

## Modernity vs. Culture: Protecting the Indigenous Peoples of the Philippines

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### ABSTRACT

*The indigenous peoples of the Philippines (IPs) held a distinct culture before the arrival of the Spanish, American, and Japanese colonizers in the archipelago. Once, they were original settlers with revered customs and rituals. Over time, the IPs evolved into a minority group of decreasing social, economic, and political power. Gradually, they transformed into one of the most ignored sectors of Philippine society. Progress looked down on their civilization. Technology threatened their traditions. Modernity infringed on their rights. This paper examines the plight of the IPs using historical, cultural, legal, and political viewpoints. It shall gauge their current situation, and recommend viable ways to improve their present condition and secure their future.*

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## Introduction

Who are the Indigenous People? "Indigenous" denotes an anthropological category — a dying sector of humanity which needs to be salvaged from the throes of extinction, either by ensuring the survival of its 'noble' primordial culture, or if that is no longer possible, by preserving the socio-cultural and physical remains in the museum (Ratuva 1998, p. 53).

José Martínez-Cobo<sup>1</sup>, characterizes the indigenous peoples (IPs) as "those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them" (UNDP 2001). In addition, he further stated that the IPs at present "form the non-dominant sectors of society" and are "determined to preserve, develop, and transmit to future generations their ancestral territories and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems" (UNDP 2001).

In the Philippines, the IPs refer to 110 major ethno-linguistic groups with a population of about 12 million. They thrive in at least 61 out of 77 provinces nationwide (Austria 2000, p. 2). Most inhabit the remote interiors of Luzon, Mindanao, Mindoro, Negros, Samar, Leyte and the Palawan and Sulu groups of islands. They comprise some forty ethno-linguistic communities classified into the following (Abelardo 1996, pp. 2-3):

1. Mindanao Lumads of the highlands of the Provinces of Davao, Bukidnon, Agusan, Surigao, Zamboanga, Misamis, Cotobato. Forming the largest grouping of the tribal Filipinos, the Lumad peoples are the Subanen, Manobo, B'laan, T'boli, Mandaya, Tiruray, Higaonon, Bagobo, Bukidnon, Tagakaolo, Banwaon, Dibabawon, Talaandig, Mamnua, Manguangan, and Ubo.
2. Igorot tribes of the Cordillera Mountain ranges in Northern Luzon. Famous for their rice terraces, the Cordillera peoples are the Ifugao, Bontok, Kanakana-ey, Yapayao, Kalinga, Ibaloi, Tingguian, and Isneg.
3. Caraballo tribes of the Caraballo Mountain range connecting the Provinces of Nueva Ecija in Eastern Central Luzon. Some of them Christianized, the Caraballo peoples are the Ibanag, Ilonggot, Gaddang, Ikalahan and Isnai.
4. Negrito Tribes. Widely dispersed throughout Luzon, some islands in the Visayas, and some Provinces in Mindanao, the Negritos are the Ata, Aeta, Alta, Agta, Ati, Pugot, and Remontado.
5. Mangyans of the mountains and foothills of the island of Mindoro. Known for their gentleness and their pre-conquest poetry *ambahan*, the Mangyans are classified as the Batangan, Iraya, Hanunuo, Alangan, Ratagnon, Buhid and Tadyawan.
6. Palawan Tribes of the Palawan cluster of islands. They are: Tagbanua, Batak, Kalamianes, Cuyonin, and Ken-uy.

Most tribes rely in agriculture-based subsistence. Unfortunately, such dependence on land for subsistence has been continuously threatened through the years. Most of them have become squatters in their own land.

### Historical Background

Through the various periods of history, the IPs have been called the non-Christian tribes, cultural communities, hill tribes, national minorities and tribal Filipinos—all to the effect of distinguishing them from the majority of the Filipino people (IPRAP-TABAK 1992, p. 6).

During the 300-year Spanish occupation, while the rest of the Philippines have been subjugated by the Spaniards, the IPs successfully resisted their dominion either by withdrawing to the hinterlands or fighting against them triumphantly. Living in their relatively isolated and self-sufficient communities, indigenous Filipinos subsisted on food-gathering, hunting and slash-and-burn farming. As a result of their refusal to abandon their traditional practices, they soon became an alienated minority (DLAC 1990, p. 11).

When the United States replaced the Spanish colonial rule in the country, the new foreign power aggravated the oppressed conditions of both the indigenous Filipinos and the majority. The pace and rhythm of development gradually accelerated. Consequently, the forces of market economy, central government, and Western cultural influences have slowly but steadily caught up with them undermining the tribal lifeways in varying degrees (DLAC 1990, p. 5). Hence, they referred the indigenous peoples as savages, illiterates and non-Christians.

