

Jurisdiction over Ancestral Domains:

Reconciling the ARMM and IPRA Laws*

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I. INTRODUCTION

The struggle for self-determination has been the foremost reason for unrest within the indigenous peoples and Muslim Filipinos. The passage of new legislation yields nothing to solve this problem. In fact, to prevent stepping

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In making this research, the author conducted researches on House and Senate bills of the ARMM and IPRA, relevant jurisprudence, laws, conventions, newspaper and magazine articles, books and internet materials, research in the ARMM Liaison Office for Committee Hearings and Working Groups discussions, personal interview with Atty. Evelyn S. Dunuan, Chairperson, National Commission on Indigenous Peoples, and telephone interviews with Deputy Governor Timuay Gumbalia T. Gunsu, Deputy Governor for Indigenous Peoples, ARMM Region, Ariel de Asis, Assistant to the Deputy Governor for Indigenous People, ARMM Region, Santos M. Unsad, Documentation Head, OSCC-ARMM, Technical Working Group, and Joel B. Beling, Member, Documentation Committee.

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on the others' toes, the authors of each of the new laws had treaded carefully, making sure that each sector's political sensibilities will not be affected. The Indigenous People's Rights Act (IPRA) makes no mention of Muslim Filipinos, whereas the Autonomous Region of Muslim Mindanao (ARMM) Law provides no procedure for survey, delineation and titling of ancestral lands and domains of indigenous peoples within the ARMM. Such cautious approach led to the creation of several gray areas, one of which is the issue on the jurisdiction over ancestral lands and domains:

There are two issues that must be considered. First is whether the National Commission on Indigenous Peoples (NCIP) may validly devolve the powers, functions and duties granted to it by the IPRA to the Autonomous Regional Government's (ARG) autonomy as vested by the Constitution. The subsequent issue would be the reconciliation of two ARMM offices, each of which claims to exercise jurisdiction over the indigenous peoples within the region — the OSCC-ARMM and the Office of the Deputy Governor for Indigenous Peoples.

The resolution of these issues is of foremost importance in order to prevent an imminent conflict between the indigenous cultural communities and the Muslim Filipinos. This paper aims *first*, to present laws, including Congressional committee deliberations relating to jurisdiction over ancestral lands and domains; *second*, to determine which agency should have the power to award titles to the indigenous peoples within the ARMM; and, *lastly*, in case agencies will have overlapping jurisdictions, to properly delineate the functions of each affected agency.

II. BRIEF HISTORICAL BACKGROUND

Prior to the ratification of the 1987 Constitution, then President Corazon Aquino issued Executive Order Nos. (EO) 122-A, 122-B and 122-C, which created the Office of the Northern Cultural Communities, Southern Cultural Communities and Muslim Affairs, respectively. Under Section 5 of each of these laws, powers and functions granted to each office included the provision of legal and technical services for the survey, adjudication, titling and development of Muslim/tribal ancestral lands as well as settlements proclaimed by the government for the Muslim Filipinos/northern cultural communities/southern cultural communities. It must be noted that the power to award titles or claims over the lands was withheld from these offices.

The 1987 Constitution mandated the creation of autonomous regions in the Cordillera and the Muslim Mindanao Regions.¹ Further, the

1. PHIL. CONST. art. X, § 15 provides: "There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical

Constitution also mandated the creation of an organic act for each of these regions,² defining the basic structure of government. Under the organic act, the autonomous regional government is allowed to have legislative powers over specific matters, which included ancestral domain and natural resources.³ However, such power was limited only within the Regional Government's jurisdiction and subject to the provisions of the Constitution and national laws.

On 10 June 1987, President Aquino, through EO 192, reorganized the Department of Environment and Natural Resources (DENR). Under this issuance, the DENR was granted the power to exercise exclusive jurisdiction on the management and disposition of all lands of the public domain and continue to be the sole agency responsible for classification, sub-classification, surveying and titling of lands in consultation with appropriate agencies.⁴

In 1989, the Organic Act of Muslim Mindanao or Republic Act No. (RA) 6734 was enacted. This law outlined the jurisdiction of the Autonomous Regional Government (ARG), which included ancestral domains.⁵ As a result, President Aquino issued EO 462, which transferred certain powers of the Office of the Southern Cultural Affairs (OSCC) within the ARMM region to the ARG. This included the function of providing legal and technical services for the survey, adjudication, titling and development of tribal ancestral lands as well as settlements proclaimed by the government for the southern cultural communities within the ARMM.⁶ The Regional Government designated the OSCC field office to undertake these functions and reorganized it as the OSCC-ARMM.

In 1992, RA 7586 or the National Integrated Protected Areas System Act was passed, granting the DENR the power to prescribe rules and

and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines."

2. *Id.* § 18.
3. *Id.* § 20(3).
4. Executive Order 102, Reorganizing the Department of Environment and Natural Resources, § 5 (1987).
5. Republic Act 6734, An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao, art. V, § 2 (1989).
6. Executive Order 462, Devolving to the Autonomous Regional Government of the Autonomous Region in Muslim Mindanao the Powers and Functions of the Office for Southern Cultural Communities, the Control and Supervision over its Offices in the Region and for other Purposes, § 1 (1991).

regulations to govern ancestral lands within protected areas.⁷ As a result, the DENR issued Department Administrative Order No. 2 which provided for the procedure for issuance of Certificates of Ancestral Domain/Land Claims. Since the issuance of this Administrative Order, the DENR has issued 181 Certificates of Ancestral Domain Claims (CADC) and 146 Certificate of Ancestral Land Claims (CALC). However, it must be noted that what the DENR issues are merely claims and not titles to the lands.

The IPRA was finally enacted in 1997. This Act created the NCIP 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 cultural communities and the recognition of their ancestral domains as well as their rights thereto.⁸ The Act also granted to the NCIP the power to issue certificate of ancestral land/domain titles.⁹ Further, said Act mandated the merger of the Office of the Northern Cultural Communities (ONCC) and Office of Southern Cultural Communities (OSCC).¹⁰ Despite this provision, the OSCC-ARMM still remained in existence up to this date. OSCC-ARMM claimed that it was not affected by the provision of the IPRA mandating the merger since their existence depends on EO 462, wherein the Regional Governor assigned to the OSCC-ARMM will assume the powers and functions granted to the Regional Government.

In 2001, the Expanded Organic Act for the Autonomous Region in Muslim Mindanao (the new ARMM) was passed.¹¹ A new feature of this law was that it mandated the appointment of a Deputy Governor for Indigenous Peoples.¹² Further, unlike the old Organic Act, this law did not provide for an enumeration of the matter over which the Regional Government had jurisdiction. Rather, Article IV, Section 2 provides, "The Regional Government has jurisdiction over all matters devolved to it by the Constitution."

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7. Republic Act 7586, An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for other Purposes, § 13 (1992).
 8. Republic Act 8371, 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, § 38. (1997).
 9. *Id.* § 44.
 10. *Id.* § 74.
 11. Republic Act 9054, Expanded Organic Act for the Autonomous Region in Muslim Mindanao (2001).
 12. *Id.* art. VII, § 6.

The IPRA and the new ARMM laws were enacted as a result of lobbying from various sectors for the government to recognize and give protection to two of the marginalized sectors in the Philippines, the Muslim Filipinos and the indigenous cultural communities. The indigenous cultural communities have waged the struggle for recognition of ancestral lands and domains for several generations. In the same vein, Muslim Filipinos have waged terrible and bloody battles to obtain their autonomy from the central government. The government has tried to address these issues by enacting laws, particularly focused on these sectors.

Despite its noble intentions, the government has created an arena for a potential conflict due to its failure to clearly specify the metes and bounds of each law. Under the IPRA, the NCIP has jurisdiction over claims for ancestral domains made by indigenous cultural communities. However, under the Constitution and the ARMM Law, the jurisdiction over ancestral domains has been given to the ARG. Indigenous peoples within the ARMM, interested in claiming their ancestral lands and domains, would not know which is the proper agency to act on his claim. Further, within the ARMM region, two offices are tasked to look after the welfare of the indigenous peoples — the OSCC-ARMM and the Office of the Deputy Governor for Indigenous Peoples. Their functions need to be clearly delineated so that effective plans, programs and services can be implemented for the welfare of the ARMM indigenous peoples.

