The Jurisdiction of the National Commission on Indigenous Peoples Under the IPRA and Related Jurisprudence

April Joy B. Guiang[★]

I. INTRODUCTION

No less than the highest law of the land provides that the State "recognizes and promotes the rights of indigenous cultural communities[.]"[1] To effect

★ '18 J.D. *cand.*, Ateneo de Manila University School of Law. The Author is a member of the Board of Editors of the *Journal*. She was an Associate Lead Editor for the fourth Issue of the 61st Volume. She is also a member of the *Katutubo* desk of the Ateneo Human Rights Center. She recently co-authored *The Public Welfare Dimension of the Competition Clauses: An Exposition and Application of the Proper Constitutional Treatment for Industries with Adverse Health Impacts*, 90 PHIL. L.J. 979 (2017).

Cite as 62 ATENEO L.J. 639 (2017).

this mandate, Congress passed the Indigenous Peoples' Rights Act of 1997 (IPRA).[2] But the IPRA is by no means mere compliance to this mandate. More than anything, the IPRA is a landmark legislation that aims to eradicate the historical bias of society against indigenous cultural communities (ICCs) and indigenous peoples (IPs)[3] —

> [It] seeks to stop prejudices against tribal peoples *through the recognition of certain rights over their ancestral domains, and including ancestral lands, and the right to live their lives in accordance with their indigenous traditions, religions*[,] *and customs*. With the enactment of this law, the Philippine indigenous peoples will now be able to eventually join the mainstream of Philippine society in community development and nation building.[4]

---

1. PHIL. CONST. art. II, § 22.
2. 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 [The Indigenous Peoples' Rights Act of 1997], Republic Act No. 8371 (1997).
3. The Indigenous Peoples' Rights Act of 1997, § 2.
4. Ella Blanca B. Lopez, et al., *Indigenous Peoples' Claim To Parts of Reservation*, 47 ATENEO L.J. 694, 699-700 (2002) (emphasis supplied). Ancestral domain is defined under The Indigenous Peoples' Rights Act as

> all areas generally belonging to [indigenous cultural communities (ICCs)/indigenous peoples (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[.]

Despite the passage of this piece of social legislation, IPs unfortunately continue to "struggle for the defense of their ancestral homelands[.]"[5] Illegal mining and logging operations continue to put at risk the rights of the Igorots of Kalinga to their ancestral lands.[6] A former public official from the province of Abra, who is not a member of the Ibaloi clan and is therefore forbidden to own ancestral land, reportedly bought an Ikang Paus ancestral land that belongs to the Ibalois in Baguio City.[7] Furthermore, Aetas have been massively dispossessed of their lands by non-ICC members who take advantage of the Aetas' "cultural difference-vulnerability to mainstream law[.]"[8] Worse, IPs caught in the midst of land-grabbing incidents are also made to carry the burden of proving their ownership over their ancestral lands since time immemorial, thus putting them at a greater disadvantage in the struggle to secure their lands.[9] On the other hand, land grabbers — who may be from the same ICC, or from another ICC, or who do not belong to any ICC at all — "who illegally obtain titles to the [ancestral] lands enjoy the

---

The Indigenous Peoples' Rights Act of 1997, § 3 (a). On the other hand, ancestral land is defined as

> land occupied, possessed[,] and utilized by individuals, families[,] and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure[,] or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms[,] and tree lots[.]

Id. § 3 (b).

5. ATENEO HUMAN RIGHTS CENTER, THE INDIGENOUS PEOPLES AND THE UNIVERSAL PERIODIC REVIEW: A COMPILATION OF SITUATIONERS ON THE IPS' HUMAN RIGHTS AS SUBMITTED TO THE UPR 11 (2012).

6. Artemio A. Dumlao, *Killings, land grabs threaten Filipino indigenous peoples*, PHIL. STAR, Aug. 9, 2016, *available at* http://www.philstar.com/headlines/2016/08/09/1611712/killings-land-grabs-threaten-filipino-indigenous-peoples (last accessed Oct. 31, 2017).

7. Vincent Cabreza, *Gov't sees flaw in IPRA to speed up sale of titled ancestral lands*, PHIL. DAILY INQ., Apr. 9, 2012, *available at* http://newsinfo.inquirer.net/173591/gov%E2%80%99t-sees-flaw-in-ipra-to-speed-up-sale-of-titled-ancestral-lands (last accessed Oct. 31, 2017).

8. Lopez, et al., *supra* note 4, at 705.

9. ATENEO HUMAN RIGHTS CENTER, *supra* note 5, at 18.

protection of the law[,] given the presumption of validity of the title that they hold."[10]

Pertinently, conflicting claims and disputes with respect to the rights of IPs to their ancestral lands trigger the operation of the IPRA's provisions pertaining to the jurisdiction of the National Commission on Indigenous People (NCIP) and the procedure of the enforcement of rights of IPs.

Preliminarily, the NCIP is an administrative agency — one that is vested with administrative, quasi-legislative, and quasi-judicial powers — mandated to implement the IPRA.[11] It has regional branches called Regional Hearing Offices (RHOs) in each region of the country that "settle disputes and entertain complaints from IPs residing in their respective areas."[12] Section 66 of the IPRA clearly grants the NCIP with jurisdiction over ancestral land-related disputes.

Curiously, however, the progression of cases decided by the Supreme Court, starting from the *City Government of Baguio City v. Masweng*[13] to *Unduran v. Aberasturi*,[14] *Lim v. Gamosa*,[15] *Begnaen v. Caligtan*,[16] and ultimately, to *Unduran v. Aberasturi* (*Resolution*),[17] would reveal a gradual and undue constriction of the broad jurisdiction of the NCIP.

The apparent contradictions of Section 66 of the IPRA and the string cases that tackle the jurisdiction of the NCIP give rise to a series of questions. What exactly is the scope of the NCIP's jurisdiction? Is it really so broad in scope such that the NCIP has jurisdiction over *all claims and disputes*

10. *Id.* at 18-19.

11. *See* The Indigenous Peoples' Rights Act of 1997, §§ 44 & 69 & Christianne Grace F. Salonga, Creation of an Indigenous Peoples Court: In Pursuit of an Effective Remedy for Indigenous Peoples Rights Act (R.A. 8371) Infringement, at 20 (2008) (unpublished J.D. thesis, Ateneo de Manila University School of Law) (on file with the Professional Schools Library, Ateneo de Manila University).

12. *Id.* at 22.

13. City Government of Baguio City v. Masweng, 578 SCRA 88 (2009).

14. Unduran v. Aberasturi, 773 SCRA 114 (2015).

15. Lim v. Gamosa, 775 SCRA 646 (2015).

16. Begnaen v. Caligtan, 800 SCRA 588 (2016).

17. Unduran v. Aberasturi (Resolution), G.R. No. 181284, Apr. 18, 2017, *available at* http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/181284.pdf (last accessed Oct. 31, 2017).

involving rights of ICCs/IPs? What now are the implications of the cases mentioned?