In 1916, the charters of Commission for National Integration (CNI) and the Bureau of Non-Christian Tribes further perpetuated the division of the indigenous peoples and the lowlanders when it reflected an 'assimilationist' approach which presumed tribal Filipinos to be inferior citizens of the Philippines politically, economically and culturally (DLAC 1990, pp. 11-13). Jurisprudence even established such distinction of the IPs when the Supreme Court, in a 1919 court decision, referred to the Manguianes (Mangyan ethnic group) as signifying savage, mountaineers, pagans and negro (Rubi 1919).

By resisting the political, social and cultural inroads of colonization, they have historically differentiated themselves from the majority of the Filipinos (Rubi 1919). The lowlanders, through the use of documents, laws and court decisions, abused the ignorance of the indigenous peoples regarding their rights over their ancestral domains. The mechanisms introduced by the colonizers became effective instruments of the State in dispossessing the IPs of their territories, the most outstanding of which is the Regalian doctrine.

Since such doctrine provides that all lands belong to the State, it becomes an imperative to produce titles evidencing ownership to particular lands for those who wanted to prove otherwise. In general, the IPs have failed to obtain such titles under the doctrine due to government prescriptions and restrictions and to their being largely illiterate and socially and politically marginalized. Thus, a big portion of the ancestral domains has been taken over by other people and groups (DLAC 1990, p. 3).

## IP Struggles from Marcos to Arroyo Administration

Though dispossessing the IPs of their ancestral domains have been pervasive for more than four centuries, it gained a new intensity in the 1970s under the martial law rule of President Ferdinand Marcos. He utilized martial law to advance his economic agenda which was supported by the US to the disadvantage of the IPs' remaining resources. However, this proved to be a tactical mistake on the part of Marcos. It catalyzed the IPs to support the rebel groups. The Presidential Assistant for National Minorities (PANAMIN)<sup>2</sup> brought the full force of martial law in the tribal communities. Initially, PANAMIN is a hand-out style charity program of the government to help the IPs resolve their problems regarding poverty and landlessness. However, upon the declaration of martial law, it became the political and military arm of the government to guard the indigenous communities against rebel groups (IPRAP-TABAK 1992, p. 9). Though most of the ICs were relocated to distant places, some still welcomed the establishment of PANAMIN, believing that such relocation would mean having a piece of land to till. Unfortunately, such movement was used to allow big businesses to take over such abandoned tribal lands.

Upon Corazon Aquino's assumption as the Philippine President, IP organizations and advocates actively lobbied for the protection of their rights. As a result, provisions purporting to protect IP rights were included in the 1987 Constitution.<sup>3</sup> However, these are subsumed subject to conditions of the "national development policies and programs" rendering the provision inutile and government pronouncements mere rhetoric (IPRAP-TABAK 1992, p. 12).

In 1988, after the collapse of the peace talks between the government and the National Democratic Front (NDF), the military adopted the "gradual constriction" strategy (IPRAP-TABAK 1992, p. 13). This includes the process of separating the civilians from the insurgents, of food supply lines and removing of suspected supporters – known as population control. Some of its various types are hamletting,<sup>4</sup> evacuation,<sup>5</sup> food and medical blockade,<sup>6</sup> zoning,<sup>7</sup> checkpoint,<sup>8</sup> and illegal arrest.<sup>9</sup>

In the process, many IPs were displaced or forced to evacuate from their ancestral lands. In 1989, the IPs made up only 15% of Mindanao's population, comprised nearly 33%

2 PANAMIN was originally established as a private foundation in 1968 under the chairmanship of Filipino billionaire Emmanuel Elizalde. Ironically, no member from the IPs was included in its board.

3 Article II, §22; Article XII, §5; Article XIII, §6 and Article XIV, §17 of the 1987 Constitution are the provisions protecting, recognizing and respecting the rights of the indigenous peoples.

4 Hamletting means the military grouping of village residents for the purpose of denying insurgents of food, cash and emotional support.

5 Evacuation means the mass withdrawal of people from residences due to military operations.

6 Food and medical blockade means the limiting of food and medicines to villagers in order to keep from falling into insurgent hands.

7 Zoning is a military practice of securing a residential area that usually involves house-to-house searches.

8 Checkpoint is a place for searching of motor vehicles and civilians by military or police.

9 Illegal arrest means taking a person into custody without a legal arrest or without witnessing the person committing a crime.

of all internal refugees (IR)<sup>10</sup> in the island. In Luzon, the IPs constitute a mere 6% of the population, but comprised 42% of all refugees (IRAP-TABAK 1992, p. 17). The proportion of the IRs coming from the indigenous population consistently increased as the term of Aquino concluded.

IP advocacy groups joined the IPs in actively asserting their rights not only over their ancestral domains but also “to social justice and human rights, self-governance and empowerment and cultural integrity” (PANLIPI 1999, p. 59). With their combined efforts, Republic Act 8371 or the Indigenous Peoples’ Rights Act was signed into law on October 29, 1997.

In his enactment speech, President Fidel Ramos declared: “Through the RA 8371, we accelerate the emancipation of our Indigenous People from the bondage of inequity. This social injustice bred poverty, ignorance and deprivation among our indigenous cultural communities and further alienated them from people from the mainstream” (PANLIPI 1999, p. 59).