III. EXTENT OF LOCAL AUTONOMY OF THE ARMM REGION

The 1987 Constitution mandates the creation of autonomous regions. Although former President Marcos created the Southern Mindanao Autonomous Region through EO 1618, the 1973 Constitution did not contain any provision involving autonomous regions. The Committee on Local Governments of the 1986 Constitutional Convention was torn between the question of setting a fully federal form of government and that of merely establishing autonomous regions, particularly in the Cordilleras and Muslim Mindanao as these areas were recognized to be distinct from the rest of the Philippines.¹³ For several centuries, the Bangsa Moro people have fought for independence from the rest of the Philippines, as they believe that they are different and could never be integrated with the Christian Filipinos. Commissioner Bennagen also recognized the overwhelming passion of the Bangsa Moro to achieve recognition of their right to self-determination in his sponsorship speech:

The Bangsa Moro is a historically and culturally distinct and separate nation from the Christian majority and deserves this status under the universal principle of self-determination; and Islam is the religion and way of life of

13. 3 RECORD OF THE CONSTITUTIONAL COMMISSION 169 (1986).

the Bangsa Moro which requires a separate political and administrative framework from the Western concept and principle of separation of church and state. The latter is similarly important because the Bangsa Moro embraces Islam as the central theme, not only of his religious practices, but all other aspects of life including the government and the economy. Hence, a political fusion with the Christian majority is workable only under a framework of political autonomy which shall allow the full flowering of the genius of the Bangsa Moro in the context of his Islamic Culture.¹⁴

They see regional autonomy as the answer to their centuries of struggle against oppression and exploitation. For so long, their names and identities have been debased. Their lands have been ransacked for their treasures, for their wealth. Their cultures have been defiled, their very lives threatened, and worse, extinguished, all in the name of national development; all in the name of public interest; all in the name of the common good; all in the name of the right to property; all in the name of the Regalian doctrine; all in the name of national security. These phrases have meant nothing to our indigenous communities, except for the violation of their human rights.¹⁵

In determining which areas should constitute the autonomous regions, the Commissioners kept in mind the diversity of cultures and not just geographic proximity. Only the Cordilleras and Muslim Mindanao were given the distinct privilege of forming autonomous regions, in recognition of their distinctive historical and cultural heritage.¹⁶ The decision to create autonomous regions was also made in response to the need for progress and the failure of the unitary system largely due to the Marcos regime. The explanation of Commissioner Jose N. Nolleto shows such intention.

Rapid growth could be better attained with a more efficient and effective management of the country. By limiting matters to be decided by the central government to those of national importance, the central government will not be unduly distracted by localized problems. Moreover, programs should be designed according to regional priorities and potentials rather than the national yardstick of least common denominator. A genuine autonomy is inhospitable to the rise of another Marcos; it will be more difficult for foreign powers to influence or dominate the country because it may happen that foreigners may influence one region but another region may resist, and it is not easy to control all these regions. Also, by reason of the archipelagic geography of our country, central governance is inefficient and unresponsive. A regionalized structure will make the government more accessible to the people. That we are regionalistic as a people is beyond dispute. The reasons for these are, besides our island geography, the existing linguistic and ethnic diversities. The State can achieve equitable distribution of income through the decentralization of political and

14. *Id.* at 183.

15. *Id.* at 171-72.

16. JOAQUIN G. BERNAS, S.J. THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 980 (1996).

economic power. In addition, the exercise of these powers through local autonomy is also the key to modernization of our rural areas.¹⁷

Having decided to create autonomous regions instead of setting up a fully federalized government, the Commission decided that "the creation of autonomous regions does not mean the establishment of sovereignties distinct from that of the Republic. These autonomous regions can be established only 'within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.'"¹⁸ According to Commissioner Bennagen, what was actually considered is not a complete separation from the central government, but rather an efficient working relationship between the autonomous region and the central government. It was seen to be an effective partnership and not a separation.¹⁹ The regional autonomy structure will facilitate that catching up with the development process in the more developed regions, because the regional autonomy structure will be more responsive to the particularities of the region, both culturally and geographically.²⁰

However, it must be kept in mind that 'token autonomy' is not what the Bangsa Moro peoples envisioned. As pointed out by Macapado A. Muslim, Chancellor of the Mindanao State University, two things are essential for meaningful Moro autonomy: (1) capability to be adequately self-sustaining, not dependent on the central government and (2) some degree of compensatory justice for the Muslims.²¹ The Congress has addressed these two issues by enacting the ARMM Law. At this point, a discussion of the type of autonomy that the ARMM enjoys is proper to determine whether a "meaningful Moro autonomy" has been granted. In the case of *Limbona v. Mangelin*,²² the Court recognized that the Autonomous Region enjoys decentralization. However, the Court distinguished two types of decentralization:

Now, autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments "more responsive and accountable," and "ensure their fullest development as self-reliant communities and make

17. 3 RECORD, *supra* note 13, at 175.

18. BERNAS, *supra* note 16, at 980; 3 RECORD, *supra* note 13 at 497-99.

19. 3 RECORD, *supra* note 13, at 179.

20. *Id.* at 188.

21. Macapado A. Muslim, *Sustaining the constituency for Moro autonomy*, accessed at http://www.c-r.org/accord/acc_min/muslim2.htm. (last accessed Nov. 10, 2002).

22. *Limbona v. Mangelin*, 170 SCRA 787 (1989).

them more effective partners in the pursuit of national development and social progress." At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises "general supervision" over them, but only to "ensure that local affairs are administered according to law." He has no control over their acts in the sense that he can substitute their judgments with his own.

Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency.²³

Although the Court declared that the Autonomous Region created under Presidential Decree No. (PD) 1618 did not enjoy a decentralization of power,²⁴ the Court refused to rule on whether the grant of autonomy to Muslim Mindanao under the 1987 Constitution involves an effort to decentralize power rather than mere administration, as it was not a justiciable controversy at that time.²⁵

Two years later, the Court settled this issue in the case of *Cordillera Broad Coalition v. Commission on Audit*²⁶ where the Court ruled that the grant of autonomy to the autonomous regions in Muslim Mindanao and the Cordilleras was that of political autonomy.

On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions [Art. X, sec. 18].²⁷

According to Professor Alberto C. Agra, a recognized specialist in Philippine Local Autonomy, decentralization of administration is equivalent to administrative autonomy while decentralization of power is equivalent to

23. *Id.* at 794-95. See also *Ganzon v. CA* 200 SCRA 271, 286-87 (1991).

24. *Limbona*, 170 SCRA at 796.

25. *Id.* at 795.

26. *Cordillera Broad Coalition v. Commission on Audit*, 181 SCRA 495 (1990).

27. *Id.* at 506.

political autonomy.²⁸ Applying this definition to the Supreme Court pronouncements, it can be deduced that what the ARMM enjoys is a decentralization of power, which amounts to "self-immolation." Despite the fact that the ARMM is accountable to its constituency, rather than the central authorities, its legislative powers over matters enumerated in Article X, Section 20 of the Constitution is still subject to national laws.²⁹ Hence, issues involving ancestral domains (one of the enumerated powers) are still within the jurisdiction of the Legislature.

IV. EFFECTS OF THE ARMM LAWS ON THE IPRA

When the first ARMM Law was enacted in 1989, it contained an enumeration of the matters devolved to the ARG over which it had jurisdiction. However, it must also be considered that there are other sectors and laws that may be affected by this enumeration. One of these is the IPRA, enacted for the indigenous peoples sector, specifically on the issue of ancestral domains. The matters over which the ARMM had jurisdiction over are as follows:

Section 2. The Autonomous Region is a corporate entity with jurisdiction in all matters devolved to it by the Constitution and this Organic Act as herein enumerated:

- (1) Administrative organization;
- (2) Creation of sources of revenue
- (3) Ancestral domain...³⁰

It must be remembered that during this time, the OSCC had jurisdiction over the indigenous peoples' ancestral domains. However, OSCC only had the power to "provide legal and technical services for the survey, adjudication, titling and development of tribal ancestral lands."³¹ The power to title lands by issuing CALCs and CADCs lies with the DENR, as provided by A.O. 2 and E.O. 192.

