

they will have to adapt to a changing national situation, economy and environment, they have the right to determine the pace at which to adapt these changes and their own development.

It is, thus, imperative that the following are recognized: the indigenous peoples will continue to exist as part of the national society but with their own identity, their own structures and their own institutions; the IPs own structure and way of life have a value that needs to be protected; the IPs are able to speak for themselves and take part in decision making processes that affect them; and in taking part in decision making, the IPs contribution will be considerable.

The indigenous peoples' survival in mainstream society hinges on the continuous operation of their own system. The loss of such system does not only mean the loss of freedom but also of life. The strategies to promote indigenous peoples' rights therefore must not only protect an individual but an entire system. The operation of such system in a fast-changing world is only ensured if the indigenous peoples, who have been steering it, retain their right to self-determination. The right entails not just freedom but also the capability to chart their fate as they decide among options of change.

Finally, as we in this colloquium deliberate on means to effect IPRA and strengthen the policy environment towards its full and effective implementation, let us be reminded that we are engineering a process of empowerment through which the IPs, who have not been able to access various resources, like economic, social and political, will now be able to do so. It is a process that aims at changing the nature and direction of systemic forces that causes marginalization. It is a process of equality enhancement, an inherently induced mechanism of change that will enable the IPs to renegotiate their existence on an equitable basis.

## Introducing the Indigenous Peoples Rights Act\*

Atty. Sedfrey M. Candelaria\*\*

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### I. INTRODUCTION

Indigenous cultural communities (ICCs)<sup>1</sup> and indigenous peoples (IPs)<sup>2</sup> have long been one of the vulnerable, if not, neglected sectors in Philippine

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society. State policy towards them has evolved from that of segregation to assimilation and integration and currently to that of recognition and preservation.<sup>3</sup>

It was to precisely address the marginalization of the ICCs/IPs that the 10th Congress of the Philippines passed and approved Republic Act No. 8371<sup>4</sup> or the Indigenous People's Rights Act of 1997 (IPRA). Deemed as one of President Ramos's social reform agenda, IPRA is a consolidation of two bills, Senate Bill No. 1728 and House Bill No. 9125.

IPRA, in synopsis, recognizes the existence of ICCs/IPs as a distinct sector in Philippine society. In doing so, IPRA provides for the respective civil, political, social, and cultural rights of ICCs or IPs; acknowledges a general concept of indigenous property right and their title thereto; and creates the National Commission on Indigenous Peoples (NCIP) as the independent implementing body of R.A. 8371.

## II. LAYING DOWN THE FRAMEWORK FOR IPRA

### A. Indigenous Cultural Communities in a Historical Perspective

The characterization of the relationship between the indigenous peoples and the national government dates back to the colonial period, when the conquering European powers relentlessly pursued the principal goal of *reduccion*. To further this objective, the colonizers adopted the two-pronged approach of spreading Christianity and promoting trade, while at the same time, civilizing the native inhabitants of the other parts of the world, properly known as the *Indios*. All through the Spanish regime, for instance,

1. The expression ICCs is an adaptation of the terminology used in the 1987 Philippine Constitution. They were, however, first referred to as "national cultural communities" in Article XV, Section 11 of the 1973 Constitution.
2. This conforms to the term used in contemporary international language. See for example, International Labor Organization Convention No. 169, Convention Concerning Indigenous and Tribal Peoples in Independent Countries (June 27, 1989) and United Nations Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc.E/CN.4/Sub.2/1994/Add.I (1994).
3. For a concise account of the legislative history in regard to Filipino indigenous peoples, see Cruz v. Secretary, 347 SCRA 128, 176-89 (2000) (Puno, J., dissenting). See also Candelaria, *The Rights of Indigenous Communities in International Law: Some Implications under Philippine Municipal Law*, 46 ATENEO L.J. 273, 300-06 (2001).
4. This Act is fully 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 Therefor, and for Other Purposes."

it had been regarded by the Spanish Government as a sacred "duty to conscience and humanity" to civilize the 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."<sup>5</sup>

This need to impart civilization during the period of European conquest was most evident in the manner by which the colonizers related to the native inhabitants of the then Philippine Islands. The relationship between the indigenous peoples, on one hand and the State, on the other hand, was thus primarily characterized as analogous to that between a guardian and a ward.