Unfortunately, the enactment of the IPRA culminated with the end of Ramos administration. The supposed implementation of the programs and projects designed to realize the provisions of the Act must endure the biases of the Estrada administration against the IPs. Such predispositions are apparent in several measures made to prevent the effective implementation of the law.

The Estrada administration appropriated low budgets to the National Commission on Indigenous People (NCIP). In 1999 and in 2000, the allocations for NCIP amounted to only 363 million and 360 million, respectively (Women and Men 2000, pp. 4-6). Moreover, program funds for the agency were withheld. On September 21, 1998, Executive Secretary Ronaldo Zamora issued Memorandum Order NO. 21 which froze all NCIP project funds except salaries of rank-and-file employees. Another is Administrative Order No. 108 issued by the Malacanang, which created the Presidential Task Force on Indigenous People (PTFIP) to assist the NCIP in rendering its functions (Malanes 2000, p. 8). Lastly, no Certificate of Ancestral Domain Title (CADT) or Certificate of Ancestral Land Title (CALT) has been issued (Hamada 2001, p. 3).

After the ouster of Joseph Estrada, Gloria Macapagal-Arroyo was cast into the presidency with the push of civil society, the business community, and military concession. Her political debt allowed civil society some form of leverage with the government in the form of a few key government positions. For issues concerning IPs, Secretary Ging Deles of the National Anti-Poverty Commission and Ambassador Howard Dee of the Office of the Presidential Adviser for Indigenous Peoples’ Affairs provided these links to the executives (Hamada 2001, p. 3).

However, Arroyo, as a Senator and Vice-President, was staunch supporter of globalization and the WTO Agreements. As an economist, she has clearly enunciated that her gover-

10 Internal refugees are those people who flee from their homes because of the population control but remain inside the country.

nance will be guided by the principles of the market. In her inaugural speech, policy directions for basic and marginalized sectors were not clearly articulated (Hamada 2001, p. 5).

Moreover, in her State of the Nation Address (SONA) delivered in Congress on July 26, 2001, the President summed up her IP land policy under the second component of her anti-poverty plan. In her words, "Bawat taon, mamamahagi ang gobyerno ng dalawang-daanglibong ektarya para sa reporma sa lupa: 100,000 of private land and 100,000 of public land, including 100 ancestral domain titles for indigenous people" (Hamada 2001, p. 5). Apparently, for Arroyo, it seems that the issuance of CADTs and CALTs is a benevolent gift from the state, falling under the category of land reform, rather than recognition of time-immemorial land ownership and natural resources utilization rights of indigenous peoples (Hamada 2001, p. 5).

### **Socio-cultural Perspective**

Once the masters of their own land, the majority of IPs today are poor and landless (Rodil 1994, p. 16). Many used to live in plains. However, due to population pressures and resettlement programs from among the majority, several have moved to forest areas. Unfortunately, at present, even their forests are devastated and their cultures are threatened.

The Indigenous Cultural Communities (ICCs) are peoples who have their own particular socio-cultural and economic institutions that distinguish them from the rest of the society. This distinct way of life or culture developed within the context of their original associations with or use and occupation of a specific, defined territory. They have a unique relationship to the land for it shapes their culture thus; its loss gravely threatens the very essence of their existence. For them, land is sacred. No single person owns the lands but everybody owns the land (Rodil 1994, p. 16).

However, their struggles for recognition of ancestral domains remain to be the centerpiece of their agenda. It includes the recognition of their rights to the ancestral domains and their traditional socio-political structures and practices. It also includes development activities that truly cater to their needs and aspirations and give due respect to their way of life.

Nevertheless, the State strongly asserts its right over all lands by virtue of the Regalian Doctrine, which is alien to the IPs. To quote Macli-ing Dulag, an elder from Kalinga, in his protest to the construction of the Chico River Dam Project in 1970s:

You ask if we own the land. And mock us. "Where is your title?" When we query the meaning of your words, you answer with taunting arrogance. "Where are the documents to prove that you own the land?" Title. Documents. Proof of ownership. Such arrogance to speak of owning the land. When you shall be owned by it. How can you own that which will outlive you. Only the race owns the land because only the race lives forever (PANLPI 1999, p. 55).

Such strong resistance was due to their universal concept of land as a gift from God the Creator. To the IPs, the land is life because it is the source of food and shelter. It is also the basis of their culture, the core of their existence as distinct peoples (Penafiel 1996, p. 10). Land to them means domains, which belong to the tribe, a heritage to be passed on from their ancestors to generations unto perpetuity. Indigenous Filipinos believe that they are stewards of the land given to them by their God and entrusted to them by their ancestors. They convinced that their role is to ensure that the generations to come will have the same or better quality of life that they now enjoy (Penafiel 1996, pp. 10-11).