As a result of the enactment of the first ARMM Law, President Aquino issued E.O. 462 which transferred the powers of the OSCC within the

28. Alberto C. Agra, *Current Issues and Emerging Policy Trends in Local Autonomy*, 46 ATENEO L. J. 1, 7 (2001).

29. PHIL. CONST. art. X, § 20 provides: "Within its national territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over..."

30. R.A. 6734, art. V, § 2.

31. Executive Order 122-C, *Creating the Office for Southern Cultural Communities*, § 5(f) (1987).

ARMM to the ARG.³² However, as the power to title lands was not with the OSCC, this power was not transferred to the ARG, but rather, only the power "to provide legal services for the survey adjudication, titling and development of tribal ancestral lands"³³ that was transferred. The powers transferred to the ARG were assumed by the OSCC within the affected area, which later renamed itself to OSCC-ARMM and separated itself from the OSCC.

When the IPRA was enacted in 1997, it created the NCIP, which was mandated to be the primary agency responsible for recognition of the ancestral domains of the indigenous peoples. As a result, the power to issue CADCs and Certificates of Ancestral Land Titles (CALTs) was removed from the DENR and among the powers given to the NCIP was "to issue the certificate of ancestral land/domain."³⁴ Further, IPRA mandated that the OSCC and ONCC be merged to form the NCIP.

Section 74. Merger of ONCC/OSCC. — The Office for Northern Cultural Communities (ONCC) and the Office of 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 structures to achieve the objectives of the NCIP...³⁵

With the enactment of EO 462 and the subsequent separation of OSCC-ARMM, the merger of the OSCC and ONCC did not include OSCC-ARMM. It continued to exist and performed the functions provided under EO 462. However, unlike the NCIP, it could not issue titles to ancestral lands and domains. Hence, should an indigenous cultural community seek to file a petition for titling of their ancestral lands and domains under the IPRA, such petition must be filed with the NCIP. However, it must be remembered that the ARMM Law devolved the jurisdiction over ancestral domains to the ARG. Despite the fact the IPRA is a later law than that of the first ARMM Law, there are two reasons why the enactment of the IPRA has not amended the first ARMM Law and has not transferred the jurisdiction over ancestral domains from the ARMM to the NCIP.

32. E.O. 462, § 1.

33. *Id.* § 1(k).

34. R.A. 8371, § 44(e).

35. *Id.* § 74.

A. Character of an Organic Law

The ARMM Law was enacted as an organic law.³⁶ According to Commissioner Nolloedo, the organic act possesses the character of a charter passed by Congress, not as a constituent assembly, but as an ordinary legislature, and, therefore, the organic act will still be subject to amendments in the ordinary legislative process as now constituted.³⁷ The following discussion of the 1986 Constitutional Convention is enlightening:

Fr. Bernas. [W]hen the legislature creates this organic act, will it be acting as a constituent assembly or as a legislative body?

Fr. Bernas. Yes, that is the reason I am bringing this up. This thing involves some rather far-reaching consequences also in relation to the issue raised by Commissioner Romulo with respect to federalism. Are we, in effect, creating new categories of laws? Generally, we have statutes and constitutional provisions. Is this organic act something in between the two or is it something equivalent to a constitutional provision? It is going to be equivalent to a constitutional provision, it would seem to me that the formulation of the provisions of the organic act will have to be done by the legislature, acting as a constituent assembly, and therefore, subject to the provisions of the Article on Amendments. That is the point that I am trying to bring up. In effect, if we opt for federalism, it would really involve an act of the National Assembly or Congress acting as a constituent assembly and present amendments to this Constitution, and the end product itself would be a constitutional provision which would only be amendable according to the process indicated in the Constitution.

Mr. Ople. Madam President, may I express my personal opinion in this respect. I think that to require the Congress to act as a constituent body before enacting an organic act would be to raise an autonomous region to the same level as the sovereign people of the whole country. And I think the powers of Congress should be quite sufficient in enacting a law, even if it is not exalted to the level of an organic act for the purpose of providing a basic law for an autonomous region without have to transform itself into a constituent assembly. We are dealing still with one subordinate subdivision of the State even if it is now vested with certain autonomous powers on which its own legislature can pass laws.

Fr. Bernas. So, the questions I have raised so far with respect to this organic act are: What segment of the population will participate in the plebiscite? In what capacity would the legislature be acting when it passes this? Will it be as a constituent assembly or merely a legislative body? What is the nature, therefore, of this organic act in relation to ordinary statutes and the Constitution? Finally, if we are going to amend this organic act, what process will be followed?

36. R.A. 6734.

37. 3 RECORD, *supra* note 13 at 182.

Mr. Nolloedo. ... Second, the organic act has the character of a charter passed by Congress, not as a constituent assembly, but as an ordinary legislature and, therefore, the organic act will still be subject to amendments in the ordinary legislative process as now constituted; unless the Gentleman has another purpose.³⁸

From the deliberations, it is clear that the character of an organic act is just like an ordinary statute and can be repealed by Congress.

Upon the enactment of the IPRA, no express repeal was made on the first ARMM Law. As a result of this non-repeal, there seems to be a conflict regarding jurisdiction over ancestral domains. Despite this conflict, it cannot be said that the IPRA amended the ARMM Law and transferred the jurisdiction over ancestral lands and domains to the NCIP. However, one point to consider is a recent case, where the Supreme Court seems to have created a rule on repeals or amendments of organic acts:

An ordinary statute, whether general or special, cannot amend an organic act that provides for an autonomous region which under the Constitution may only be created, and therefore changed, through a plebiscite called for the purpose. Under Section 3, Article XVIII of the Organic Act of 1989, any amendment to the Organic Act required the approval of a majority of the votes cast in a plebiscite called for the purpose within the constituent units of the ARMM. Section 3 of Article XVIII provides as follows:

"Sec 3. Any amendment to or revision of this Organic Act shall become effective only when approved by a majority of the votes cast in a plebiscite called for the purpose, which shall be held not earlier than sixty (60) days or later than ninety (90) days after the approval of such amendment or revision."

Unless this amendatory process is followed, no subsequent law can amend or revise the Organic Act of 1989.³⁹

As a result, the issue on the character of an organic act seems to be muddled and is open to further interpretation.

B. Constitutional Provisions

The second reason would be because of the Constitution, which prevails over any statute. The 1986 Constitutional Commission has recognized that the issue of ancestral lands and domains is properly within the scope of the powers of the autonomous region.

Mr. Davide. [S]ection 18 of the Article on Local Governments enumerates precisely the powers of the autonomous regions and, therefore, in respect

38. *Id.* at 182-83.

39. Dr. Lampa I. Pandi and Dr. Jarmila B. Macacua v. The Court of Appeals and Dr. Amer A. Saber, GR No. 116850 (April 11, 2002).

to the matter of customary laws on the ancestral lands or domains within the autonomous regions, these matters would be within the legislative authority of the autonomous regions.⁴⁰

Hence, this recognition was enshrined in the provisions on local autonomy in the 1987 Constitution.

Article X, Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;

It is clear that the jurisdiction over ancestral domain has always been vested in the ARG. However, it is submitted that such pronouncement does not mean that issues involving this matter are beyond the reach of the Legislature as the exercise of the ARG of its powers over the matters enumerated is always "subject to the provisions of the Constitution and national laws."

V. TRANSFER OF POWERS TO THE ARMM

In 2001, the new ARMM Law was enacted.⁴¹ Unlike the old ARMM Law, this did not contain an enumeration of the matters over which it had jurisdiction, but just referred to the powers granted to the autonomous regions by the Constitution.⁴²

However, the new ARMM Law mandated the appointment of a Deputy Governor for indigenous cultural communities as a member of the Executive Council of the Regional Governor.⁴³

40. 4 RECORD OF THE CONSTITUTIONAL COMMISSION 39 (1986).