In *Rubi v. Provincial Board of Mindoro*,<sup>6</sup> the Manguianes of the Province of Mindoro were the subject of Provincial Board Resolution No. 25 for the purpose of resettling them in a reservation.<sup>7</sup> Alleging that the provincial officials illegally deprived them of their liberty, Rubi and the other Manguianes applied for the issuance of the writ *habeas corpus* in their favor. The Court, speaking from the point of view of the State's exercise of police power, justified the resolution as a form of protection and introduction of civilized customs to the "non-Christian" Manguianes. Significantly, in tracing the concept of *reduccion* during the conquest period, Justice Malcolm

5. *People v. Cayat*, 68 Phil. 12, 17 (1939) (citing Decree of the Governor-General of the Philippines of January 14, 1887).

6. 39 Phil. 660 (1919).

7. Provincial Board Resolution No. 25, provided as follows:

Whereas several attempts and schemes have been made for the advancement of the non-Christian people of Mindoro, which were all a failure,

Whereas it has been found out and proved that unless some other measure is taken for the Mangyan work of this province, no successful result will be obtained toward educating these people,

Whereas it is deemed necessary to oblige them to live in one place in order to make a permanent settlement,

Whereas the provincial governor of any province in which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board,

Now, therefore be it resolved, that under Section 2077 of the Administrative Code, 800 hectares of public land in the sitio of Tigbao on Naujan Lake be selected as a site for the permanent settlement of Mangyanes in Mindoro subject to the approval of the Honorable Secretary of the Interior.

explained that the meaning of the term "non-Christian" refers not to religious belief, but to a geographical area, as well as the people's level of civilization. The Court then ruled that the methods followed by the Government of the Philippine Islands in its dealings with the non-Christian people were practically identical with that followed by the United States Government in its dealings with the Indian tribes. As was expressed,

From the beginning of the United States, and even before, the Indians have been treated as "in a state of pupillage." The recognized relation between the Government of the United States and the Indians may be described as that of guardian and ward... These Indian tribes are the wards of the nation. They are communities dependent on the United States. Dependent largely for their daily food. Dependent for their political rights... from their very weakness and helplessness... there arise the duty of protection....<sup>8</sup>

In *People v. Cayat*,<sup>9</sup> meanwhile, an ordinance was passed that prohibited the sale to and possession of highly intoxicating liquor by native inhabitants. Cayat, a native inhabitant of Benguet, was then fined for having possessed one bottle of gin (A-1-1) other than the native wine the inhabitants were used to. The Court once more cited the policy of *reduccion* and justified the prohibition as not discriminatory under the equal protection clause, owing to the valid classification of the natives not based on accident of birth or parentage but upon the degree of civilization and culture. Justice Moran reasoned:

The prohibition... is unquestionably designed to insure peace and order in and among the non-Christian tribes. It has been the sad experience of the past... 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... Act. No. 1639... is designed to promote peace and order in the non-Christian tribes so as to remove all obstacles to their moral and intellectual growth and eventually, to hasten their equalization and unification with the rest of their Christian brothers.<sup>10</sup>

The treatment of ICCs/IPs would later on progress toward increased constitutional protection in light of developments at the international level.

#### B. The Recognition of Indigenous Peoples in International Law

While the prevalent State policy emphasized a guardian-ward relationship and highlighted the subservience of the indigenous peoples, the international human rights movement toward the recognition of indigenous peoples, however, shifted this policy to one of upholding the indigenous peoples'

8. *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 694-97 (1919).

9. 68 Phil. 12 (1939).