Having presented the long-standing struggle of the IPs over their ancestral domains and encompassing rights as individuals, one could ask whether the promotion of the right to self-determination of indigenous people is a threat or a blessing to a nation-state (Penafiel 1996, pp. 10-11). The interest of the state for economic development contradicts the very essence of existence of the IPs – the preservation and recognition of their rights over the ancestral domains.

In this process, it is vital that IPs should stand up, organize themselves, form collective strategies, and fight for what is rightfully theirs without discriminating against, manipulating or marginalizing other communities (Penafiel 1996, p. 13). Development can only be achieved if it addressed the fundamental reason behind prevailing poverty in most indigenous communities – the absence of legal recognition of their right to ownership and control of their ancestral domain. The recognition of the rights of the IPs to their ancestral domains is not only a demand of social justice, but also an imperative for the survival or the life support system that underlie national prosperity and development (National Secretariat 1998, p. 6).

The very survival of ICCs depends on obtaining respect and legal recognition of their rights. They have only one basic agenda: to be able to own, manage, develop and reap the fruits of their ancestral domain (National Secretariat 1998, p. 6).

### **Laws Protecting the Rights of Indigenous Peoples**

Philippine history attests to the struggle of the IPs in defending their rights to their lands. Legislation provides a glimpse of this struggle through varying laws and policies adopted by the government regarding the IP rights. The issue on ancestral land and ancestral domain ownership form the bones of contention whenever IP rights are discussed.

From the American occupation, the Commonwealth Period, and up to 1957, the official policy with respect to IPs in the Philippines was one of patronage (First Peoples 2001). It was founded on the view that the mission of the State was to “civilize” peoples with a “low level of civilization” (First Peoples 2001). Thereafter, the policy of “integration” was adopted from 1957 to 1986 (First Peoples 2001). Within 1986 to 1997, several laws included provisions on identifying ancestral land and domains without providing processes for its eventual recognition and the rights and obligations that should ensue (First Peoples 2001).

In the 1935, 1973 and 1987 Constitutions, the State asserted ownership over the lands of the public domain and all the minerals and other natural resources found therein.<sup>11</sup> However, with the effectivity of the 1987 Constitution, the supremacy of the Regalian Doctrine over certain portions of the public domain has been seriously challenged by "constitutional innovations geared for the recognition of the rights of indigenous cultural communities to their ancestral domain" (Abelardo 1996, p. 29).

In the 1935 Constitution, there was no state policy on tribal Filipinos. It has been noted that the raging issue then was the conservation of the national patrimony for Filipinos, which impelled the framers of the organic law to entrench the Regalian Doctrine in the 1935 Constitution (Cristobal 1990, p. 48).

In the 1973 Constitution the tribal Filipinos who were previously called as dociles, feroces or infiles by the Spaniards (Ugnayan 1983, p. 56) and as non-Christian tribes by the North Americans (Ugnayan 1983, p. 22), were officially addressed as "communities" by the highest law of the land. However, the implementation of this provision under the Martial Rule is another matter.

Thereafter, Marcos promulgated Presidential Decree No. 410 or the Ancestral Lands Decree in 1974, in order to address the ancestral domain issue. The decree provided for the issuance of land occupancy certificates to the members of national cultural communities who were given until 1984 to register their claims. Nonetheless, no land occupancy certificate was ever issued.

After the historic February Revolution, the need to address the inequities in Philippine society was emphasized. The 1987 Constitution provides at least six provisions that ensure the right of tribal Filipinos to preserve their way of life.<sup>12</sup>

Section 5 of Article XII<sup>13</sup> of the Constitution alone fairly addresses the issues of development aggression, conflict between the national law and customary law, and land classification connected with the ancestral domain issue (Abelardo 1996, p. 32).

As regards conflict between national law and customary law on land ownership and use, 1986 Constitutional Commissioner Bennagen stated that on matters concerning ancestral lands and codification of laws, "...when there is a conflict between this (ancestral lands) and national law, the general principle is that the national law shall prevail, but there should always be the effort to balance the interest as provided for in the national law and the interest as provided for in the customary law" (Record 1986, p. 34).

Thus, the Regalian Doctrine will still be in place, but this time, in its proper place (Abelardo 1996, p. 34). The harsh and confiscatory effects of this constitutionally adopted feudal theory are now counteracted by Art. XII, Section 5 of the 1987 Constitution in con-

11 PHILIPPINE CONSTITUTION, art. XIV, § 1 (1935); art. XIV, § 8 (1973); art. XII, § 2 (1987).

12 1987 PHILIPPINE CONSTITUTION, art. II §22; art. VI, §5, cl.2; art. XII, §5; art. XIII, §6; art. XIV, §17; art. XVII, §12.

13 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.



junction with the other constitutional doctrines like balancing of interest, due process, compensation, and social justice (Abelardo 1996, p. 34). The Regalian Doctrine must be viewed alongside the rights of the indigenous peoples. Consistent with the spirit of Section 5, the first view calling for automatic exclusion of ancestral lands and ancestral domains from the operation of the Regalian Doctrine must be upheld (Abelardo 1996, p. 36).

