

## Ancestral Domain Ownership and Disposition: Whose Land, Which Lands

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The plight of the indigenous cultural communities for recognition of their ancestral domain is a struggle that has raged for generations. Their demand is just and there is sufficient legal basis for their claim. The Regalian Doctrine has been unjustly and indiscriminately applied to lands occupied by indigenous cultural communities. But under Carino, the indigenous cultural communities' pre-conquest occupation of their lands has removed the same from the coverage of the Regalian Doctrine. Even under the original text of the Manahan Law, as applied by *Republic v. Court of Appeals* (201 SCRA 1 (1991)), there is an unmistakable basis today for allowing registration of ancestral lands though they may be classified as forest lands under the present classification.

The issue of ancestral domain is not, however, as simple when viewed in the light of current environmental concerns. This is not to say that traditional indigenous land-use systems are destructive. On the contrary, these indigenous practices can be made the basis of prohibiting the transfer of lands within ancestral domains to non-indigenous persons who lack the indigenous people's conservatory and indigenous knowledge. Thus, while it is conceded that, either under Carino or the Manahan Law, ancestral lands are private with all the rights and attributes of ownership, the Author submits that there must first be a determination of which lands in the ancestral domain are held in a private capacity and which lands are not, in order that registration of communal lands in favor of individuals may be precluded. The Author also submits that, as the march of non-indigenous migrants to the uplands has been shown to precede forest denudation and destruction, as against the ecologically sound indigenous practices, the transfer and alienation of land within such critical areas must per force be limited to members of the indigenous cultural communities. On this score, Carino seems to be an insufficient basis.

It is therefore submitted that while recognition of private ownership is made in favor of indigenous cultural communities over their ancestral lands, a clarification and limitation on the exercise of such rights are in order as an exercise of police power.