10. *Id.* at 19-20.

right to self-determination. In 1957, the International Labour Organization adopted Convention No. 107,<sup>11</sup> the first attempt to codify the rights of indigenous peoples in international law. The Convention concerned itself with the protection of the indigenous populations, their progressive integration into their respective national communities, and the improvement of their working and living conditions. ILO Convention 169<sup>12</sup> subsequently set the standard for preventing the utilization of indigenous labor in a context where discrimination and servitude of these peoples were prevalent.

Two other sets of international instruments significantly contribute to increased protection for ICCs and IPs. The United Nations Declaration on the Elimination of All Forms of Racial Discrimination<sup>13</sup> and the International Covenant on the Elimination of All Forms of Racial Discrimination<sup>14</sup> sought to eliminate racial discrimination and secure respect for the dignity of the human person. A United Nations Draft Declaration on the Rights of the Indigenous Peoples<sup>15</sup> also came about for the purpose of consolidating the fundamental rights that indigenous peoples could enjoy at the domestic level.

Not only were the indigenous peoples afforded protection, the international community also recognized that these communities enjoy collective rights as social groups on account of their distinct characteristics. Incorporated in the right to self-determination is the concomitant right of the indigenous peoples, *inter alia*, to determine their course of development, the type of education they want to pursue, and the extent of the land and domain they would utilize.

#### C. The Constitutional Basis

Constitutional policy vis-à-vis the rights of indigenous communities did not come about until the adoption of the 1973 Constitution. Section 11, Article 15 therein provided that '[t]he State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of [S]tate policies.'

In contrast to its predecessor, the 1987 Constitution introduced several provisions specifically recognizing, promoting, and protecting the rights of

11. ILO Convention (No. 107) concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Population in Independent Countries, June 26, 1957, 328 U.N.T.S. 249.

12. Indigenous and Tribal Peoples Convention (ILO Convention no. 169), 72 ILO Off. Bull. 59 (Ser. A., No. 2) (September 1991) *reprinted in* 28 ILM 1348 (1989).

13. G.A. Res. 1904, (XVIII) (Nov. 20, 1963).

14. 660 U.N.T.S. 195 (Jan. 4, 1969).

15. U.N. Doc.E/CN.4/Sub.2/1994/Add.I (1994).

the indigenous peoples. The Constitution embodies the State policy that recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.<sup>16</sup> Another provision in the Constitution states that 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 equitable diffusing wealth and political power for the common good.<sup>17</sup>

The State shall likewise protect the right of indigenous cultural communities to their ancestral lands and in view of this, Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.<sup>18</sup> Moreover, the State shall apply the principles of agrarian reform to the rights of indigenous cultural communities over ancestral land.<sup>19</sup> The State shall also consider the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions in the formulation of national plans and policies.<sup>20</sup>

The Constitution further provided for autonomous regions, each in Muslim Mindanao and the Cordilleras,<sup>21</sup> whose organic acts shall provide for legislative powers over certain areas of concern within these regions.<sup>22</sup> Congress may also create a consultative body to advise the President on policies affecting indigenous cultural communities.<sup>23</sup> Majority of the members of this body shall come from such communities.<sup>24</sup>

### III. WHO ARE THE INDIGENOUS PEOPLES?

Indigenous peoples in the country total around twelve (12) million and comprise about 16 to 17% of the total Filipino population.<sup>25</sup> These peoples

16. PHIL. CONST. art. II, § 22.

17. *Id.* art. XIII, § 1.

18. *Id.* art. XII, § 5.

19. *Id.* art. XIII, § 6.

20. *Id.* art. XIV, § 17.

21. *Id.* art. X, §§ 1, 15.

22. *Id.* art. X, § 20 provides.

23. *Id.* art. XVI, § 12.