Republic Act No. 8371 or the Indigenous Peoples Rights Act of 1997 (IPRA) is the present law protecting the rights of the indigenous peoples. This law primarily guarantees the IPs rights to ancestral lands and domains, political and human rights, and rights to cultural integrity (Manzano 1998, p. 7). It grants the ownership and possession of ancestral domains and ancestral lands, and defines the extent of these lands and domains (Cruz 2000, pp. 128, 174).

**The important features of the IPRA are the following (Manzano 1998, pp. 8-9):**

- 1) Grants the total recognition of the right of the indigenous peoples to own ancestral domains and ancestral lands, including the right to control, manage and utilize natural resources found in the lands/domains. This includes the right to formulate and implement ancestral domains management plans.
- 2) Repeals all laws prejudicial to the recognition of the right to ownership of ancestral domains.
- 3) Respects and recognizes indigenous political structures and systems, culture, resource management practices and conflict resolution mechanisms.
- 4) Provides for the issuance of tenure instruments, which are equivalent to Torrens title. This is the Certificate of Ancestral Domain Title (CADT) and the Certificate of Ancestral Land Title (CALT), which will be issued by the National Indigenous Peoples Commission (NCIP).
- 5) Recognizes socio-cultural differences among the various indigenous groups.
- 6) Provides for the establishment of an office/structure with clearly defined functions, with adequate funding and where indigenous peoples are adequately represented. It provides for the creation, composition, qualifications, appointment and removal processes of the NCIP to carry out the policies of the IPRA.
- 7) Mandates the delivery of basic services to indigenous communities and provides for their holistic and integral development.
- 8) Simplifies the requirements for the recognition of ancestral domain ownership and provides for the conversion of ancestral domain claims under DAO2 to complete ownership.

9) Recognizes the right of indigenous peoples to self-determination and autonomy.

10) Provides for the indigenous peoples' self-delineation of ancestral domains and ancestral lands.

Some sectors consider the IPRA as a landmark legislation spawned by deliberate, sustained and collective action of IPs, IP support groups, and some individuals (Manzano 1998, pp. 7-8). Others regard the IPRA to be far from revolutionary. Like all laws, the IPRA represents, even before enactment, a simple compromise in form and in substance (Leonen 1998, p. 7). Apparently, the passage of the law elicited varying views from different sectors of society.

An examination of IP history would reveal that it was not so much the case of a law waiting for the IPs to be prepared to comply with it. On the contrary, it was the IPs who were struggling and waiting for the law to help the government understand their needs and demands (Leonen 2001, p. 2). It embodies the much-awaited recognition that the IPs had long-struggled for.

In *Cruz v. Secretary of Environment and Natural Resources* (Cruz 2000, p. 128), this law was challenged by former Justice Isagani Cruz and Davao-based attorney Cesar Europa. They allege that certain IPRA provisions contravene the constitution. The Supreme Court decided:

As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same. Accordingly, pursuant to Rule 56, Section 7 of the Rules of Civil Procedure, the petition is DISMISSED (Cruz 2000, p. 162).

Hence, by virtue of the votes provided by members of the Supreme Court, the petition to declare the IPRA as unconstitutional was not granted. The dismissal of the petition only means "the challenge to the constitutionality of the IPRA is defeated, not because the Supreme Court decided that the questioned provisions of the IPRA do not contravene the Constitution but because those who believe that the questioned provisions of the IPRA are unconstitutional do not form a majority" (Leonen 2001, p. 9).

### **Implications of Law and Jurisprudence**

The passage of Republic Act No. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997 (IPRA), on October 29, 1997, and the decision of the Supreme Court upholding its validity on December 6, 2000 necessarily spawn the following ramifications:

(1) The *Jura Regalia* doctrine enshrined in Art. XII, Sec. 2 & 3 of the 1987 Constitution, as well as in the previous 1935 and 1973 Constitutions, no longer holds an absolute rule. The Court unanimously view an exception, actually recognized way back in *Cariño v.*

Insular Government (Cariño 1909) and *Oh Cho v. Director of Lands* (Oh Cho 1946). The Cariño ruling, on the one hand, held that lands held under the concept of owner since time immemorial are presumed never to have been public land (Cariño 1909, p. 941). The Oh Cho ruling, on the other hand, defined lands of the public domain as

...all lands that were not acquired from the Government, either by purchase or by grant...An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessor-in-interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest (Oh Cho 1946).

While all lands of public domain and natural resources belong to the State, lands held under the concept of ownership since time immemorial have never been part of the public domain and can therefore be appropriated to the indigenous peoples without contravening Article XII, Sections 2 and 3 and Article XII, Section 5 of the 1987 Constitution which provides for such possession by virtue of time immemorial possession.

