights of the

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1. Act No. 190 (1901).
2. Rules of Court (1940).
3. An Act to Ordain and Institute the Civil Code of the Philippines (1950).
4. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).
5. Domestic Adoption Act (1998).