24. *Id.*

25. Cruz, 347 SCRA at 252 (2000) (Kapunan, J., concurring).

number to about 110 ethnic groups, and are represented according to seven (7) ethnographic regions.<sup>26</sup>

The most widely accepted definition of indigenous peoples comes from UN Special Rapporteur Martinez Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on 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.<sup>27</sup>

Under Philippine constitutional law, the term pertains to those groups of Filipinos who have retained a high degree of continuity from pre-conquest culture.<sup>28</sup>

Indigenous peoples are comprehensively appreciated in three (3) contexts. First is on account of descent before conquest, which means that one may want to trace his roots to his elders who were already in the Philippines before the Spaniards came. Second is on account of the social, economic, and cultural conditions, *i.e.*, indigenous peoples are those who practice a way of life characteristically different from mainstream society. They continue to do so by living, speaking, dressing, and expressing themselves in such manner. Third is self-ascription, *i.e.*, one believes by himself that he is an indigenous person and to a certain extent manifests this belief in his relations with other people.

The definition of indigenous peoples under Chapter II, Section 3 (h) of R.A. 8371 is a combination of all the three factors abovementioned. Indigenous people pertains to:

a group of people or homogenous 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 distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous

26. Response of Rep. Gregorio A. Andolana to the interpellation of Rep. John Henry R. Osmeña on House Bill No. 9125, JOURNAL OF THE HOUSE OF REPRESENTATIVES 20 (Aug. 20-21, 1997).

27. Jose Martinez Cobo, Study of the Problem of Discrimination Against Indigenous Population, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, ¶ 379.

28. 4 RECORD OF THE CONSTITUTIONAL COMMISSION 34 (1986).

religions and cultures, become historically differentiated from the majority of the 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 religion 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 domain.<sup>29</sup>

William Henry Scott, a noted scholar on indigenous peoples, views the definition of the indigenous peoples from the point of view of a majority-minority dichotomy. Centuries of colonialism and neocolonial domination have created a discernible chasm between the cultural majority and the group of cultural minorities.<sup>30</sup> This means that ultimately, the present Philippine national culture is the culture of the majority while its indigenous roots had been replaced by foreign cultural elements that are decidedly pronounced and dominant.<sup>31</sup>

There is a predominant view among international legal scholars that the use of the term "people" within the context of ICCs is not synonymous to "people" in the international and political sense, which implies the right to secede. The Philippine Government is actually confronting this issue in Muslim Mindanao as regards revolutionary movements or even within the context of minority-majority and ethnic conflicts. Scholars, however, point out that this is currently more a question of fact rather than law at this point.

#### IV. THE CONCEPT OF ANCESTRAL DOMAIN AND ANCESTRAL LAND

##### A. Definition and Scope Under R.A. 8371<sup>2</sup>

One of the more problematic areas in IPRA is the concept of ancestral domain, including ancestral land. Both became the subject of the test case of *Cruz v. Secretary of Department of Environment and Natural Resources*.<sup>32</sup>

29. R.A. 8371, § 3 (h).

30. *Cruz*, 347 SCRA at 251 (Kapunan, J., concurring).

31. See CONSTANTINO, *THE PHILIPPINES: A PAST REVISITED* 26-41 (1975); AGONCILLO, *A HISTORY OF THE FILIPINO PEOPLE* 5, 74-75 (8TH ed.).

32. 347 SCRA 128. See also *Cruz v. Secretary of DENR*, Motion for Reconsideration, G.R. No. 13585 (September 18, 2001). The Court upheld the validity of R.A. 8371. Here, as the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, upon redeliberation, the voting remained the same. The Court then dismissed the petition assailing the constitutionality of IPRA, pursuant to Rule 56, Section 7 of the Revised Rules of Civil Procedure.

As provided under Chapter II, Section 3 (a), ancestral domain 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 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.

Ancestral land, meanwhile, as defined in a limited sense in Chapter II, Section 3 (b) pertain to land "occupied and possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial ... including but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots."

##### B. The Regalian Doctrine vis-à-vis Ancestral Domain and Land

Under the concept of *jura regalia*, the State is deemed the owner of all natural resources within its territory.<sup>33</sup> Such concept<sup>34</sup> was deemed as a necessary

33. PHIL. CONST. art. XII, § 2 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 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 as may be provided by law. In case 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...