The presumption now lies against the State. The declaration of ownership by the State of all lands of the public domain and all natural resources, from the 1935 to the 1987 Constitution, does not mean absolute ownership by operation of law. The Constitution sets parameters to guarantee due process, thus limiting the State's confiscatory power (Leonen 2001, p. 2).

Therefore, IPRA should be understood as conferring OWNERSHIP from a different concept, as stated in Sec. 5 thereof, as "private but community property, which belongs to all generations, and therefore cannot be sold, disposed or destroyed."

(2) The IPRA is valid until held otherwise by the Supreme Court. The *Cruz v. NCIP* decision (Cruz 2000) is indecisive, petition therein having been granted with a 7-7 decision. The petition was dismissed in accordance with the Rules of Court<sup>14</sup>, the Constitution<sup>15</sup>, and jurisprudence (Salas 1972). The Motion for Reconsideration, filed on December 22, 2000, remains pending in the Court chambers.

Only 14 Justices deliberated on the issues of the case and voted thereon due to Justice Fidel Purisima's retirement prior to the votation. However, Justice Angelina Sandoval-Gutierrez has been appointed to fill the vacant post. The new and complete 15-member chamber can now decide the matter with more conclusiveness (Leonen 2001, pp. 28-30; Cruz 2001, p. 6). However, following a line of cases previously decided and subsequently overruled by a same set of Supreme Court justices<sup>16</sup>, the present ruling on the IPRA stands floating on thin air until the next Court decision. Should the Court declare IPRA or some of its provisions unconstitutional, the NCIP will be abolished, if not deprived of much power and capacity.

<sup>14</sup> Rule 56, Sec. 7, Rules on Civil Procedure.

<sup>15</sup> PHILIPPINE CONSTITUTION, art. VIII, §4 (3).

<sup>16</sup> *Protection Developer's Inc. v. Court of Appeals*, 193 SCRA 142 & 201 SCRA; *Secretary of Justice v. Lantion*, G.R. 139465, Jan. 18, 2000 and Oct. 17, 2000; *Kilosbayan v. Guingona*, 232 SCRA 110 & 246 SCRA 540.

(3) Until declared unconstitutional, IPRA is a valid law capable of vesting property rights to IPs over ancestral lands and domains. However, the threat posed by IPs' claim over Philippine territory cannot be overemphasized. As early as June of 1998, IPs have claimed over 2.5 million hectares as ancestral domains. Based on ethnographic surveys, ancestral domains cover 80 percent of our mineral resources, and 8-10 million of the 30 million hectares of land in the country. Therefore, four-fifths of the country's natural resources and one third of land in the country will be concentrated among 12 million Filipinos constituting the IPs, while over 60 million non-IPs share what remains. Obviously, this would run contrary to the constitutional principle of a "more equitable distribution of opportunities, income, and wealth" among Filipinos (Cruz 2000, p. 27).

(4) The provisions of IPRA necessarily encourage litigation by inciting more legal questions requiring judicial determination. Will national law or customary law apply to a given situation (Sec. 65)? Is the punishment cruel, degrading and inhuman (Sec. 72)? Is there a need for NCIP to issue a certification as a precondition for a financial or technical assistance agreement (Sec. 59)? Is prior free & informed consent of the IPs necessary before eminent domain is exercised (Sec. 7, RA 7942)? Is prior free & informed consent of the IPs necessary for the proclamation of watersheds and protected areas? Does the full participation of IPs include free and informed consent (Sec. 58)? Why should Baguio City be excluded from the operation of IPRA (Sec. 78)? (Leonen 1998, pp. 40-41)

(5) Absent any protective measure by the State, the exercise by the IPs of their rights under the IPRA will be threatened by external factors. The apparent economic equality will tend to influence the IPs in giving their "free and informed consent" to other parties, especially mining companies, to the end that the latter will be allowed to exploit the ancestral domains for their own commercial interests.

(6) Implementation of the IPRA does not necessarily reflect the interests of the IPs. The appointment of officials and employees of the National Commission on Indigenous Peoples (NCIP), the agency tasked to implement the IPRA, may be marred by political interests, which may pollute the direction towards addressing genuine IP concerns (Manzano 1998, pp. 65-68).

(7) Being a government agency created by law, the NCIP has to depend on the yearly budget appropriation of Congress, which is relatively low to speed up their administrative and judicial machineries (Varanal 2002). The yearly NCIP budget for the management and development of ancestral lands in support of the Social Reform Agenda (SRA) is a mere trickle compared to the Department of Environment & Natural Resource (DENR) budget for the establishment, maintenance, and protection of tree plantations. Also, the NCIP budget pales in comparison to the Mining & Geosciences Bureau (MGB) for the exploitation of mineral resources. Should this trend of discrepancy continue, mineral and forestlands continue to be subject to environmental risks (Malanes 2000, p. 8).