41. R.A. 9054.

42. Section 1. Powers and Functions. — Subject to the provisions of the Constitution, the Regional Government shall exercise those powers and functions expressly granted to it in this Organic Act, or necessary for or incidental to the proper governance and development of all the constituent units within the autonomous region consistent with the policy on regional and local autonomy and decentralization....

Section 2. Corporate Entity. — The autonomous region is a corporate entity with jurisdiction over all matters devolved to it by the Constitution and this Organic Act.

43. Section 6. Executive Council; Deputy Regional Governors. — The Regional Governor shall appoint three (3) deputies each representing the Christians, indigenous cultural communities, and the Muslims in the region. The Regional

Like the old ARMM Law, the new ARMM Law also mandated the creation of an Oversight Committee "for the purpose of supervising the transfer to the autonomous region of such powers and functions vested in it by this Organic Act."⁴⁴ The Oversight Committee was organized on February 8, 2002.

During the 2ND meeting of the Technical Working Group for the Oversight Committee on February 28, 2002, it was deliberated that the NCIP would be one of the national government agencies that would be devolved. As a result, an executive order was drafted, transferring the powers of the NCIP to the ARG.

The proposed Executive Order was submitted to NCIP Chairperson Atty. Evelyn Dunuan and OSCC-ARMM Executive Director Victoria Karakan for Comment. Atty. Dunuan's position is that the said Executive Order would result to the dismemberment of the NCIP and therefore, legislative action is necessary.

R.A. 8371 created the NCIP as the vehicle to implement the provisions thereof and has clothed it with powers and functions. The transfer of the powers and functions of the NCIP to any other body is not authorized by the law itself. This being so, there is need for the amendment of the law before any of its powers and functions could be transferred.

Upon closer scrutiny, the proposed EO does not only transfer the powers and functions of the NCIP to the ARMM but is actually a case of dismemberment of the NCIP as an agency. The proposed EO creates an NCIP in the ARMM which is independent from the NCIP created by R.A. 8371. We do not find the arrangement objectionable if the NCIP at the ARMM would still be part of the NCIP as a national government agency, that is, NCIP-ARMM will be under the control and supervision of the NCIP-Central Office as one of its field offices.⁴⁵

Further, Atty. Dunuan believes that "the power and function of the national government to protect the ancestral domains and ancestral lands of indigenous cultural communities in the ARMM has already been devolved

Governor, the Regional Vice-Governor, and the three (3) deputies shall comprise the executive council of the autonomous government. The executive council shall advise the Regional Governor on matters of governance of the autonomous region. The three deputies shall be *ex officio* members of the regional cabinet with or without portfolio. The Regional Governor may assign powers and functions to the executive council to promote the general welfare of the people of the autonomous region subject to the laws enacted by the Regional Assembly.

44. R.A. 9054, art. XVIII, § 3.

45. Position Paper of Atty. Evelyn Dunuan, Chairperson of the NCIP, in response to the Proposed Executive Order 2 (February 27, 2002) (on file with the author).

to the Regional Government of the ARMM.⁴⁶ Hence, the NCIP cannot be devolved to the ARMM. Rather, the ARG must create the appropriate regional agency which would serve as the vehicle for the protection of the ancestral domains and lands within the ARMM.

The IPRA created the NCIP 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 ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto."⁴⁷ The creation of administrative agencies may present questions relating to the powers and functions, which may be bestowed upon them. Moreover, in the creation and establishment of administrative agencies, there are applicable, constitutional restrictions which apply to any legislative act.⁴⁸ The NCIP derives its powers from Section 44 of Republic Act No. 8371. On the other hand, ARG's jurisdiction over ancestral domain is mandated by its Organic Act (the ARMM Law) and by the Constitution. According to Atty. Alberto Agra:⁴⁹

Devolved powers are those powers conferred by the National Government and transferred to local governments. These powers were originally performed by National Government Agencies. Non-devolved powers are those directly delegated to local governments.

Clearly then, no devolution can be made regarding ancestral domains to the ARG, as jurisdiction over ancestral domains is included in the express grant of power given by the Constitution to the ARG.⁵⁰ Therefore, the NCIP cannot be further devolved to the ARG. Rather, in exercise of the express power granted to it by the Constitution, the ARG should create its own regional agency (for instance, a "Regional Commission on Indigenous Peoples") to properly exercise and implement its jurisdiction over ancestral domains as mandated by its Organic Act and the 1987 Constitution. Further, the ARG's jurisdiction should include all claims for ancestral domains, including those of the non-Muslim indigenous peoples. As pointed out, the delineation of jurisdiction should be based on geographical areas and not on the classifications based on religion.

In the meantime, prior to the creation of the ARMM's regional agency, it is submitted that the IPRA is applicable. The Regional Legislative Assembly is given the power to amend a national law to suit the peculiarities

46. *Id.*

47. R.A. 8371, § 38.

48. HECTOR S. DE LEON AND HECTOR DE LEON JR., *ADMINISTRATIVE LAW: TEXT AND CASES 21* (4TH ed. 2001).

49. Alberto C. Agra, *Powers of Local Governments 3* (1999) (unpublished document) (on file with Atty. Alberto C. Agra).

50. PHIL. CONST. art. X, § 20.

of the ARMM. As they have not adopted a regional legislation amending the IPRA to suit their situation, the policies provided under the national law are applicable.

Mr. Matalam. Your Honor, you wish me to read the provision. The Commission says, "The Commission shall supervise the transfer to the Autonomous Region of such powers and functions vested in it by this Organic Act and the appropriations of the abolished offices or agencies including the transfer of properties, assets and liabilities and such personnel as may be necessary."

Mr. Bandon. Because I notice, Your Honor, Mr. Speaker, that there are many specified powers as a result of the powers devolved by the Constitution embodied in this Organic Act.

So, Your Honor, I notice in Article VIII, Section 5; on page 29, the last sentence, And I want to be clarified, Your Honor, about this. This has a relation to Section 3 of Article I. Allow me to read, Your Honor. "However, the Regional Legislative Assembly may modify such general provisions of the law which, owing to peculiar or unusual conditions existing within the Autonomous Region, render them difficult for application."

Your honor, I am just a little bit confused that is why I want to ask this so that I can be clarified, Your Honor.

When we speak of the provisions of the law here, does it mean the national law?

Mr. Matalam. Your Honor, it is the national law.

Mr. Bandon. It is the national law. So, in other words, *these provisions can modify general provisions of the law*. And the reason stated because owing to the peculiar or unusual conditions existing within the autonomous region.

Mr. Matalam. Oh yes, yes, your Honor.⁵¹

Hence, under the present situation, the indigenous cultural communities within the ARMM, wishing to file a petition for titling of their ancestral lands and domains under the IPRA should do so with the NCIP. However, once the ARG's Regional Legislative Assembly has drafted a local legislation addressing this duty, then the NCIP must transfer all petitions filed with it by indigenous cultural communities within the ARMM to the regional agency.

VI. OSCC-ARMM AND THE OFFICE OF THE DEPUTY GOVERNOR FOR INDIGENOUS AFFAIRS

After the first ARMM Law was enacted, President Aquino issued EO 462 devolving the powers of the OSCC within the ARMM to the ARG. These powers and functions were assumed by the OSCC-ARMM, which is still in

51. Transcript of Session Proceedings on HB No. 22929, 7TH Congress, 3RD Regular Session (March 9, 1989) (emphasis supplied).

existence. With the enactment of the second ARMM Law, the appointment of a Deputy Governor for indigenous cultural communities was mandated and was fulfilled by the appointment of Timuay Gumbalia T. Gunki. As of August 2002, his Office has no clear cut plans as he is waiting for an EO from the Governor prescribing his powers, functions duties and responsibilities.⁵²

Prior to the Deputy Governor's appointment, Victoria Kankan wrote a letter dated 6 March 2002 addressed to Atty. Nabil Tan, Chairman of the Technical Working Group. In that letter, Victoria Kankan deferred her comment on the proposed EO prepared by the Oversight Committee, pending consultation with tribal leaders and legal advisers. A tripartite dialogue with the NCIP Commissioners, ARMM-Technical Working Group and the OSCC-ARMM Technical Working Group was conducted at the Office of the Regional Governor Conference Hall on 14 May 2002. During the dialogue, another draft executive order was presented for discussion. A day after this meeting, Timuay Gumbalia T. Gunki was appointed as the Deputy Governor for Indigenous Affairs.