34. 1973 PHIL. CONST. art. XIII, § 1.

starting point to secure recognition of the State's power to control their disposition, exploitation, development, or utilization of its natural resources.<sup>35</sup>

As embodied in the Regalian doctrine, the King, by fiction of law, was regarded as the original proprietor of all lands, the true and only source of title, and from whom all lands were held. As such, title to land must be traced to some express or implied grant from the Spanish Crown or its successors, the American colonial government, and thereafter, the Philippine Republic.<sup>36</sup>

How the IPRA definition of ancestral domain, inclusive of ancestral land relates to the constitutional definition of lands of public domain is resolved in the concept of native title. This was affirmed in the landmark case of *Cariño v. Insular Government*<sup>37</sup> where the Court recognized the concept of private land title that existed irrespective of any royal grant from the State.

In *Cariño*, Don Mateo Cariño, an Ibaloi, sought to register with the land registration court 146 hectares of land in Baguio. Prior to the Treaty of Paris, the applicant and his ancestors had held the land as owners for more than fifty (50) years, in accordance with Igorot custom. Cariño claimed ownership of the land and sought registration under the Philippine Commission Act No. 496 of 1902. His application was granted in 1904 but the Insular Government maintained that his failure to register his property, pursuant to a decree of June 25, 1880, converted his land to public land. Upon succession to the title of Spain by the United States, Insular authorities thereby contended that Cariño no longer had any rights that the Philippine Government was bound to respect.

Justice Oliver Wendell Holmes, in finding for the applicant on appeal to the U.S. Supreme Court stated:

It is true that Spain, in its earlier decrees, embodies the universal feudal theory that all lands were held from the Crown... [but] it does not follow that... applicant 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... for the want of ceremonies which the Spaniards would not have permitted and have not the power to enforce.<sup>38</sup>

The Court further emphasized:

Every presumption is and ought to be against the government... It might, perhaps, be proper and sufficient to say that when, as far back as testimony

35. *Cruz*, 347 SCRA at 171-72 (Puno, J., concurring).

36. *Id.* at 268 (Kapunan, J., concurring).

37. 53 L. Ed. 594 (1909).

38. *Id.* at 596.

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.<sup>39</sup>

Thus, in Chapter II, Section 3 (1), native title has been defined as "pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish conquest."

### C. The Concept of Ownership

The law makes a distinction as between the civil law concept of ownership and indigenous ownership. On one hand, the civil law concept of ownership entails the attributes of the right to receive from the thing that which it produces (*jus utendi, jus fruendi*), the right to consume the thing by its use (*jus abutendi*), the right to alienate, encumber, transform and even destroy that which is owned (*jus disponendi*), and the right to exclude other persons from the possession of the thing owned (*jus vindicandi*).<sup>40</sup> On the other hand, Section 5 of the IPRA emphasizes that ancestral domains are the ICCs/IPs, "private but community property which belongs to all generations."

Furthermore, although the presumption of the law is that areas within the ancestral domains are communally held, such is not in the concept of co-ownership under the New Civil Code.<sup>41</sup> This important distinction emphasizes the fact that ancestral domain cannot be sold, disposed or destroyed because under the indigenous concept of ownership, ancestral domains and resources found therein serve as the material bases of the IPs' cultural integrity.<sup>42</sup>

### D. Vested Rights and Priority Rights

As regards rights existing prior to the passage of the law, IPRA provides for the rule on vested rights which respects existing property rights regime.<sup>43</sup> The remedy may be compensation for the displaced indigenous peoples and/or grant of lands of quality and legal status at least equal that of the land

39. *Id.*

40. 2 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 42 (1983); CIVIL CODE, arts. 427-428.

41. Indigenous People's Rights Act, R.A. No. 8371, ch. VIII, § 55 [hereinafter IPRA]; See *Cruz v. Secretary of DENR*, 347 SCRA 128, 219-25 (2000) (Puno, J., concurring; 287 (Kapunan, J., concurring).