This Essay seeks to illustrate the potential injustices that may stem from the improper interpretation of the Supreme Court of Section 66 of the IPRA, as it pertains to the jurisdiction of the NCIP over claims and disputes relating to the right of IPs to their ancestral lands. The first Section of this Essay provides a brief background on the ancestral land-related claims and disputes experienced by different groups of IPs. The second Section discusses the manner by which the Court, in the five previously mentioned Supreme Court decisions, has interpreted Section 66 of the IPRA in relation to jurisdictional issues in ancestral land-related disputes. The third Section lays down the legal bases to hold that the Court's interpretation of Section 66 of the IPRA[18] contradicts well-established principles of statutory construction and ultimately defeats the language and intent of the IPRA. The Author argues that: first, the NCIP has limited but still concurrent jurisdiction with the Regional Trial Court (RTC) when the case pertains to the rights of ICCs/IPs over their ancestral lands; and, second, that the NCIP has jurisdiction over claims and disputes as long as one of the parties is an ICC member, as opposed to the different permutations referred to in the cases mentioned above. The final Section of the Essay contains the Author's recommendations on how to address these jurisdictional issues.

II. PROGRESSION OF JURISPRUDENCE PERTAINING TO THE SCOPE OF NCIP'S JURISDICTION

The Supreme Court, in a line of cases decided under the regime of the IPRA, has gradually but significantly constricted the jurisdiction granted to

18. The Indigenous Peoples' Rights Act of 1997, § 66. This law, which created the National Commission on Indigenous Peoples (NCIP), provides —

> [Section] 66. Jurisdiction of the NCIP. — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs[;] Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

Id.

the NCIP.[19] As noted in *The Indigenous Peoples and the Universal Periodic Review: A Compilation of Situationers on the IPs' Human Rights as Submitted to the UPR*, published by the Ateneo Human Rights Center, while the IPRA is a law "recognized by the international community as among the very progressive laws protecting the rights of [IPs],"[20] its legal significance is diminished as "[t]he inherent right of [IPs] to their ancestral land and natural resources therein are undermined by jurisprudence [and a] regressing interpretation of the IPRA[.]"[21] As can be gleaned from the manner by which the Supreme Court has disposed of cases involving jurisdictional issues between the NCIP and the RTC, this observation is not without basis. The relevant facts and disposition of these cases are summarized below.

A. City Government of Baguio City v. Masweng

First is the case of *City Government of Baguio City,* which was decided in 2009.[22] Braulio D. Yaranon, then mayor of Baguio City, issued demolition orders for the removal of illegally constructed structures in a portion of the Busol Watershed Reservation.[23] Respondents, who are members of the Ibaloi ICC, filed a petition for injunction against the mayor before the NCIP Cordillera Administrative Region RHO.[24] They alleged that the land they were occupying was part of their ancestral lands, and that the issuance of the demolition orders was in violation of their rights over such lands.[25] The NCIP issued the writ of preliminary injunction, which was later challenged by the petitioners on the ground that the NCIP has no jurisdiction to hear and decide main actions for injunction.[26]

The Supreme Court disposed of the case in favor of the respondents and, in the process, recognized the NCIP's role as the "primary government agency responsible for the formulation and implementation of policies,

19. *See generally City Government of Baguio City*, 578 SCRA; *Lim*, 775 SCRA; *Unduran*, 773 SCRA; *Begnaen*, 800 SCRA; & *Unduran* (*Resolution*), G.R. No. 181284.

20. ATENEO HUMAN RIGHTS CENTER, *supra* note 5, at 25.

21. *Id.* at 27.

22. *City Government of Baguio City*, 578 SCRA.

23. *Id.* at 91.

24. *Id.*

25. *Id.* at 91-92.

26. *Id.* at 92.

plans[,] and programs to protect and promote the rights and well-being of [ICCs/IPs] and the recognition of their ancestral domains as well as their rights thereto."[27] The Court reiterated that the broad grant of jurisdiction in Section 66 of the IPRA stands, as long as the condition precedent provided in the same provision is met.[28] Worthy of emphasis is the Court's pronouncement that "[i]n order to determine whether the NCIP has jurisdiction over the dispute ... , it is necessary to resolve, on the basis of the allegations in their petition, *whether private respondents are members of ICCs/IPs*."[29] In other words, the Court deemed it sufficient that either the petitioner/s or the defendant/s — in this case, the private respondents — were members of ICCs/IPs for the NCIP to have jurisdiciton of the case. Ultimately, the Court said that "the allegations in the petition, which axiomatically determine the nature of the action and the jurisdiction of a particular tribunal, squarely qualify it as a 'dispute[ ] or controversy[ ] over ancestral lands/domains of ICCs/IPs' within the original and exclusive jurisdiction of the NCIP[-]RHO."[30]

B. Lim v. Gamosa

In this case, the respondents filed a petition before the NCIP for petitioners' "Violation of Rights to Free and Prior and Informed Consent (FPIC) and Unauthorized and Unlawful Intrusion with Prayer for Issuance of Preliminary Injunction and Temporary Restraining Order,"[31] alleging the following:

27. *Id.* at 94 (citing The Indigenous Peoples' Rights Act of 1997, § 3 (k)).

28. *City Government of Baguio City*, 578 SCRA at 94-95. The proviso states

> Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

The Indigenous Peoples' Rights Act of 1997, § 66.

29. *Id.* at 96 (emphasis supplied).

30. *Id.*

31. *Lim*, 775 SCRA at 653.

(1) Respondents' status as Tagbanuas, claiming representation of Tagbanua ICCs in the Calamianes Group of Islands in Coron, Palawan;

(2) The provision in the law which recognizes native title of ICCs/IPs;

(3) That they have already filed their claim for the recognition of their ancestral domains with the Department of Environment and Natural Resources (DENR);

(4) That they have yet to obtain a Certificate of Ancestral Domain Title (CADT) from the NCIP;

(5) The purported violation of petitioners of their rights to FPIC; and

(6) That petitioners unlawfully intruded and occupied respondents' ancestral domains.[32]

Petitioners filed a motion to dismiss before the NCIP alleging lack of jurisdiction.[33] The NCIP denied said motion and took cognizance of the case.[34] On appeal, the Court of Appeals (CA) affirmed the NCIP and denied petitioners' subsequent Motion for Reconsideration.[35] The CA agreed with NCIP's assertion of its jurisdiction, using as legal basis the phraseology of Section 66 and "the averred purpose for the law's enactment[ ] 'to fulfill the constitutional mandate of protecting the rights of the [ICCs] to their ancestral land and to correct a grave historical injustice to our [IPs].'[36] The appellate court espoused this position, and stated that "[a]ny interpretation that would restrict the applicability of the IPRA law exclusively to its members would certainly leave them open to oppression and exploitation by outsiders."[37] The CA also held that "Section 66 does not distinguish between a dispute among members of ICCs/IPs and a dispute involving ICC/IP members and non[-]members. Thus, there is no reason to draw a

32. *Id.* at 683-85.

33. *Id.* at 653-54.

34. *Id.* at 654.

35. *Id.* at 655.

36. *Id.* at 656.