On 5 June 2002, Victoria Kankan submitted the draft of a Memorandum of Agreement between the NCIP and OSCC-ARMM relative to the operation and implementation of the IPRA within the ARMM.⁵³ The OSCC-ARMM believes that the regional branch of the NCIP should be created and be called as the NCIP-ARMM. On the other hand, Deputy Governor Gunki also transmitted a proposed EO to the Regional Governor prescribing the powers, functions, duties and responsibilities of his Office. At the moment, there is no communication at all between the OSCC-ARMM and the Office of the Deputy Governor. The delineation of the function of each Office is therefore necessary prior to the creation of the regional agency earlier proposed.

The OSCC-ARMM claims to have obtained its powers by virtue of EO 462.⁵⁴ A closer look at the said EO will show that the power was actually transferred to the ARG and not to the OSCC-ARMM. The continued existence of the OSCC-ARMM was due to the fact that it was assigned by the Regional Governor to perform the services mandated through the said

EO.⁵⁵ Hence, the continued existence of the OSCC-ARMM was not due to the devolution of powers mandated by Executive Order No. 462. Rather, it was through a direct act of the Regional Governor, in consonance with the ARMM Law and the Constitution. At this point, had the Regional Governor or Regional Legislative Assembly decided to bestow the power to title ancestral lands and domains to the OSCC-ARMM, they would have the power to do so, by virtue of the express provision of the Constitution. However, no such regional law or EO was created. Hence, the Regional Director has not yet granted to any agency the power to title ancestral lands and domains within the ARMM.

Should the Regional Governor or the Regional Legislative Assembly decide to transform the OSCC-ARMM into the regional counterpart of the NCIP (for instance, as the Regional Commission on Indigenous Peoples), the issue of the relationship of the Regional Commission on Indigenous Peoples and the Office of the Deputy Governor for Indigenous Peoples must be addressed. It is the Regional Legislative Assembly who must prescribe the relationship between the Regional Commission and the Regional Governor. Further, the relationship that needs to be defined should be one similar to the relationship of the Office of the President and the NCIP - on which is lateral but autonomous merely for the purpose of policy and program coordination. At this point, a discussion of the character of the NCIP and its relationship with the President is proper. This relationship is discussed under the Rules and Regulations Implementing the IPRA.⁵⁶

Section 1. NCIP as an Independent Agency Under the Office of the President. The NCIP is the primary agency of government for the formulation and implementation of policies, plans and programs to recognize, promote and protect the rights and well-being of indigenous peoples. It 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 Chief Executive Officer.⁵⁷

Under the Revised Administrative Code of 1987, an agency refers to "any of the various units of the Government, including a department,

52. Interview with Timuay Gumbalia T. Gunki, Deputy Governor for Indigenous Peoples — Autonomous Region in Muslim Mindanao (July 23, 2002) [hereinafter Interview with Deputy Governor].

53. Letter from Hadja Victoria Kankan, Executive Director, OSCC-ARMM to Atty. Evelyn Dunuan, Chairperson, National Commission on Indigenous Peoples I (June 5, 2002) (on file with author).

54. Proposed Executive Order of OSCC-ARMM, § 1 (on file with the author).

55. Telephone Interview with Mr. Joel Beling, Member, Documentation Team, OSCC-ARMM TWG (July 17, 2002).

56. National Commission on Indigenous Peoples Administrative Order 1, Rules and Regulations Implementing Republic Act No. 8371 (1998).

57. *Id.* Rule VII, Part II, § 1 (emphasis supplied).

bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein."⁵⁸

By express provision of the IPRA, the NCIP has been placed under the Office of the President. The relationship between the NCIP and the Office of the President can be characterized as one of "attachment" as provided in the Administrative Code, where there is a lateral relationship between the Office of the President and the attached agency.⁵⁹

(3) Attachment. - (a) This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation for purposes of policy and program coordination. The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency;

(b) Matters of day-to-day administration or all those pertaining to internal operations shall be left to the discretion or judgment of the executive officer of the agency or corporation. In the event that the Secretary and the head of the board or the attached agency or corporation strongly disagree on the interpretation and application of policies, and the Secretary is unable to resolve the disagreement, he shall bring the matter to the President for resolution and direction;

The Regional Governor is the Chief Executive of the ARMM.⁶⁰ The Regional Commission on Indigenous Peoples (RCIP) will be created to perform the functions of the NCIP within the ARMM. Like the NCIP, the RCIP is an independent agency attached to the Office of the Regional Governor. Hence, as its powers and functions will be similar to the NCIP.

It is submitted that upon the creation of the RCIP, its relationship with the Regional Governor should be similar to that of the President and the NCIP—one that is characterized by a lateral but autonomous relationship for purposes of policy and program creation.

On the other hand, the relationship of the Deputy Governor for Indigenous Peoples, as a member of the Cabinet of the Regional Governor, can be compared to the relationship between the President and the members of his Cabinet, *i.e.*, a Department Secretary, where the latter acts as an alter

58. ADMINISTRATIVE CODE, sec 2(4).

59. *Id.* Book IV, chap. 7, § 38.

60. R.A. 9054, art. VII, § 1.

ego⁶¹ of the President. Hence, it is submitted that the doctrine of political agency is applicable and the Deputy Governor acts as an alter ego of the Regional Governor. The doctrine of qualified political agency has been defined in the case of *Carpio v. Executive Secretary*.⁶²

Equally well accepted, as a corollary rule to the control powers of the President, is the "Doctrine of Qualified Political Agency." As the President cannot be expected to exercise his control powers all at the same time and in person, he will have to delegate some of them to his Cabinet members.

Under this doctrine, which recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person on the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or repudiated by the Chief Executive presumptively the acts of the Chief Executive."

Thus, and in short, "the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department."⁶³

As alter-ego of the Regional Governor, the relationship between the Deputy Governor and the RCIP will also be one that is lateral but autonomous for purposes of policy and program coordination. This has been recognized by current Deputy Governor Gunsí. In an interview with the author, he said that he does not consider such local counterpart as under his Office. He believes that both of his Office and the local counterpart of NCIP are under the Office of the Regional Governor. He further posits that as the alter-ego of the Regional Governor, there must be constant coordination and communication between his Office and the local counterpart of the NCIP.

It is therefore submitted that the proposed RCIP be created as the primary agency of the ARG for the formulation and implementation of policies, plans and programs to recognize, promote and protect the rights and well-being of indigenous peoples, especially over their ancestral lands

61. See, *e.g.*, *Pelaez vs. Auditor General* 15 SCRA 509 (1965); *Estrella v. Orendain, Jr.* 37 SCRA 640 (1971); *Almine v. CA, et al.* 177 SCRA 796 (1989); *De Leon v. Carpio* 178 SCRA 957 (1989); *Ganzon v. CA* 200 SCRA 271 (1991); *Macalingag v. Chang* 208 SCRA 413 (1992) (discussing the alter-ego doctrine).

62. 206 SCRA 290 (1992).

63. *Id.* at 295. See also *Joson v. Torres*, 290 SCRA 279 (1998).

and domains. Further, its relationship with the Deputy Governor for Indigenous Peoples is one that is lateral and autonomous. Hence, despite its independent nature, constant coordination and communication must be made between the RCIP and the Deputy Governor for Indigenous Peoples. There must be a system of periodic reporting to the latter. However, matters of day-to-day administration or all those pertaining to internal operation shall be left to the Chief Executive Officer of the Regional Commission.

VII. RECOMMENDATIONS

To address the conflicting issues presented in this paper, it is recommended that the Regional Legislative Assembly of the ARG enact a regional legislation creating an RCIP. The RCIP will serve as the counterpart of the NCIP within the ARMM. Hence, it is necessary to look at the powers, functions, duties and responsibilities of the NCIP as provided in the IPRA.

It is recommended that the current OSCC-ARMM be reorganized into the Regional Commission on Indigenous Affairs as they have been performing the powers and functions transferred to the ARG by virtue of Executive Order No. 462. Hence, instead of creating a totally new agency, a transition will be effected, ensuring the continuity of services being offered.