(8) Debated upon by various sectors, the IPRA will possibly be subject of possible modifications and amendments by Congress. The members of the Congress, humans themselves, may well entertain commercial interests in the guise of IP protection. In fact,

in 1999, House Rep. Harry Angping submitted House Resolution No. 310 during the 1st Regular Session of the 11th Congress. This Bill seeks to “harmonize” the provisions of the IPRA and the National Integrated Protected Areas System Law (NIPAS) to the Mining Act of 1995 (Republic Act No. 7492) (Pasimio 1999, p. 1). Like any other statute, the rigors of the law can be tilted by Congress to favor certain class of private interests, by sort of a compromise agreement.

### **Critical Analysis**

The Philippine society has long been confronted with the struggles of the indigenous Filipino peoples. These are continuously heightened by the widening gap of differences between the lowlanders and the IPs. Several legislations have been passed to reconcile it but most proved to be unrewarding. Some even contradict the very nature of IP existence.

### **IPRA vs. Philippine Politics**

The unsettled constitutional issue of the IPRA caused the spawning of other related issues. Politics, to be exact, corrupted the ideal letter of the said law in which, for most part of its implementation, the programs were stalled and the imperfections, magnified. To start with, the law is not self-executory. The implementation of the law is the most important component in order to mobilize the system. One must also understand that it is in the implementation aspect that external factors, both seen and unforeseen, not to mention those deliberately created, could affect the efficiency of the law. One clear instance of this, and perhaps manifesting how politics blemishes the image of the law, is during the appointment of the chairperson of the NCIP.

President Ramos appointed Atty. David Daoas, a Kankanaey from the Cordilleras as chair of the NCIP in early 1998 (Ballesteros 2001, p. 39). A few months old in the position and with the near take off of operations of the agency, then President-elect Joseph Estrada appointed Cesar Sulong, a Subanen in Zamboanga (Castro 2000, p. 38). Other members were also appointed.

An organizational crisis immediately ensued prompting several protests from the Daoas group, saying that their tenures were not respected and the balance of representation of the said different IP groups inside the agency was seriously disrupted by the appointments. As a result of this, and to pacify or silence protesting groups, the then Executive Secretary Ronaldo Zamora released a memorandum<sup>17</sup> creating the Presidential Task Force on Ancestral Domains (PTFAD) to be chaired by PA Gasgonia. The Department of Justice was also ordered to investigate certain complaints against NCIP officials. The President, on the other hand, had ordered the Department of Budget and Management to withhold the release of funds to the NCIP except for payments of salaries of the rank and file employees of two agencies formerly tasked with managing govern-

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<sup>17</sup> Memorandum No. 31.

ment's programs to "cultural communities" (Ballesteros 2001, p. 37), pending the study being conducted by the Task Force. "The resulting confusion due to overlapping jurisdictions, plus the fact that the legally constituted agency had no money and were facing graft charges, led to a virtual administrative standstill" (Ballesteros 2001, p. 37).

Consequently, with no operational funds to speak of and with a narrow, if not the absence of, vision and program for the Indigenous Communities, the whole implementation system of the IPRA bogged down. Not a single CADT was released. Further, IPs were now isolated because local government units and the DENR ceased to extend aid after the IPRA. These are other government agencies, which are used to giving assistance to IP groups before the passing of IPRA. Truly, it has amounted to an administrative mess.

Another interesting aspect is the kind of framework the government adopts in formulating its programs and implementing its policies. The current development tenets that the government so hold are profit-driven and not people-centered. "The national government's development framework remains hinged on the pursuit of national development, national security, increased gross national product or national wealth and becoming an economic tiger cub" (Manzano 1998, p. 10). As long as the government continues to treat ancestral domain as a resource basin of wealth, IP rights, culture and history shall forever be threatened. This framework of mind cannot be denied. As the IPRA is worded, the concessions represent the leeway of the government to give opportunities for exploiting the natural resources therein.

Until now, real efforts to implementing the rules have yet to be seen. The present government under President Gloria Macapagal-Arroyo promises a new hope. Amid the constitutional and legal issues that come with the IPRA, the purpose of the law must not be undermined and a sound governmental policy and program would be a good ground to start with. One problem with the Estrada Administration is that clearly, at the beginning of his term, he already had no clear program for the IPs, that is to include the "actor style" of speeches he used to deliver during conferences. This administration is prayed for doing more than uttering hollow words.

### **IPRA vs. Indigenous Peoples' Culture**

The land of the IPs shapes their unique identity and culture that are inextricably linked to the environment. The environment, more often than not, assumes a spirituality of its own. Thus, the rituals of appeasing spirits when a tree is cut down and of thanksgiving for a bountiful harvest (Macli-ing 1999, p. 49), to cite an example, characterize their culture. In other words, the land is the Indigenous People. Without the land, there are no distinction between highlanders and lowlanders – no indigenous peoples. "When one takes away the land, to the dispossession of the IPs, he therefore kills them" (Manuel 2002). The indigenous peoples, being one with the environment, understand the ecology of the natural resources. This allows them to manage and utilize the environment responsibly, not merely to their exclusion and benefit, but also to avoid the disruption of ecological balance in

the environment (Macli-ing 1998, p. 49). According to most scholars, this outlook has usually ignored and misunderstood. Thus, this makes them more vulnerable to dispossession of their lands.