37. *Lim*, 775 SCRA at 656-57.

distinction and limit the NCIP's jurisdiction over ['] all claims and disputes involving rights of ICCs/IPs.[']"[38]

The Supreme Court ruled that the use of the word "all" to describe the scope of "claims and disputes" involving the rights of ICCs/IPs is deemed qualified by the proviso in Section 66, "which on its face restrains or limits the initial generality of the grant of jurisdiction."[39] It further held that, even if the controversy pertains to the rights of ICCs/IPs, it cannot be covered under the special and limited jurisdiction of the NCIP when it involves a non-ICC/IP.[40]

C. Unduran v. Aberasturi

Third is the case of *Unduran*, which was decided in October 2015.[41] The petitioners were allegedly awardees of a CADT over a 105.74-hectare parcel of land, located within the ancestral domain of the Talaandig tribe in Bukidnon, Mindanao.[42] The respondents, however, claimed that they were the owners of such unregistered agricultural land, and thus filed an *accion reivindicatoria* with prayer for the issuance of a temporary restraining order or preliminary prohibitory injunction before the RTC against the petitioners, *most of whom* were members of the Talaandig tribe.[43] In response, the petitioners filed a motion to dismiss on the basis of lack of jurisdiction over the case.[44] They claimed that it was the NCIP, and not the RTC, that actually had *exclusive and original* jurisdiction over the case because the subject matter concerns a dispute and controversy over an ancestral land/domain of ICCs/IPs.[45] The petitioners asserted that "the mere fact that [the] case involves members of [ICCs/IPs] and their ancestral land, automatically endows the NCIP, under Section 66 of the IPRA, with jurisdiction[.]"[46]

38. *Id.* at 657.

39. *Id.* at 660.

40. *Id.* at 677.

41. *Unduran*, 773 SCRA at 114.

42. *Id.* at 131.

43. *Id.* at 131-32.

44. *Id.* at 132.

45. *Id.*

46. *Unduran*, 773 SCRA at 184 (J. Perez, concurring opinion).

Later on, the respondents filed a motion to amend and supplement the original complaint to one for "Injunction, Damages, and other Relief,"[47] alleging that "by means of fraud, stealth[,] and surreptitious means, petitioners entered the said land, without permission and against the consent of the landowners, caused damages therein[,] and harassed respondents by indiscriminately firing upon their farm workers."[48] The NCIP, on the other hand, also filed a motion to refer the case to it but the RTC refused to do so and, at the same time, granted the prayer for injunction against the petitioners.[49] The CA affirmed the decision, stating that the allegations in the original complaint for *accion reivindicatoria* and the amended complaint for injunction show that the subject matter of both complaints was within the RTC's jurisdiction.[50]

In resolving the case, the Supreme Court laid down the basic premise that the nature of the action is determined by the allegations in the complaint, regardless of whether or not the plaintiff is entitled to the reliefs prayed therefor.[51] It ruled that the RTC had jurisdiction over the case based on Batas Pambansa Blg. 129 (B.P. Blg. 129),[52] which grants it exclusive original jurisdiction "in all civil actions in which the subject of the litigation is incapable of pecuniary estimation[,]"[53] and "[i]n all civil actions which involve the title to, possession of, real property or any interest therein where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty Thousand Pesos (₱50,000.00)[.]"[54]

Effectively, the Supreme Court made a sharp turn from its ruling in *City Government of Baguio City* — based on *Unduran*, the NCIP continues to have jurisdiction over all claims and disputes involving rights of ICCs/IPs

47. *Id.* at 132.

48. *Id.* at 144.

49. *Id.* at 133-34.

50. *Id.* at 134-35.

51. *Id.* at 139-40.

52. *Unduran*, 773 SCRA at 148.

53. An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for Other Purposes [The Judiciary Reorganization Act of 1980], Batas Pambansa Blg. 129, § 19 (1) (as amended).

54. *Id.* § 19 (2).

"*only when they arise between or among parties belonging to the same ICC/IP.*"[55] This conclusion, according to the Court, can be gathered from the proviso in Section 66, which states that the parties must have exhausted all remedies available under the customary laws of the ICCs/IPs before the petition can be filed with the NCIP.[56] The Court pointed to Section 3 (f) of the IPRA, which defines customary laws as a "body of written and/or unwritten rules, usages, customs[,] and practices *traditionally and continually recognized, accepted*[,] *and observed by respective ICCs/IPs.*"[57] Therefore, since parties that belong to different ICCs do not share, and furthermore are not bound to comply with, the same set of customary laws, "it would be violative of the principles of fair play and due process" to subject them to the jurisdiction of the NCIP.[58]

Corollarily, when the claims and disputes involve parties who do not belong to the same ICC/IP, the regular courts, instead of the NCIP, will have jurisdiction based on B.P. Blg. 129.[59] Therefore, there are two permutations of cases falling under the jurisdiction of the RTC: first, cases where the parties are both members of ICCs/IPs but belong to different ICCs/IPs and second, cases where one of the parties is a non-ICC/IP. Since the respondents in this case did not belong to the same ICC/IP — even though most of the petitioners belong to Talaandig Tribe — the case was held to be under the jurisdiction of the RTC.[60] It is pertinent to point out that in contrast with the case of *City Government of Baguio City*, which was initially filed with the NCIP, this case was first lodged in the regular courts.[61]

More striking is the concurring opinion of Justice Marvic Mario Victor F. Leonen with regard to the elements of the grant of jurisdiction of the NCIP: first, that "[t]he claim or dispute must involve the rights of ICCs/IPs;"[62] second, that "[b]oth parties must belong to the same

55. *Unduran*, 773 SCRA at 146 (emphasis supplied).

56. *Id.*

57. *Id.* at 147 (citing The Indigenous Peoples' Rights Act of 1997, § 3 (f)) (emphasis supplied).

58. *Unduran*, 773 SCRA at 147.

59. *Id.* at 148.

60. *Id.*

61. *Unduran*, 773 SCRA at 226 (J. Leonen, concurring opinion).

62. *Id.*

ICC/IP;"[63] third, that "[t]hese parties must have exhausted all remedies provided under their ICC/IP's customary laws;"[64] and, fourth, "[c]ompliance with this requirement of exhausting remedies under customary laws must be evidenced by a certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute, to the effect that the dispute has not been resolved."[65]

D. Begnaen v. Caligtan

The case of *Begnaen* — which involves parties belonging to the same ICC, i.e., the Kankanaey in Mountain Province — was decided in August 2016.[66] The controversy started when Spouses Leo and Elma Caligtan unlawfully — through the use of force, intimidation, stealth, and threat — entered a 125-square meter ancestral land owned by Thomas Begnaen in Barangay Sabangan, Mountain Province.[67] Begnaen filed a complaint for "Land Dispute and Enforcement of Rights" before the NCIP-RHO, but this was dismissed because settlement proceedings before the Council of Elders, which is a condition precedent mandated by the IPRA, were not conducted.[68] The NCIP ordered Begnaen to comply with the said condition precedent; however, the latter instead decided to file a case of forcible entry against the Caligtans in the Municipal Circuit Trial Court (MCTC).[69] The MCTC dismissed the case, "without prejudice to the filing of a case before the [NCIP-RHO], which had primary, original, and exclusive jurisdiction over the matter pursuant to the IPRA."[70] The RTC of Bontoc, Mountain Province reversed, holding that the MCTC had jurisdiction over the case of forcible entry because "the provisions of the IPRA pertaining to jurisdiction do not espouse exclusivity and thus cannot divest the MCTC of its jurisdiction over forcible entry and unlawful detainer cases as provided by B.P. Blg. 129."[71] Later on, the appellate court reversed the RTC's decision and said that "the passage of the IPRA has *divested regular courts* of their

63. *Id.*

64. *Id.*

65. *Id.*

66. *Begnaen*, 800 SCRA.