A comparative chart of the draft EO proposed by the Oversight Committee Technical Working Group, the draft EO proposed by the OSCC-ARMM Technical Working Group and EO 462 has been prepared. On the basis of this comparison and considering the provisions of the ARMM Law and the Constitution, a proposed Regional Legislative Act creating the Regional Commission on Indigenous Peoples has been drafted. It is also recommended that the Regional Commission on Indigenous Peoples adopt the Procedure for Delineation of Ancestral Lands and Domains drafted by the NCIP.

It is further recommended that the Deputy Governor for Indigenous Affairs maintain constant coordination and cooperation with the Regional Commission on Indigenous Peoples to ensure formulation and implementation of necessary and relevant policies, plans and programs to recognize, promote and protect the rights and well-being of the indigenous peoples within the ARMM. Based on the comparative chart, Organic Act and the proposed regional legislative act, a Regional EO providing for the powers, functions and duties of the Deputy Governor for Indigenous Peoples has been drafted.

A. Proposed regional legislation

AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/

INDIGENOUS PEOPLES, CREATING A REGIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao assembled:

CHAPTER I

GENERAL PROVISIONS

Section 1. Short Title. This Act shall be known as the "ARMM Indigenous Peoples' Rights Act of 2002."

Section 2. Declaration of Policies. Pursuant to Article X, Section 20 of the 1987 Constitution and Section 1, Article 10 of Republic Act No. 9054, the Autonomous Regional Government shall undertake measure to protect the ancestral domains and ancestral lands of indigenous cultural communities (ICCs) and indigenous peoples (IPs). Section 5, Article III also mandates that the Autonomous Regional Government shall ensure the development, protection, and well-being of all indigenous tribal communities in keeping with the spirit of autonomy.

Section 3. Integration of IPRA. Section 1, Article III provides that the Autonomous Region in Muslim Mindanao shall remain an integral and inseparable part of the national territory of the Republic as defined by the Constitution and existing laws. However, the autonomous region shall be governed and administered in accordance with the laws enacted by this Assembly and by the Organic Act. Hence, this Assembly declares that the provisions of Republic Act No. 8371 shall be made an integral part of this Act unless otherwise amended by this Act.

CHAPTER II

REGIONAL COMMISSION ON INDIGENOUS PEOPLES

Section 4. Regional Commission on Indigenous Peoples. Chapter VII of Republic Act No. 8371 is hereby amended to respond to the particular needs of the Autonomous Region. To carry out the policies herein set forth, there shall be created the Regional Council on Indigenous Peoples (RCIP), which shall be 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 ICCs/IPs within the ARMM and the recognition of their ancestral domains as well as their rights thereto.

Section 5. Composition. The RCIP shall be an independent agency under the Office of the Regional Governor, as represented by the Deputy Governor for Indigenous Peoples, and shall be composed of 5 Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the Regional Governor, in consultation with the Deputy Governor for Indigenous

Peoples, from a list of recommendees submitted by authentic indigenous peoples: *Provided*, That of the five (5) Commissioners shall be appointed, not one indigenous group shall be represented more than once; *Provided*, That the non-Muslim groups within the ARMM region shall be represented by at least two (2) Commissioners; *Provided*, That at least two (2) of the five (5) Commissioners shall be women.

Section 6. Relationship with the Deputy Governor for Indigenous Peoples. As an alter-ego of the Regional Governor, the Deputy Governor for Indigenous Peoples' relationship with the RCIP 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.

Section 7. Qualifications, Tenure and Compensation. — The Chairperson and the four (4) Commissioners must be natural born Filipino citizens, bonafide members of the indigenous cultural communities as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) 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: *Provided*, That at least one (1) of the five (5) Commissioners shall be members of the Philippine Bar: *Provided*, further, That the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: *Provided*, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: *Provided*, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.

Section 8. Removal from Office. — Any member of the RCIP may be removed from office by the Regional Governor, on his own initiative or upon recommendation by the Deputy Governor for Indigenous Peoples or by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

Section 9. Appointment of Commissioners. — The Regional Governor shall appoint the five (5) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

Section 10. Powers and Functions. To accomplish its mandate, the RCIP shall have the following powers, jurisdiction and function:

1. Formulation, coordination, implementation and monitoring of policies, plans, programs and projects in coordination with the Deputy Governor for Indigenous Peoples for the economic, social and cultural development of the indigenous tribal peoples within the Autonomous Region in Muslim Mindanao (ARMM);

2. Undertake and coordinate development programs and projects in coordination with the Deputy Governor for indigenous affairs for the advancement of indigenous tribal peoples, including development, management and maintaining ancestral domains in the ARMM;
3. Serve as the custodian and administrator in charge of all existing tribal peoples settlements within the ARMM, subdivision, allocations and distribution of ancestral domains and ancestral lands as provided by Republic Act No. 8371;
4. Undertake studies, formulate policies and plans and implement programs and projects in coordination with the Deputy Governor for Indigenous Peoples for the preservation and development of the historical and cultural heritage of indigenous tribal peoples within the ARMM as well as establish and maintain ethnographic research centers and museums on the culture and institution of the indigenous tribal peoples in the ARMM as may be necessary;
5. Issue Certificate of Ancestral Domain Title (CADT), Certificate of Ancestral Land Title (CALT) and Certificate of Ancestral Sea Title (CAST) in accordance to Chapter III of Republic Act No. 8371;
6. To advise the Regional Governor of the ARMM on all matters relating to the indigenous tribal peoples and to submit within sixty (60) days after the close of each calendar year a report of its operations and achievements;
7. To submit to Regional Legislative Assembly appropriate legislative proposals intended to carry out policies under Republic Act No. 9054;
8. Conduct inspections or surveys jointly with other appropriate agencies, and issues necessary certifications prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of the indigenous tribal peoples in the ARMM;
9. To issue appropriate certification as a pre-condition to the grant of permit, lease, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the indigenous tribal peoples concerned;
10. Provide legal and technical services for the survey, adjudication, titling and development of ancestral domains and ancestral lands as well as settlement proclaimed by the government for the indigenous tribal peoples within the ARMM;
11. To exercise and perform quasi-judicial powers pursuant to Section 69, Chapter IX of Republic Act no. 8371;

12. To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of Republic Act No. 8371;
13. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, record, agreement and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of Republic Act No. 8371;
14. To hold any person in contempt, directly or indirectly, and impose appropriate penalties thereof;
15. To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity;
16. Coordinate with formulation, design, integration and the implementation in coordination with the Deputy Governor for Indigenous Peoples, where applicable, of development plans which will assist members of the indigenous tribal peoples in developing their ancestral domains, ancestral lands and ancestral sea domains with respect to contiguous areas occupied by members thereof, incorporating therein livelihood programs and ecological or environmental protection for traditional tribal domains, tribal hunting and fishing grounds and sacred ancestral places or tribal cultural assets;
17. Recognize and promote Tribal Justice and Governance of the indigenous tribal peoples in the ARMM, in coordination with the Deputy Governor for Indigenous Peoples, pursuant to Section 13 and 15, Chapter IV of Republic Act No. 8371;
18. To prepare and submit the appropriate budget to the office of the Regional Governor, in coordination with the Deputy Governor for Indigenous Peoples;
19. Certify, whenever appropriate, membership of persons belonging to the indigenous tribal peoples in the ARMM for purpose of establishing qualifications for specific requirements of government and private agencies and for other benefits as may be provided by law;
20. Perform such other functions as may be provided by law.

CHAPTER III

TRANSFER FROM THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES

Section 11. Transfer of projects from the NCIP. All locally funded programs and projects of the NCIP intended or programmed for the five (5) provinces and the City of Marawi of the Autonomous Region shall be transferred to, and assumed by the Autonomous Regional Government, subject to the usual accounting and auditing rules and procedures.

Section 12. Personnel and Administration.