42. R.A. 8371, § 5.

43. *Id.* § 56.

previously occupied as contemplated in Section 5(c) when a pre-existing title to the land could no longer be nullified.

The rule on utilization of natural resources within the domains provides ICCs/IPs with "priority rights" in the harvesting, extraction, development or exploitation but a non-IP may be allowed to take part in the development and utilization for a period of not exceeding twenty-five (25) years renewable for another twenty-five (25) years. Application of this rule, however, is subject to a formal written agreement entered into with the IPs concerned or that the community, pursuant to its own decision-making process has agreed to allow such operation.<sup>44</sup>

#### E. Disposition of Ancestral Domain and Ancestral Land

As for sale or transfer, IPRA makes a distinction as to ancestral domain and ancestral land. By express provision, ancestral domains can never be sold.<sup>45</sup> However, ancestral lands may be transferred only to or among members of the same indigenous people subject to customary laws and traditions of the community concerned. The ancestral lands, may, however, be redeemed within fifteen (15) years from non-IPs on the ground of vitiated consent or unconscionable price received in exchange for the land.<sup>46</sup>

#### F. Formal Recognition of Native Title

Native title, in accordance with the *Cariño* ruling, may be claimed by ICCs/IPs. Formal recognition of such native title, however, comes about through a process under the National Commission on Indigenous Peoples (NCIP) which is thereafter embodied in a Certificate of Ancestral Domain Title (CADT).<sup>47</sup> Individual members of cultural communities, with respect to 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 thirty (30) years immediately preceding the approval of IPRA and uncontested by the members of the same ICCs/IPs shall have the option, within twenty (20) years, to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.<sup>48</sup> The Act further provides that, for this purpose, individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes,

44. *Id.* § 57.

45. *Id.* § 5.

46. *Id.* § 8.

47. *Id.* § 11.

48. *Id.* § 12.

including those with a slope of eighteen percent (18%) or more, are classified as alienable and disposable agricultural lands.

#### G. Tax Exemption

In regard to taxes, all lands certified to be ancestral domains are exempt from real property taxes, special levies, and other forms of exaction except such portion as are actually used for large-scale agriculture, commercial forest plantation and residential purposes and upon titling by another private person provided that exactions from these non-exempt portions shall be used to facilitate the development and improvement of the ancestral domains.<sup>49</sup>

#### H. Rights to Ancestral Domain and Ancestral Land

Chapter III, Section 7 of R.A. 8371 enumerates the rights of the indigenous peoples to their ancestral domain, to wit:

- a) to claim ownership over lands, bodies of water, sacred places, hunting and fishing grounds;
- b) to develop lands, and to manage and control natural resources, and to benefit therefrom;
- c) to stay in the territories;
- d) to be resettled, in case of displacement;
- e) to regulate entry of migrant settlers;
- f) to have access to integrated systems for the management of their inland waters and their air space;
- g) to claim parts of reservations, except those for public welfare and service; and
- h) to resolve land conflicts using customary laws prior to any court action.

As for ancestral lands, as previously mentioned, ICCs/IPs have 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. They also have the right of redemption within fifteen (15) years 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.<sup>50</sup>

49. *Id.* § 60.

50. *Id.* § 8.



### V. THE RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

In general, IPRA provisions on the right to self-governance apply to indigenous peoples not included in the autonomous regions of Muslim Mindanao and the Cordilleras. They may use the form and content of their way of life, as well as their distinct sense of the justice system so long as these are compatible with the national legal system and with internationally recognized human rights.<sup>51</sup> This means that ICCs/IPs are still subject to some fundamental standards outside their tradition, religion or culture. In contrast, pursuant to Article X, Section 20 of the Constitution, IPs in the autonomous regions are given legislative powers over: (1) administrative organization; (2) revenue creation; (3) ancestral domain and natural resources; (4) personal, family and property relations; (5) urban and rural planning development; (6) economic, social and tourism development; (7) education; (8) cultural matters; and (9) other matters as may be authorized by law. It will be noted that criminal legislation is excluded from the mandate given to these autonomous regions. Likewise, the conduct of foreign affairs and national security are beyond their powers.