67. *Id.* at 592.

68. *Id.* at 607.

69. *Id.*

70. *Id.* at 593.

71. *Id.*

jurisdiction when the parties involved are members of ICCs/IPs and the disputed property forms part of their ancestral land/domain."[72]

The Supreme Court, reiterating its ruling in *Lim*, stated that Section 5, Rule III of NCIP Administrative Circular No. 1-03[73] (also known as the Rules on Pleadings, Practice and Procedure Before the NCIP) and Section 1, Rule III of Administrative Circular No. 1, Series of 2014[74] (also known as The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples), which both provide that the jurisdiction of the NCIP-RHO is "original and exclusive[,]" has been declared null and void.[75] Section 66 confers jurisdiction to the NCIP over "all claims and disputes involving rights of ICCs/IPs" without qualification in that there was no mention of the words "original" and "exclusive" in the text of the IPRA.[76] Moreover, it reiterated its ruling on the same issue in *Lim*, stating that "[t]he implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. Indeed, administrative issuances must not override, but must remain consistent with the law they seek to apply and implement."[77]

The Court sought to resolve the issue of "whether the NCIP's jurisdiction is limited to cases where both parties are ICCs/IPs or primary and concurrent with regular courts, and/or original and exclusive, to the exclusion of the regular courts, on all matters involving rights of ICCs/IPs."[78] Ultimately, it stated that the NCIP has neither primary nor original/exclusive jurisdiction over claims involving rights of ICCs/IPs; rather, its "limited jurisdiction" is concurrent with that of the regular courts.[79] It quoted heavily its decision in *Lim*, which also refers back to the first two cases discussed above.

---

72. *Begnaen*, 800 SCRA at 594 (emphasis supplied).

73. National Commission on Indigenous Peoples, Rules on Pleadings, Practice and Procedure Before the NCIP, rule III, § 5 (Apr. 9, 2003).

74. National Commission on Indigenous Peoples, The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples, rule III, § 1 (Oct. 9, 2014).

75. *Begnaen*, 800 SCRA at 595-99 (citing *Lim*, 775 SCRA at 682).

76. *Begnaen*, 800 SCRA at 597-98.

77. *Id.* at 598 (citing *Lim*, 775 SCRA at 682).

78. *Begnaen*, 800 SCRA at 597.

79. *Id.* at 599.

> Recently, in [*Unduran*], we ruled that Section 66 of the IPRA *does not endow the NCIP with primary and/or exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs*. Based on the qualifying [proviso], we held that the NCIP's jurisdiction over such claims and disputes occur only when they arise between or among parties belonging to the same ICC/IP. Since two of the defendants therein were not IPs/ICCs, the regular courts had jurisdiction over the complaint in that case.
>
> In his concurring opinion in *Unduran*, Justice Jose P. Perez submits that the jurisdiction of the NCIP ought to be definitively drawn to settle doubts that still linger due to the *implicit affirmation* done in [*City Government of Baguio City*] of the NCIP's jurisdiction over cases where one of the parties [is] not [an ICC/IP].
>
> In *Unduran* and as in this case, *we are hard pressed to declare a primary and/or exclusive and original grant of jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs where there is no clear intendment by the legislature*.
>
> Significantly, the language of Section 66 is only clear on the nature of the claim and dispute as involving rights of ICCs/IPs, but ambiguous and indefinite in other respects. While using the word 'all' to quantify the number of the 'claims and disputes' as covering each and every claim and dispute involving rights of ICCs/IPs, Section 66 unmistakably contains a [proviso], which on its face *restrains or limits the initial generality of the grant of jurisdiction*.[80]

Ultimately, however, the Court ruled that the case was under the jurisdiction of the NCIP because of the principle of exclusionary jurisdiction.[81]

> While the doctrine of concurrent jurisdiction means equal jurisdiction to deal with the subject matter, [w]e have consistently upheld the settled rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.
>
> Thus, assuming there is concurrent jurisdiction, 'this concurrence is not to be taken as an unrestrained freedom to file the same case before both bodies

80. *Lim*, 775 SCRA at 659-60 (citing *Unduran*, 773 SCRA at 185 (J. Perez, concurring opinion) & *City Government of Baguio City*, 578 SCRA at 94-96) (emphases supplied).

81. *Begnaen*, 800 SCRA at 604-05 (citing Puse v. Delos Santos-Puse, 615 SCRA 500, 516 (2010); Department of Justice v. Liwag, 451 SCRA 83, 98 (2005); & Carlos v. Angeles, 346 SCRA 571, 581 (2000)).

> or be viewed as a contest between these bodies as to which will first complete the investigation.'[82]

The ruling in *Begnaen* seems to be the prevailing rule in terms of the NCIP's jurisdiction, based on the decision's express clarification of its previous ruling in *City Government of Baguio City*.

E. Unduran v. Aberasturi (Resolution)

This case, which is the resolution on the Motion for Reconsideration of the Supreme Court's en banc Decision on 20 October 2015, is the most recent pronouncement as to the jurisdiction of the NCIP and the RTC over controversies involving ancestral lands where one or both of the parties are ICCs/IPs.[83] The initial denial of the Petition was affirmed in this Motion for Reconsideration.[84] The Court pronounced that when an administrative agency like the NCIP acts in its quasi-judicial capacity, it is considered "a tribunal of limited jurisdiction which could wield only such powers that are specifically granted to it by the enabling statutes. *Limited or special jurisdiction* is that which is confined to particular causes or which can be exercised only under limitations and circumstances prescribed by the statute."[85] The Court also rejected the claim that the NCIP had concurrent jurisdiction with the regular courts;[86] instead, it ruled that the NCIP only has limited jurisdiction by virtue of Section 66 of the IPRA.[87] The Court held —

> [U]nder Section 66 of the IPRA, the NCIP shall have *limited* jurisdiction over claims and disputes involving rights of IPs/ICCs only when they arise between or among parties belonging to the same ICC/IP group; but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction. However, under Sections 52[ ](h) and 53, in relation to Section 62 of the IPRA, as well as Section 54, the NCIP shall have *primary jurisdiction* over adverse claims and border disputes arising from the delineation of ancestral domains/lands, and cancellation of fraudulently-issued CADTs, regardless of whether the parties are non-ICCs/IPs, or members of different ICCs/IPs

82. *Id.*

83. *Unduran (Resolution)*, G.R. No. 181284, at 24.

84. *Id.* at 25.

85. *Id.* at 10 (citing Bank of Commerce v. Planters Development Bank, 681 SCRA 521, 548 (2012)) (emphasis supplied).

86. *Unduran (Resolution)*, G.R. No. 181284, at 12.