1. All plantilla positions (filled and unfilled) of the NCIP effectively assigned or with the provinces of the ARMM as their official station shall be placed immediately under the control and supervision of the ARG.
2. All personnel of the NCIP who are absorbed by the ARG shall retain their seniority rights, compensation and other benefits as provided under Section 2, Article XIX of the Republic Act No. 6734.
3. Personnel who decline to transfer or be absorbed by the ARG shall have the following options as outlined by the Civil Service Commission:
 - a. Retirement, if eligible;
 - b. Absorption by their line department in another office of region subject to the availability of positions and at management's discretion;
 - c. Voluntary resignation.

Section 13. Assets, Equipment and Properties. The field offices and sub-field offices of the NCIP shall be transferred to the ARG, subject to the provisions of law, pertinent issuances and other rules and regulations.

Section 14. Budget. All outstanding budget balances duly appropriated for the operations of the NCIP in the provinces of the ARMM for the current fiscal year as of the date of transfer shall be turned over to the ARG.

CHAPTER IV

ANCESTRAL DOMAINS FUND

Section 16. Ancestral Domain Fund. There is hereby created an Ancestral Domain Fund, the amount of which will be sourced from the Office of the Regional Governor and from the Presidential Social Fund. Funds will be sourced from the NCIP National. Certain amount from the Local Funds can be appropriated thereto and such other source, as the government may deem appropriate. Thereafter, such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the Regional Autonomous Government shall be coursed through the Office of the Deputy Governor for Indigenous Peoples, in coordination with the RCIP. The RCIP may also solicit and receive donations endowments and grants in the form of contribution and such endowments shall be exempted from income or gift taxes and other taxes,

charges or fees imposed by the government or any political subdivision or instrumentality thereof, in coordination with the Office of the Deputy Governor for Indigenous Peoples.

CHAPTER V

TRANSFORMATION OF THE OFFICE FOR SOUTHERN CULTURAL COMMUNITIES-ARMM

Section 17. The Office for Southern Cultural Communities-Autonomous Region in Muslim Mindanao shall be reorganized into the Regional Commission for Indigenous Peoples: *Provided* that the procedure for appointment of Commissioners shall be complied with: *Provided, further*, That upon approval of this Regional Executive Order, the officers and employees of the OSCC-ARMM shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits. The new position structure and staffing pattern of the Commission shall be approved and prescribed by the Placement Committee within one hundred twenty (120) days from the approval of this Regional Executive Order and the authorized positions created thereunder shall be filled with regular appointments by the Regional Governor as the case may be. Those incumbents whose positions are not included therein or who are not reappointed shall be deemed separated from the service. Those separated from the service shall receive the retirement benefits to which they may be entitled under existing laws, rules and regulations. Otherwise, they shall be entitled to gratuity a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement or gratuity, they shall have the option to select either such retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: *Provided, finally*, That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.

Section 18. Transition Period. — The OSCC-ARMM shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

Section 19. Transfer of Assets/Properties. — All real and personal properties which are vested in, or belonging to, the merged offices as aforesaid shall be transferred to the RCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: *Provided*, That all contracts, records and documents relating to the operations of the transformed offices shall be transferred to the RCIP. All agreements and contracts entered into by the transformed office shall remain in full force and effect unless otherwise terminated, modified or amended by the RCIP.

Section 20. Placement Committee. — Subject to rules on government reorganization, a Placement Committee shall be created by the RCIP, in coordination with the Civil Service Commission-ARMM, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The Placement Committee shall be composed of five (5) commissioners and the Deputy Governor for Indigenous Peoples. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

CHAPTER VI

FINAL PROVISIONS

Section 21. Appropriations. The amount necessary to finance the initial implementation of the restructuring of the office shall be charged against the current appropriation of the OSCC-ARMM and from the Presidential Social Funds.

Section 22. Date of Transfer. The date of transfer shall be set one month after the date of effectivity of this Act.

Section 23. Within sixty (60) days immediately and after appointment, the RCIP shall issue the necessary rules and regulations, in consultation with the Deputy Governor for Indigenous Peoples, for the effective implementation of this Act.

Section 24. Separability Clause. If, for any reason, any part or provision of this Act shall be held unconstitutional or declared contrary to law, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 25. Repealing Clause. All acts, orders, issuance, rules and regulations inconsistent with any provision of this Act are hereby repealed, modified or otherwise amended accordingly.

Section 26. Effectivity. This Act shall take effect fifteen (15) days after publication in a newspaper of general circulation and one (1) local newspaper of general circulation in the ARMM.

B. Proposed regional Executive Order

FURTHER DEFINING THE POWERS, FUNCTIONS AND DUTIES OF THE OFFICE OF THE DEPUTY GOVERNOR FOR INDIGENOUS AFFAIRS AND FOR OTHER PURPOSES

WHEREAS, the Constitution mandates that the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions;

WHEREAS, it is the policy of Autonomous Regional Government to ensure the development, protection, and well-being of all indigenous tribal

communities to the indigenous cultural communities equality in stature, dignity and opportunity with all other citizens;

WHEREAS, the appointment of a Deputy Governor for Indigenous Peoples has been mandated by Republic Act No. 9054

NOW, THEREFORE, I, DR. PAROUK HUSSIN, Regional Governor of the Autonomous Region in Muslim Mindanao, by virtue of the powers vested in me by law, do hereby order:

Section 1. Appointment. — By virtue of the Organic Act, a Deputy Governor for Indigenous Peoples has been appointed to serve the needs of the indigenous cultural communities within the Autonomous Region in Muslim Mindanao (ARMM).

Section 2. Powers, Functions and Duties. — Implementation of the Constitutional mandate and Regional policy hereby vested in the Office of the Deputy Governor for Indigenous Peoples, hereinafter referred to as ODGIP, under the Office of the Regional Governor, which shall act for and in behalf of the Regional Governor in all matters pertaining to indigenous cultural communities and shall have the following powers, functions and duties:

1. Serve as the primary regional government agency through which the indigenous tribal peoples can seek government assistance and as the medium through which such assistance may be extended;
2. Formulation, coordination, implementation and monitoring of policies, plans, programs and projects in coordination with the Regional Commission on Indigenous Peoples (RCIP) for the economic, social and cultural development of the indigenous tribal peoples within the Autonomous Region in Muslim Mindanao (ARMM);
3. Serve as the link between the Regional Governor and agencies, public and private, internal or external, involved in such programs and projects; and recommend such affirmative actions as may be necessary for their efficient and effective implementation;
4. Provide mechanism through which the indigenous tribal peoples within the ARMM can seek the ARG assistance and through which such assistance may be extended to them;
5. To review and assess the conditions of indigenous tribal peoples including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
6. Enter, subject to existing laws, policies, and guidelines, into such contracts, agreements, or arrangements, with government or private agencies or entities as may be necessary to attain the objectives of the ARMM, including obtaining loans from lending institutions;

7. Accept grants, donations, gifts, funds, and/or properties in whatever form and from whatever source, for the benefit of the indigenous tribal peoples with the ARMM, and administer the same in accordance with the terms thereof, or in the absence of any condition, in such manner as may be consistent with the interest of indigenous tribal peoples in ARMM, as well as any existing laws;
8. Undertake studies, formulate policies and plans and implement programs and projects in coordination with the Regional Council for Indigenous Peoples for the preservation and development of the historical and cultural heritage of indigenous tribal peoples within the ARMM as well as establish and maintain ethnographic research centers and museums on the culture and institution of the indigenous tribal peoples in the ARMM as may be necessary;
9. To convene periodic conventions or assemblies of indigenous tribal peoples to review, assess as well as propose policies or plans;
10. Coordinate the enforcement of policies and laws protecting the rights of the indigenous tribal peoples to their ancestral domains and ancestral lands, including the applications of customary laws governing property rights and relations, in determining the ownership and extent of ancestral domains and ancestral lands, subject to procedures and standards established by Republic Act No. 8371 or any other constituted authority and for its purpose, enlist the assistance of appropriate government agencies, including those concerned with law enforcement;
11. Acquire, lease or own such properties or assets in whatever form as may be necessary and sell or otherwise dispose of the same and serve as the custodian or administrator of such ancestral domains and ancestral lands or areas and other properties or assets as the ARG may reserve for the benefit of the indigenous tribal peoples in the ARMM;
12. To advise the Regional Governor of the ARMM on all matters relating to the indigenous tribal peoples and to submit within sixty (60) days after the close of each calendar year a report of its operations and achievements;
13. Provide medical assistance and health programs in coordination with the Department of Health;
14. Coordinate with formulation, design, integration and the implementation in coordination with the Regional Commission on Indigenous Peoples, where applicable, of development plans which will assist members of the indigenous tribal peoples in developing their ancestral domains, ancestral lands and ancestral sea domains with respect to contiguous areas occupied by members thereof, incorporating therein livelihood programs and ecological or

environmental protection for traditional tribal domains, tribal hunting and fishing grounds and sacred ancestral places or tribal cultural assets;