Governance and empowerment include the right of the indigenous peoples to participate at all levels of decision-making and development of indigenous political structures, including mandatory representation in policy-making bodies and other local legislative councils,<sup>52</sup> and the right of the IPs to determine their own priorities for development.<sup>53</sup> Furthermore, ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.<sup>54</sup>

### VI. SOCIAL JUSTICE AND HUMAN RIGHTS

The principle of non-discrimination and equal protection is the overarching principle of R.A. 8371.<sup>55</sup> This means that the State shall extend to ICCs/IPs the same employment rights and opportunities,<sup>56</sup> basic services,<sup>57</sup>

51. *Id.* § 15.

52. *Id.* § 16.

53. *Id.* § 17.

54. *Id.* § 18.

55. *Id.* § 21.

56. *Id.* § 23. IPRA also specifically provides for unlawful acts pertaining to employment, which are:

educational<sup>58</sup> and other rights and privileges available to every member of the society. Women<sup>59</sup> and children<sup>60</sup> shall likewise be afforded special protection as regards their respective right to participation and development.

IPRA also provides that indigenous peoples have the right to special protection and security in periods of armed conflict in observance of international humanitarian laws.<sup>61</sup> ICCs/IPs shall not be recruited against their will into armed forces, and in particular, for the use against other ICCs/IPs; nor shall children of ICCs/IPs be recruited under any circumstance. Indigenous individuals shall also not be forced to abandon their lands, territories and means of subsistence, or relocated in special centers for military purposes under any discriminatory condition.

### VII. CULTURAL INTEGRITY

IPRA provisions on cultural integrity are understood in a holistic sense. They cover and guarantee the rights to the preservation of indigenous culture,<sup>62</sup> establishment of indigenous educational systems,<sup>63</sup> elimination of prejudice and promotion of tolerance in the recognition of cultural diversity,<sup>64</sup> restitution of cultural, intellectual and spiritual property,<sup>65</sup> preservation of archeological sites and practice of spiritual traditions,<sup>66</sup> and protection of indigenous knowledge systems, medicines, plants, animals, archeological sites, and sciences and technologies.<sup>67</sup>

a. to discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and

b. to deny any ICC/IP employee any right or benefit ... provided for [by law] or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under [R.A. 8371].

57. As enumerated in Section 25 of IPRA, basic services include, *inter alia*, water and electrical facilities, education, health and infrastructure.

58. Section 28, for instance, provides for a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/IPs.

59. R.A. 8371, § 26.

60. *Id.* § 27.

61. *Id.* § 22.

62. *Id.* § 29.

63. *Id.* § 30.

64. *Id.* § 31.

65. *Id.* § 32.

66. *Id.* § 33.

67. *Id.* §§ 34-7.



## VIII. NCIP AND IPRA ENFORCEMENT

The NCIP is the primary government agency responsible for the formulation and implementation of policies to promote and protect the rights and well-being of the ICCs/IPs as well as for the recognition of their ancestral domains and their rights thereto.<sup>68</sup> It is composed of seven Commissioners belonging to ICCs/IPs, appointed specifically from each of the following 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, with the additional proviso that at least two of the seven Commissioners shall be women.<sup>69</sup>

The Commissioners must be natural born Filipino citizens, bona fide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity.<sup>70</sup> They shall hold office for three years subject to re-appointment for another term only.<sup>71</sup> They can be removed from office by the President or upon recommendation by any indigenous community.<sup>72</sup>

Under Section 44 of the IPRA, two of the most crucial powers of the NCIP are the power to issue certificate of ancestral land/domain title<sup>73</sup> and the power to issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation of any part or portion of the ancestral domain.<sup>74</sup>

There are several offices within the NCIP which are responsible for the implementation of the policies provided by IPRA. They are as follows: the Ancestral Domains Office, Office on Policy, Planning and Research, Office of Education, Culture and Health, Office on Socio-Economic Services and Special Concerns, Office of Empowerment and Human Rights, Administrative Office, Legal Affairs Office.<sup>75</sup>

68. *Id.* § 38.