87. *Id.*

> groups, as well as violations of ICCs/IPs rights under Section 72 of the IPRA where both parties belong to the same ICC/IP group.[88]

It also held that the "'implicit affirmation' done in [*City Government of Baguio City*] of the NCIP's jurisdiction over cases where one of the parties is not ICC/IPs ... can only be considered as an *obiter dictum*[.]"[89] Adopting the justification of fair play and due process in the earlier *Unduran* case, the Court stated that "non-ICCs/IPs cannot be compelled to comply with the two conditions under Section 66 before such may be brought before the NCIP, since IPs/ICCs are recognized to have their own separate and distinct customary laws and Council of Elders/Leaders."[90]

III. TRACING BACK THE GRANT OF JURISDICTION OF THE NCIP

The cases of *Unduran*, *Lim*, *Begnaen*, and *Unduran (Resolution)* have unduly limited the jurisdiction of the NCIP over ancestral land-related cases. As current jurisprudence stands, it appears that the NCIP only has jurisdiction over ancestral land-related disputes when *both* of the parties belong to the *same ICC*. Therefore, the regular courts, to the exclusion of the NCIP, have jurisdiction over the following cases, even though such involves ancestral land-related disputes:

(1) Where one party is an ICC-member while the other is a non-ICC member; or

(2) Where one party belongs to one ICC while the other belongs to another ICC.[91]

The gradual constriction of its jurisdiction arose from an arguably faulty construction of Section 66 of the IPRA. It is humbly submitted that the NCIP has primary but concurrent jurisdiction over claims and disputes involving the rights of ICCs/IPs over ancestral lands.

88. *Id.* at 24-25 (emphases supplied).

89. *Id.* at 24.

90. *Id.* at 19. *See Unduran*, 773 SCRA at 147.

91. *See Unduran (Resolution)*, G.R. No. 181284, at 24.

A. Section 66 of the IPRA: Clear and Unequivocal as to the Grant of Jurisdiction to the NCIP

Section 66 of the IPRA is clear and unequivocal in vesting the NCIP with jurisdiction over all claims and disputes involving the rights of ICCs/IPs, which includes their right over ancestral lands.[92] Section 66 provides —

> [Section] 66. Jurisdiction of the NCIP. [—] The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs[;] Provided, however, [t]hat no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.[93]

Basic is the rule in statutory construction that if a statute is expressed in clear and unequivocal language and is free from any ambiguity, the courts are duty-bound to give effect to the literal meaning of the statute.[94] No interpretation or ascertainment of the intent of the legislature is needed,[95] and the judiciary has no choice but to "consider the law as controlling."[96]

Ruben E. Agpalo, an authority on statutory construction, expounds on the concept of "plain meaning" rule in this wise —

> The fundamental rule that the legislative intent must be determined from the language of the statute must itself be adhered to even though the court is convinced by extraneous circumstances that the legislature intended to enact something very different from that which it did enact. An absurdity cannot be created to be cleared up by construction ... To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret.[97]

92. *See* The Indigenous Peoples' Rights Act of 1997, § 66.

93. The Indigenous Peoples' Rights Act of 1997, § 66.

94. Globe-Mackay Cable and Radio Corporation v. NLRC, 206 SCRA 701, 711 (1992) (citing RUBEN E. AGPALO, STATUTORY CONSTRUCTION 124 (2003 ed.)).

95. Bustamante v. National Labor Relations Commission, 265 SCRA 61, 71 (1996).

96. Maritime Company of the Philippines v. Reparations Commission, 40 SCRA 70, 78 (1971).

97. AGPALO, *supra* note 94, at 126.

The plain meaning rule must be applied to Section 66, lest the courts be faulted with judicial legislation. It is clear from the language of the law that "the NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs[.]"[98] It contains no qualification as to the kind of parties that should be involved in the dispute, as long as the subject matter involves the rights of ICCs/IPs.

As earlier stated, the rulings are consistent in denying the grant of "original and/or exclusive" jurisdiction to the NCIP, allegedly because there is no discernible intent on the part of Congress to grant such power to the NCIP.[99] The word "jurisdiction" in the first part of Section 66 is unqualified. Section 66 was originally worded "*exclusive and original jurisdiction*[,]" but during the Bicameral Conference Committee meetings, the lower house objected to giving the NCIP exclusive and original jurisdiction —

> [Senator (Sen.)] Juan Flavier: (Chairman of the Senate Panel) There is exclusive original. And so what do you suggest?
>
> ...
>
> [Representative (Rep.)] [Jeremias Z.] Zapata: (Chairman of the Panel for the House of Representatives) Chairman, may I butt in?
>
> Sen. Flavier: Yes, please.
>
> Rep. Zapata: This was considered. The original, we were willing in the [H]ouse. But the 'exclusive,' we objected to the word 'exclusive' because it would only be the Commission that would exclude the court, and the Commission may not be able to undertake all the review nationwide. And so we remove the word 'exclusive' so that they will have original jurisdiction but with the removal of the word 'exclusive' that would mean that they may bring the case to the ordinary courts of justice.
>
> Sen. Flavier: Without passing through the Commission?
>
> Rep. Zapata: Yes. Anyway, if they go to the regular courts, they will have to litigate in court, because if [it is] exclusive, that would be good.
>
> Sen. Flavier: But what he is saying is that ...
>
> Rep. Zapata: But they may not have the facility.
>
> Rep. _____: *Senado na lang.*

98. The Indigenous Peoples' Rights Act of 1997, § 66.

99. *Lim*, 775 SCRA at 660-61.

> Rep. Zapata: *Oo, iyong original na lang.*
>
> Sen. Flavier: In other words, it's not only the Commission that can originate it, *puwede mag-originate sa* courts.
>
> Rep. Zapata: Or else, we just remove 'exclusive original' so that they will say, the National [Commission on Indigenous Peoples] will have jurisdiction over claims. So we remove both 'exclusive and original.'
>
> Sen. Flavier: So what version are you batting for, Mr. Chairman?
>
> Rep. Zapata: Just to remove the word 'exclusive original.' The Commission will still have jurisdiction only that, if the parties will opt to go to the courts of justice, then [they have] the proper jurisdiction, then they may do so because we have courts nationwide. Here there may be not enough courts of the Commission.
>
> Sen. Flavier: So we are going to adopt the [S]enate version minus the words 'exclusive orginal'?
>
> Rep. Zapata: Yes, Mr. Chairman, that's my proposal.
>
> Sen. Flavier: No problem. Okay, approved.[100]

Even though the legislature did not intend to grant the NCIP with original and exclusive jurisdiction, it cannot be said that there is a discernible intent on the part of Congress to limit the jurisdiction of NCIP to cases involving parties belonging to the same ICC. The appellate court in *Unduran* also took the position that Section 66 "does not distinguish between a dispute among members of ICCs/IPs and a dispute involving ICC/IP members and non-members."[101] Such is the flaw in Justice Jose P. Perez' ponencia in *Lim*, which explained that the denial of the grant of original and exclusive jurisdiction over disputes arising from the rights of ICCs/IPs is supported by the proviso of Section 66 —

> That the [proviso] found in Section 66 of the IPRA is exclusionary, *specifically excluding disputes involving rights of IPs/ICCs where the opposing party is non-ICC/IP*, is reflected in the IPRA's emphasis of customs and customary law to govern in the lives of the ICCs/IPs. In fact, even the IPRA itself recognizes that customs and customary law cannot be applied to non-IPs/ICCs since ICCs/IPs are recognized as a distinct sector of Philippine society. This recognition contemplates their difference from the

100. *Unduran*, 773 SCRA at 179-81 (J. Brion, separate opinion) (citing Bicameral Conference Meeting on the Disagreeing Provisions of Senate Bill No. 1728 and House Bill No. 9125 (1997)) (emphasis omitted).