15. Assist, promote and support community schools, both formal and non-formal, for the benefit of members of the indigenous tribal peoples, incorporating therein the cultural values of the beneficiary communities consistent with the Filipino values of good citizenship and love of country, preferably in areas where existing educational facilities are not accessible to members of the indigenous tribal peoples in the ARMM, in coordination with the Department of Education;
16. Recognize and promote Tribal Justice and Governance of the indigenous tribal peoples in the ARMM, in coordination with the Regional Commission on Indigenous Peoples, pursuant to Section 13 and 15, Chapter IV of Republic Act No. 8371;
17. To prepare and submit the appropriate budget to the office of the Regional Governor, in coordination with the Regional Commission on Indigenous Peoples;
18. Encourage trade affairs and market centers to serve as outlets for the agricultural and handicraft products of the indigenous tribal peoples; support the establishment of other marketing assistance and credit facilities for the promotion of trade and entrepreneurship among indigenous tribal peoples in the ARMM;
19. Promote peace and harmony within between and among the indigenous tribal peoples by acting as mediator and encouraging the peaceful settlement of tribal disputes in accordance with prevailing customary laws of each particular tribe; for such purpose, shall codify the customary laws of each particular tribe, especially those on the conduct of adjudication councils;
20. Assist in the organization of tribal courts, to include a Tribal Appellate Court for the indigenous tribal peoples in the ARMM. The said courts shall determine, settle, and decide controversies and enforce decisions involving personal and family property rights of members of the tribal peoples concerned in accordance with the tribal codes of the communities;
21. To represent the indigenous tribal peoples in the ARMM in all national and International conferences and conventions dealing with indigenous peoples and other related concerns; and
22. Perform such other functions as may be provided by law.

Section 3. Deputy Governor. — The ODGIP shall be headed by a Deputy Governor who shall be of cabinet rank and who shall be entitled to all privileges and prerogatives of a regular member of the Cabinet.

Section 4. Organization Structure of the Office. — The Deputy Governor shall determine the organization structure of the ODGIP in such manner as would best carry out its powers, functions and duties and attain the objectives of this Order. He shall organize the ODGIP and appoint, discipline and/or remove, and determine the compensation and allowances of its personnel. The Deputy Governor may appoint tribal chieftains, members of tribal councils, and other tribal leaders as well as other deserving minorities without the requisite civil service eligibility when in his opinion the welfare and interest of the National Minorities and of the government will be best served thereby.

Section 5. Appropriations. — ODGIP shall receive an annual lump sum appropriation in such amounts as may be sufficient to finance its operation and its programs, projects and activities.

Section 6. Relationship with the RCIP. Being the alter-ego of the Regional Governor, the relationship of the ODGIP and the Regional Commission on Indigenous Peoples shall be characterized as a relationship that is lateral and autonomous but with constant coordination and communication for purposes of policy and program formulation and implementation.

Section 7. Repealing Clause. — All orders, issuances, rules, regulations, or parts thereof which are inconsistent with any provisions of this Order, are hereby repealed or modified accordingly.

Section 8. Separability Clause. — If, for any reason, any part or provisions of this Executive Order shall be held unconstitutional or declared contrary to law, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 10. This Regional Executive Order shall take effect fifteen (15) days after its publication in one local newspaper in general circulation in the ARMM.

VIII. ON ANCESTRAL WATERS

Should jurisdiction over ancestral domains be granted to the ARG, an issue regarding ancestral waters will arise. Under the Expanded Organic Act (RA 9054), the definition of ancestral domain and lands of indigenous cultural communities is provided in Article X, Section 1, as follows:

All lands and natural resources in the autonomous region that have been possessed or occupied by indigenous cultural communities since time immemorial, except when prevented by war, *force majeure*, or other forms of forcible usurpation, shall form part of the ancestral domain. Such ancestral domain shall include pasture lands, worship areas, burial grounds, forests and fields, mineral resources, *except* strategic minerals, such as uranium, coal, petroleum; and other fossil fuels, mineral oils, and all sources

of potential energy; lakes, rivers, and lagoons; and national reserves and marine parks, as well as forest and watershed reservations.

Under the IPRA, ancestral domains are defined under Section 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*, *minera* 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;

Under the IPRA, bodies of water are included in the definition of ancestral domains, allowing indigenous cultural communities to claim for their ancestral waters. However, the new ARMM Law excludes lakes, rivers, lagoons and marine parks from the definition. Should the Regional Government decide to apply the definition under the IPRA, this would be in conflict with the definition under its Organic Act. Should the Regional Government decide to apply the definition under its Organic Act, then the indigenous cultural communities within the ARMM region will be in a worse situation than those outside the region. This is a cause for concern, especially since one of the communities in the ARMM, the Badjaos, rely mainly on the seas for their livelihood.

This issue could only be addressed by an amendment of the definition of ancestral domains provided under the new ARMM Law.

IX. CONCLUSION

The survival of the indigenous cultural communities and the Bangsa Moro people depends on their ability to secure land rights and assert their rights to it. It has been sufficiently asserted that their right to self-determination is tied to land ownership.

The government has tried its best to answer this demand. However, its best efforts were met with certain idiosyncrasies that had to be satisfied. Hence, the laws that the government enacted were fraught with vague provisions and gray areas when applied together.

The IPRA grants NCIP the power to issue ancestral domain and land titles. However, the 1987 Constitution and the old ARMM Law grants this power to the ARG. As a result, the NCIP has tried to tread carefully with regard to petitions coming from the ARMM. On the other hand, the ARMM failed to come up with a legislation to execute its jurisdiction over the ancestral domain during the effectivity of the old ARMM Law.

Despite the non-existence of a regional legislation, a regional agency, the OSCC-ARMM claims to be the counterpart of the NCIP within the ARMM region. This agency claims to have received such power by virtue of EO 462. Further, the OSCC-ARMM believes that the creation of a regional branch of the NCIP called NCIP-ARMM is proper.

The subsequent enactment of the new ARMM Law created the Office of the Deputy Governor for Indigenous Peoples. Although the Deputy Governor has already been appointed, his Office is still in a flux, pending the issuance of an EO delineating his powers, functions, duties and responsibilities by the Regional Governor.

As a result of the enactment of the new ARMM Law, an Oversight Committee was created which decided to devolve the powers of the NCIP to the ARG. However, the NCIP was against this devolution, as the Commission believed that the power to protect the ancestral domains and lands had already been devolved to the ARG hence, there was nothing more to devolve. The OSCC-ARMM was also seeking for the devolution of powers as well as its transformation into the NCIP-ARMM.

To resolve the conflict and reconcile the differences, the proponent believes that a regional legislation should be enacted, creating an RCIP to serve as the local counterpart of the NCIP and perform the powers, functions and duties necessary to protect the rights of the indigenous peoples within the ARMM. Further, to ensure the continuity of services, it is suggested that the OSCC-ARMM should be reorganized into the RCIP. On the other hand, the Deputy Governor for Indigenous Peoples, as the alter ego of the Regional Governor, must maintain close coordination and cooperation with the RCIP to ensure that necessary policies and programs to best address the needs of indigenous peoples within the ARMM will be properly drafted and implemented.

As a final note, the IPRA's enactment was a novel and well-applauded legislation, responding to the needs of the indigenous peoples. However, it must be remembered that in the application of this law, the concerns of other sectors must also be considered. The creation of the RCIP is proposed not only to address the right to self-determination of the indigenous peoples within the ARMM but also to signify the exercise of autonomy by the Bangsa Moro peoples, allowing them to ensure their own right to self-determination.