Examining the outlook on land, Datu Betil spoke of the issue yet to be addressed, "Our current issue is with regard to not only the recognition of the indigenous peoples but concerns (of) our tribe, the Bagobo-Clata Tribe. We want our tribe to be strengthened because now it looks like it is vanishing... with the entry of western culture and religion... as well as the establishment of the government of the lowlanders... They entered using legal matters, owning properties by virtue of having a title. The title is nothing to us because we believe that since time immemorial the land has been ours. That is government's way to establish rights... papers. We do not have rights and are not really very interested, so we did not attend to them... And because of this we were displaced from our lands" (Macli-ing 1998, p. 51). It is interesting to note that to some extent, the IPRA gave them hope that a historical justification of the years of non-recognition of ancestral domain as a historical fact would be achieved. "... Government recognition of the rights of the indigenous peoples to their ancestral domain, laws and IPRA... gave us renewed hope that we could revive our tribal heritage... As I've said to my companions, we should begin from that point" (Macli-ing 1998, p. 52). Datu Betil puts it.

However, not all IP groups have the same belief, at least at the time when the task to implement came in. The concessions promoted disunity and the culture of corruption among them. Among these concessions are the Mining Concessions where the mining firms were allowed to enter into the lands of the indigenous peoples to exploit the minerals underneath the land. NCIP Administrative Order No. 3 specifically grants right of entry to mining groups subject to the Free and Prior Informed Consent of the Indigenous Peoples (FPIC) provisions of the IPRA (Manuel 2002). The order clarified that the firms with approved contracts, licenses, agreements and other concessions prior to the effectivity of the IPRA are exempted from the FPIC requirement (Castro 2000, p. 42). Nonetheless, mining firms manipulated this by organizing IP groups to give their FPIC, but then in reality, these IPs were employees of the mining firm. The process of getting the FPIC already undermines its very concept as enshrined in the IPRA. The "palakasan" system never left the scenario, as NCIP members made corrupt deals to allow the issuance of the FPIC. Several instances in the process of securing FPICs have encouraged a culture of bribery among these communities. In extreme cases, partisan differences relative to IPRA have created tensions and conflict in multi-ethnic communities. The initial euphoria by indigenous communities led to disillusionment because of the failed promises of the law (Castro 2000, p. 50).

The concessions made by law prompted the alteration of the IP culture. One of them is the employment of IPs in mining firms. The entrance of economic development slowly changes the face of Indigenous culture. Sad to say, the IPRA legitimizes these changes.

Conclusively, the law's impact on local communities is two-fold. On the one hand, IPRA has brought about heightened public awareness on IP rights and welfare and

encouraged the organization of several IP organizations. On the other hand, differing attitudes toward the law brought about disunity among IP groups and within communities (Castro 2000, p. 50). However, to totally disregard the IPRA would definitely be a step backwards. What are needed are an improvement of the existing law through amendments and the passage of new implementing rules and regulations. More concretely, culture-specific ordinances should be adopted. There should be different guidelines for more acculturated groups distinct from those who have relatively maintained their traditional practices. A different approach should be applied for nomadic groups compared to those of “sedentary agriculturists” (Castro 2000, p. 51). Moreover, there must be a reinforced provision, with stricter policy as regards the Free and Prior Informed Consent (FPIC) provisions to avoid corruption and disunity among the IP groups.



### Recommendation

Having presented the IP situation, this paper recommends different courses of action for the government, the indigenous peoples, and mainstream Philippine society to appropriately address the problems regarding the issue.

The government is bound to protect its people, as *parens patriae*. The IPs need this governmental protection for their ancestral domain and thus, must be afforded with it. Their demands are legitimate, realistic and within constitutional bounds, and can therefore be easily addressed by the government.

Since the IPRA is already effective, the government must activate its implementation by providing sufficient funds for IP programs and projects. Government policies for the IPs must be made clear and distinct from its general anti-poverty and environment agenda.

The government should acknowledge the IPs' intricate relationship with nature. The IPs preserve and sustain their habitat in their unique way. Environmental laws desecrating their cultural integrity must not be imposed. The IP connection with nature must always be respected. The government should provide the IPs with opportunities to modernize at their own pace and rhythm. Assimilation is not always the solution. Basic human rights, including the use of resources, should be respected.

The IPs should vigilantly and assertively exercise their rights. They should not allow themselves to be corrupted by the system that is alien to them. They should fight corruption of any kind from any sector.

The mainstream Philippine society must be re-educated on the nature of IP existence. Beyond IP history and culture, a deeper understanding of the distinctions and conditions behind the IPs' alienation from modern civilization must be made. The Filipino people should vigorously and conscientiously eliminate all forms of discrimination. A profound understanding of IP and non-IP differences should lead to cultural reconciliation, social reintegration, and national unity.

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