101. *Lim*, 775 SCRA at 657.

> Filipino majority, their way of life, how they have continuously lived as an organized community on communally bounded and defined territory. The ICCs/IPs share common bonds of language, customs, traditions[,] and other distinctive cultural traits, which by their resistance to political, social[,] and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority.[102]

These observations notwithstanding, the language of the statute is clear. The proviso only states that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws[,]"[103] which is defined by Section 3 (f) of the IPRA as "a body of written and/or unwritten rules, usages, customs[,] and practices traditionally and continually recognized, accepted[,] and observed by respective ICCs/IPs[.]"[104] However, this only means that if the claim reaches the NCIP without having complied with the exhaustion of remedies under customary laws, the NCIP should order the parties to exhaust such remedies. Nowhere does it say that the NCIP can no longer take cognizance of the case when the claim or controversy in dispute cannot be subject to the exhaustion of customary laws, which is the case where the parties do not belong to the same ICC. Although provisos, as a general rule, have the purpose of "[limiting] the application of the enacting clause, section, or provision of a statute, or to except something therefrom, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview[,]"[105] it may also enlarge the scope of the statute.[106] It may also serve as an additional legislation in this manner —

> A clear and unqualified purpose expressed in the opening statement of a section of a statute comprising several subdivisions has been construed as controlling and limiting a proviso attached to one of the subdivisions, where the proviso, if segregated therefrom, would mean exactly the reverse

---

102. *Id.* at 675 (emphasis supplied).

103. The Indigenous Peoples' Rights Act of 1997, § 66.

104. *Id.* § 3 (f).

105. AGPALO, *supra* note 94, at 236 (citing Minis v. United States, 40 U.S. 423, 445 (1841); Chartered Bank v. Imperial and National Bank, 48 Phil. 931, 948-49 (1921); Unites States v. Santo Niño, 13 Phil. 141, 142 (1909); & Arenas v. City of San Carlos (Pangasinan), 82 SCRA 318, 323 (1978)).

106. AGPALO, *supra* note 94, at 236 (citing Commissioner of Internal Revenue v. Filipinas Compañia de Seguros, 107 Phil. 1055, 1060 (1960)).

> of what it necessarily implied when read in connection with the limitation.[107]

Since the language of the proviso is clear, there is no need to ascertain the intent of the Congress as to its nature and implications. Even if resort to the intent of the framers of the said provision be needed, the statutory construction will still not be available as there was actually no discussion on the "controversial proviso ... on the Senate floor or during the bicameral committee hearings."[108]

The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples is in line with this interpretation. Section 1, Rule IV (Precondition for Adjudication) of the Rules mandates that "[n]o case shall be brought before the [RHO] or the Commission unless the parties have exhausted all remedies provided for under customary laws. The exhaustion of customary laws shall strictly adhere to the processes and modes prescribed by customs and traditions duly validated and/or documented."[109] In case of failure of the parties to settle their disputes, "the Council of Elders shall issue a certification to the effect that all diligent efforts for settlement under customary practices have failed. No complaint or petition shall be accepted in the [RHO] unless it is accompanied by a Certification of Non-Resolution[.]"[110] If the said Certification is not submitted, "the [RHO] shall refer the case to the concerned Provincial Office. The latter shall cause the referral of the case to concerned council of elders/leaders or mediators, whichever is applicable."[111] Significantly, the Rules allow for an exception to the Certification requirement, that is, "where one of the parties is non-IP or does not belong to the same ICC, except when he/she voluntarily submits to the jurisdiction of the Council of Elders/Leaders."[112] In such a case, it is argued that the Regional Hearing Officer need not refer the matter to the Provincial Office; rather, the condition precedent must necessarily be dispensed with and the NCIP may take cognizance of the case involving a

---

107. AGPALO, *supra* note 94, at 236 (citing Chartered Bank of India v. Imperial, 48 Phil. 931, 948 (1921)).

108. *Unduran*, 773 SCRA at 171 (J. Brion, separate opinion).

109. The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples, rule IV, § 1.

110. *Id.* § 2.

111. *Id.* § 6.

112. *Id.* § 5.

non-IP even without the resort to settlement proceedings pursuant to customary laws.[113]

In other words, non-compliance with the condition precedent in disputes where one of the parties is not an ICC only affects how the NCIP dispenses with the case, i.e., the Certification is dispensed with and the proceedings in the NCIP proceeds. It cannot be stretched to mean that the NCIP is totally divested of its jurisdiction over ancestral land-related disputes by the mere fact that one of the parties cannot comply with the condition precedent. Pursuing this skewed conclusion detracts from the "primacy" of customary laws that is espoused not only by the IPRA[114] but also by the 1987 Constitution.[115] Ultimately, adopting a strict construction to the grant of jurisdiction to the IPRA Law, in the words of the NCIP in the case of *Lim*, "would certainly leave them open to oppression and exploitation by outsiders."[116]

B. Harmonizing the Provisions of the IPRA Related to Ancestral Land-Related Disputes

Another basic rule in statutory construction is that

> a statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[117]

A holistic examination of Sections 65 to 70 of the IPRA, which pertains to the jurisdiction and procedures for the enforcement of the rights protected under the IPRA, would show that the law does not distinguish between ICC members and non-ICC members.[118] This much is apparent in Section

113. *See* The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples, rule IV, § 5.

114. *See* The Indigenous Peoples' Rights Act of 1997, § 2.

115. *See* PHIL. CONST. art. XII, § 5.

116. *Lim*, 775 SCRA at 656-57.

117. Chavez v. Judicial and Bar Council, 676 SCRA 579, 599 (2012).

118. The Indigenous Peoples' Rights Act of 1997, §§ 65-70. These provisions are reproduced below.

[Section] 65. Primacy of Customary Laws and Practices. [—] When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

[Section] 66. Jurisdiction of the NCIP. [—] The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs[;] Provided, however, [t]hat no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

[Section] 67. Appeals to the Court of Appeals. [—] Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

[Section] 68. Execution of Decisions, Awards, Orders. [—] Upon expiration of the period here provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders[,] or awards of the Regional Hearing Officer of the NCIP.

[Section] 69. Quasi-Judicial Powers of the NCIP. [—] The NCIP shall have the power and authority:

(a) 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 this Act;
(b) To administer oaths, summon the parties to a controversy, [and] issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements[,] 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 this Act;
(c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and,
(d) To enjoin any or all acts involving or arising from any case pending therefore 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.