69. *Id.* § 40.

70. *Id.* § 41.

71. *Id.*

72. *Id.* § 42.

73. *Id.* § 44 (e).

74. *Id.* § 44 (m).

75. *Id.* § 46.

The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs, subject to the principle of exhaustion of remedies under customary law.<sup>76</sup> Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.<sup>77</sup> No inferior court of the Philippines shall have the jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.<sup>78</sup>

Penalties are specifically provided for unlawful intrusion on ancestral domain, violation of the principle of non-discrimination, and the exploration, excavation, defacing or removal of archeological sites and artifacts of great importance to the IPs.<sup>79</sup> The violators may be punished in accordance with the customary laws of the ICCs/IPs concerned, provided that the penalty is not cruel, degrading or inhuman and that no death penalty or excessive fines shall be imposed.<sup>80</sup>

It is to be noted though that there is a special provision for Baguio, which is still governed by its own Charter.

## IX. THE DELINEATION PROCESS AND SOME CONCERNS

In the identification and delineation of ancestral domain, a petition for delineation is first filed with the NCIP through the Ancestral Domains Office (ADO).<sup>81</sup> Then in the delineation proper, the official delineation of ancestral domain boundaries, including census of all community members therein, is immediately undertaken by the ADO upon filing of the application by the ICCs/IPs concerned.<sup>82</sup> The applicant establishes proof of ancestral domain claims through the submission of a number of documents.<sup>83</sup>

76. *Id.* § 66.

77. *Id.* § 67.

78. *Id.* § 70.

79. *Id.* § 72.

80. *Id.*

81. *Id.* § 52 (b).

82. *Id.* § 52 (c).

83. *Id.* § 52 (d). It states:

Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (1) of the following authentic documents:

1. Written accounts of the ICCs/IPs customs and traditions;

On the basis of its investigation, the ADO shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein.<sup>84</sup> A complete copy of the preliminary census and a report of investigation, shall be prepared by the ADO,<sup>85</sup> subject to notice and publication requirements.<sup>86</sup> The ADO report on endorsement shall be made within fifteen (15) days from publication.<sup>87</sup> After a favorable endorsement report, the NCIP Chairperson shall thereafter certify that the area covered is an ancestral domain<sup>88</sup> and ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned.<sup>89</sup> The NCIP shall then register issued certificates of ancestral domain titles and certificates of ancestral land titles before the Register of Deeds in the place where the property is situated.<sup>90</sup>

This delineation process, however, is not applicable to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under

- 
2. Written accounts of the ICCs/IPs political structure and institution;
  3. Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
  4. Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
  5. Survey plans and sketch maps;
  6. Anthropological data;
  7. Genealogical surveys;
  8. Pictures and descriptive histories of traditional communal forests and hunting grounds;
  9. Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
  10. Write-ups of names and places derived from the native dialect of the community.

84. *Id.* § 52 (e).

85. *Id.* § 52 (f).

86. *Id.* § 52 (g).

87. *Id.* § 52 (h).

88. *Id.* § 52 (i).

89. *Id.* § 52 (j).

90. *Id.* § 52 (k).

any other community/ancestral domain program prior to the enactment of his law.<sup>91</sup>

#### X. CONCLUSION

The passage of IPRA was a milestone both in Philippine legislative history and jurisprudence. However, the effective application of its provisions entails political will on the part of the government and policy-makers. New legal concepts introduced by the law have immediately generated debate among law practitioners. This implies a need to thoroughly understand and study the implications of IPRA, particularly in balancing the mandate to remedy the historical injustice suffered by ICCs/IPs and addressing a human right centered development for the Filipino people as a whole.

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91. *Id.* § 52 (a).