[Section] 70. No restraining Order or Preliminary Injunction. [—] No inferior court of the Philippines shall have the jurisdiction to issue any

66 as it is in Section 69 (c) and (d) of the IPRA, which uses the word "any" in describing the person/s who may be subject to contempt and other penalties and the persons who may be protected by its power to enjoin certain acts.[119] This position is further supported by the purpose behind the promulgation of the IPRA, which is "to fulfill the constitutional mandate of protecting the rights of the [ICCs] to their ancestral land and to correct a grave historical injustice to our [IPs]."[120]

The aforementioned provisions must also harmonize with Section 7 (h) of the IPRA. This provision states that ICCs/IPs have the "[r]ight to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary."[121]

Amicable settlement, and in default thereof, mediation conferences, occurs in the NCIP level.[122] Court proceedings are only resorted to "when necessary," and, in conjunction with Section 67 of the IPRA, only when the decisions of the NCIP are appealed to the CA.[123] The concurrent jurisdiction between the NCIP and the RTC only arises because the IPRA did not expressly or impliedly repeal B.P. Blg. 129.

C. The Special Expertise of the NCIP in the Determination and Application of Customary Laws in Ancestral Land-Related Disputes

The policy of promoting and upholding the rights of ICCs and IPs is discernible in the language of several provisions of the 1987 Philippine Constitution.[124] The right to ancestral lands is one of these fundamental

---

> 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, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.
>
> *Id.*

119. *Id.* §§ 66 & 69.

120. Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 163 (2000) (J. Puno, separate opinion).

121. The Indigenous Peoples' Rights Act of 1997, § 7 (h).

122. The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples, rule IX, §§ 6-7.

123. The Indigenous Peoples' Rights Act of 1997, § 67.

124. *See* PHIL. CONST. art. II, § 2; art. VI, § 5 (1) & (2); art. XII, § 5; art. XIII, § 6; art. XIV, § 17; & art. XVI, § 12.

rights.[125] In fact, ancestral lands are so central to the way of life of IPs that the right over such lands has come to be recognized as a right integrally intertwined with the right to cultural integrity of IPs.[126]

> Ancestral lands are operationally defined in the IPRA. It refers to —
>
> > land occupied, possessed[,] and utilized by individuals, families[,] and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure[,] or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms[,] and tree lots.[127]

More than the physical characterization of ancestral lands, what makes ancestral lands unique from other concepts of real property is that it covers the "total environment[,] including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy[,] and use and to which they have claims of ownership."[128] ICCs and IPs rely on their ancestral lands and the natural resources contained therein for their sustenance, both materially and spiritually, so much so that displacing them from their lands or threatening their possession of such lands, even to the slightest degree, is considered as a direct and serious attack to their "very existence as a people and as a community."[129]

---

125. PHIL. CONST. art. XII, § 5. This provision states that, "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being." *Id.*

126. *See* The Indigenous Peoples' Rights Act of 1997, § 5.

127. *Id.* § 3 (b).

128. *Id.* § 4.

129. SEDFREY M. CANDELARIA, COMPARATIVE ANALYSIS ON THE ILO INDIGENOUS AND TRIBAL PEOPLES CONVENTION NO. 169, UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP), AND THE INDIGENOUS PEOPLES' RIGHTS ACT (IPRA) OF THE PHILIPPINES 41 (2012). The IPRA, and even international instruments such as International Labour Organization Convention No. 169, affirms that ancestral lands are integral and vital to the cultural integrity and spiritual and social welfare of indigenous peoples. As such, the IPRA "[recognizes] the right of ICCs/IPs to maintain, develop[,] and strengthen their distinctive spiritual and material

Contributing to the *sui generis* nature of ancestral lands is the indigenous concept of ownership of ICCs and IPs over such lands. This concept, which is rooted from customary law, "generally holds that ancestral domains are the [ICCs'/IPs'] private but community property[,] which belong to all generations and therefore cannot be sold, disposed[,] or destroyed."[130] Ateneo de Manila University School of Law Dean Sedfrey M. Candelaria, an expert in IP Law, also notes that the indigenous concept of ownership over ancestral lands under the IPRA "differs from the civil law concept of ownership[,]"[131] thus necessitating the appreciation of a different set of laws other than that to which the regular courts are familiar with.

Overlooked in most if not all Court decisions, and even in the separate opinions, in cases involving jurisdiction over ancestral lands disputes is the IPRA's clear grant of rights related to ancestral domains and ancestral lands. Section 7 (h) of the IPRA unequivocally recognizes the "[r]ight to resolve land conflicts *in accordance with customary laws* of the area where the land is located, and *only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.*"[132] In clear terms, the law accords primacy to customary laws as a tool of resolving conflicts related to ancestral lands. This is bolstered by Section 65 of the IPRA, which provides that "[w]hen disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute."[133] These provisions of the IPRA regarding the primacy of customary law is in furtherance of the "constitutional policy of recognizing the application of thereof[,]" with the ultimate objective of attaining social justice for the IPs.[134] Therefore, the premise under which ancestral land conflicts must be resolved is clear, and such inevitably includes a determination of what the applicable customary laws are, and how they are to be applied in each and every factual situation.

---

relationship with the lands, territories, waters, and coastal seas[,] and other resources which they have traditionally owned, occupied, or used, and to uphold their responsibilities to future generations in this regard." *Id.* at 34-35.

130. The Indigenous Peoples' Rights Act of 1997, § 5.

131. CANDELARIA, *supra* note 129, at 35.

132. The Indigenous People's Rights Act of 1997, § 7 (h) (emphasis supplied).

133. *Id.* § 5.

134. *Unduran* (*Resolution*), G.R. No. 181824, at 23 (citing *Cruz*, 347 SCRA at 308 (J. Kapunan, separate opinion)).

Customary laws, however, which vary from one ICC to another, are matters that require the special expertise of the NCIP.[135] Justice Leonen recognizes that customary laws are controlling in the protection of rights over ancestral lands,[136] even though the determination of what comprises "customary laws" is largely dependent on the "recognition given by the NCIP."[137] A recognized limitation that complicates the settlement of ancestral land disputes with the aid of the NCIP is that "[n]o matter how representative the NCIP will be, it still suffers from the handicap that the law cannot, at its current level of generalization, provide an accurate account of indigenous holdings of property."[138] But such limitation is arguably a "lesser evil," so to speak, as compared to the "lack of awareness and comprehension by judges of indigenous customary laws."[139] On this note, Jérémie Gilbert's observations on the application of customary laws relating to ancestral lands by Philippine court judges are compelling[140] —

> A difficulty with the gradual recognition of indigenous customary laws by national courts is the *lack of awareness and comprehension by judges of indigenous customary laws*. The case of the Philippines provides a good example of an elaborate system for the reception of indigenous customary laws by the national legal system. The Constitution of the Philippines states that the Congress may provide for the applicability of customary laws regarding property rights. The ... [IPRA], which implements these provisions on indigenous peoples' rights, stipulates that in cases of conflicting interests regarding claims within ancestral domains, indigenous customary laws should apply first, and that any doubt or ambiguity in the application and

---

135. *Cruz*, 347 SCRA at 175 (J. Puno, separate opinion).

136. Marvic Mario Victor F. Leonen, *Seeking the Norm: Reflection on Land Rights Policy and Indigenous Peoples Rights, Philippine Indigenous Peoples and the Quest for Autonomy: Negotiated or Compromised?*, *in* NEGOTIATING AUTONOMY — CASE STUDIES ON PHILIPPINE INDIGENOUS PEOPLES' LAND RIGHTS 50 (2007).

137. *Id.* at 51.

138. *Id.* at 52.

139. JÉRÉMIE GILBERT, INDIGENOUS PEOPLES' LAND RIGHTS UNDER INTERNATIONAL LAW: FROM VICTIMS TO ACTORS, 113-14 (2006) (citing Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Addendum — Mission to the Philippines*, ¶ 24, U.N. Econ. & Soc. Council, U.N. Doc. E/CN.4/2003/90/Add.3 (Mar. 5, 2003) (by Rodolfo Stavenhagen)). *See also* John Borrows, *Listening for a Change: The Courts and Oral Tradition*, 39 OSGOODE HALL L.J. 1 (2001).

140. Jérémie Gilbert is a professor of International Human Rights Law with a focus on minorities and IPs at the University of Roehampton.

> interpretation of laws shall be resolved in favor of the indigenous peoples ... Thus, [the IPRA] acknowledges the collective notion of land ownership and provides for a mechanism for the recognition of indigenous peoples' collective title to their territories. *One of the difficulties that* [*remain*] *unresolved is the acceptance of customary land laws by non-indigenous institutions.* During his official visit to the Philippines in 2003, [Rodolfo] Stavenhagen, the [United Nations] Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, pointed out that there is still a *lack of awareness from judges and the national legal systems in accepting indigenous customary laws as a source of the recognition of their right to their lands.* In this regard, he has welcomed 'the initiative of the Philippine Supreme Court to train judges in the rights of indigenous peoples recognized in IPRA.' Furthermore, the Special Rapporteur has encouraged the Philippine judiciary 'to adequately address the issue of indigenous customary law in the application and interpretation of law, leading, hopefully, to shift in the mindset of legal practitioners, including judges and lawyers, in such a way that they recognize indigenous customary law as part of the national legal system, as laid out in IPRA.' However ... this law is still very young, and it remains to be seen whether judges will be open to receiving customary indigenous laws ... [The] constitutional and legislative recognition of indigenous customary laws as proof for indigenous land title forces the judges to receive such customary laws, which in turn, puts pressure on the judicial system to reform itself in order to be able to evaluate such indigenous laws.[141]

Atty. Christianne Grace F. Salonga, who wrote her *Juris Doctor* thesis on IPRA, also enumerates three significant challenges that IPs are confronted with when they are embroiled in a legal battle that takes place in the regular courts: (1) lack of shared life experiences;[142] (2) language barriers;[143] and (3) cultural differences.[144] The lack of shared life experiences is discerned from the fact that "very few judges have any extensive knowledge of IP cultures, philosophical beliefs, local community politics, clan structures, or can speak native dialects."[145] On the other hand, the language barrier problem arises because court proceedings are primarily conducted using the English language, and eventually leads to "laborious and stilted communication" due

141. GILBERT, *supra* note 139, at 113-14 (citing PHIL. CONST. art. XII, § 5; Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *supra* note 139, ¶¶ 24-25) (emphasis supplied).

142. Salonga, *supra* note 11, at 41-42.

143. *Id.* at 42-43.

144. *Id.* at 43.

145. *Id.* at 42.

to the need to address questions in Filipino and English and later on translate them into the dialects of the IPs.[146] Lastly, some cultural practices of IPs inevitably clash with the adversarial nature of mainstream justice system,[147] as opposed to the NCIP proceedings, which are summary and non-confrontational in character.[148] Ultimately, these three factors contribute to the IPs' "unfamiliarity with the mainstream justice system" and become deterrents to access to regular courts.[149]

The NCIP was created by law precisely to address these problems. As observed by Salonga, administrative agencies like the NCIP "exercise and perform adjudicatory powers and functions, though to a limited extent, basically because of the need for special competenence and experience in resolving questions of complex or specialized character and because of a companion recognition that the dockets of our regular courts have remained crowded and clogged."[150] Furthermore, she suggests that "the motivation for vesting NCIP with quasi-judicial power is the need for a specialized body with special knowledge, experience[,] and capability to hear and determine promptly disputes on technical matters or essentially factual matters."[151] Unlike regular courts, the NCIP-RHOs serve as "mini-courts" that "employs less formal procedures than the regular courts."[152] Like any other administrative agency, the NCIP only needs to ensure that administrative due process, and not due process in the strict judicial sense, is observed.[153] As stated in *Adamson & Adamson, Inc. v. Amores*,[154] the "standard of due process that must be met in administrative tribunals allows a certain latitude as long as the elements of fairness is not ignored."[155]

It is also worth mentioning that aside from its knowledge and expertise with respect to customary laws, the competence of the NCIP to take

146. *Id.* at 43.

147. *Id.*

148. The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples, rule IV, § 3 (e).

149. Salonga, *supra* note 11, at 41-42.

150. *Id.* at 36.

151. *Id.*

152. *Id.* at 44.

153. Ocampo v. Office of the Ombudsman, 322 SCRA 17, 22 (2000).

154. Adamson & Adamson, Inc. v. Amores, 152 SCRA 237 (1987).

155. *Id.* at 250.

cognizance of such cases is supported by its ancestral land-related functions, such as the identification and delineation of ancestral lands.[156]

IV. CONCLUSION

The latest case in the string of jurisprudence discussed in this Essay provides that the NCIP has limited — not exclusive and original, nor concurrent — jurisdiction with the regular courts over ancestral land-related disputes when both of the parties belong to the same ICC, subject to the rule on exclusionary jurisdiction.[157] The regular courts, to the exclusion of the NCIP, have jurisdiction over the following cases, even though such involves ancestral land-related disputes: (1) where one party is an ICC-member while the other is a non-ICC member; or (2) where one party belongs to one ICC while the other belongs to another ICC.[158]

However, based on the arguments supporting a different viable construction of Section 66 of the IPRA, as supported by the plain meaning rule and the doctrine of primary jurisdiction of the NCIP, it can be argued by such quasi-judicial agency that the NCIP can take cognizance of the case as long as one of the parties is an ICC/IP. Thus, the claim concerning the rights over ancestral lands should be brought to the appropriate regional office of the NCIP. In the instance that a party, whether a member of an ICC or not, files a claim or raises a dispute involving rights of ICCs in the regular courts, such court must refrain from taking cognizance of the case on the basis of the doctrine of primary jurisdiction. It should allow the NCIP to determine the claim using its specialized knowledge and expertise on matters affecting the rights of IPs.

Rather than slowly stripping the NCIP of its powers, particularly its quasi-legislative power to hear and decide cases depending on whether or not the parties are members of an ICC/IP, the courts must uphold the language of the IPRA. The government must dedicate its efforts in empowering the NCIP to handle these cases in a more efficient and culturally-sensitive manner.

---

156. Nancy A. Catamco, Chair of the House of Representatives Committee on Indigenous Cultural Communities and Indigenous Peoples, Remarks at the House of Representatives (transcript *available at* http://www.congress.gov.ph/legisdocs/basic_16/PS186_Rep.%20Catamco.pdf (last accessed Oct. 31, 2017)).

157. *Begnaen*, 800 SCRA at 599.

158. *See Unduran (Resolution)*, G.R. No. 181284, at 24.