

# III. THE IPRA IS A NOVEL PIECE OF LEGISLATION.

## A. The Legislative History of the IPRA

It was to address the centuries-old neglect of the Philippine indigenous peoples that the Tenth Congress of the Philippines, by their joint efforts, passed and approved **R.A. No. 8371, the Indigenous Peoples Rights Act (IPRA) of 1997**. The law was a consolidation of two Bills-- Senate Bill No. 1728 and House Bill No. 9125.

Principally sponsored by **Senator Juan M. Flavio**,<sup>[107]</sup> **Senate Bill No. 1728** was a consolidation of four proposed measures referred to the Committees on Cultural Communities, Environment and Natural Resources, Ways and Means, as well as Finance. It adopted almost en toto the comprehensive version of Senate Bill Nos. 1476 and 1486 which was a result of **six regional consultations and one national consultation with indigenous peoples nationwide**.<sup>[108]</sup> At the Second Regular Session of the Tenth Congress, Senator Flavio, in his sponsorship speech, gave a background on the situation of indigenous peoples in the Philippines, to wit:

“The Indigenous Cultural Communities, including the Bangsa Moro, have long suffered from the dominance and neglect of government controlled by the majority. Massive migration of their Christian brothers to their homeland shrunk their territory and many of the tribal Filipinos were pushed to the hinterlands. Resisting the intrusion, dispossessed of their ancestral land and with the massive exploitation of their natural resources by the elite among the migrant population, they became marginalized. And the government has been an indispensable party to this insidious conspiracy against the Indigenous Cultural Communities (ICCs). It organized and supported the resettlement of people to their ancestral land, which was massive during the Commonwealth and early years of the Philippine Republic. Pursuant to the Regalian Doctrine first introduced to our system by Spain through the Royal Decree of 13 February 1894 or the Maura Law, the government passed laws to legitimize the wholesale landgrabbing and provide for easy titling or grant of lands to migrant homesteaders within the traditional areas of the ICCs.”<sup>[109]</sup>

Senator Flavio further declared:

“The IPs are the offsprings and heirs of the peoples who have first inhabited and cared for the land long before any central government was established. Their ancestors had territories over which they ruled themselves and related with other tribes. These territories- the land- include people, their dwelling, the mountains, the water, the air, plants, forest and the animals. This is their environment in its totality. Their existence as indigenous peoples is manifested in their own lives through political, economic, socio-cultural and spiritual practices. The IPs culture is the living and irrefutable proof to this.

Their survival depends on securing or acquiring land rights; asserting their rights to it; and depending on it. Otherwise, IPs shall cease to exist as distinct peoples.”<sup>[110]</sup>

To recognize the rights of the indigenous peoples effectively, Senator Flavio proposed a bill based on **two postulates**: (1) the concept of native title; and (2) the principle of *parens patriae*.

According to Senator Flavio, “[w]hile our legal tradition subscribes to the Regalian Doctrine reinstated in Section 2, Article XII of the 1987 Constitution,” our “decisional laws” and jurisprudence passed by the State have “made exception to the doctrine.” This exception was **first laid down** in the case of *Cariño v. Insular Government* where:

“x x x the court has recognized long occupancy of land by an indigenous member of the cultural communities as one of private ownership, which, in legal concept, is termed “native title.” This ruling has not been overturned. In fact, it was affirmed in subsequent cases.”<sup>[111]</sup>

Following *Cariño*, the State passed Act No. 926, Act No. 2874, C.A. No. 141, P.D. 705, P.D. 410, P.D. 1529, R.A. 6734 (the Organic Act for the Autonomous Region of Muslim Mindanao). These laws, explicitly or implicitly, and liberally or restrictively, recognized “native title” or “private right” and the existence of ancestral lands and domains. Despite the passage of these laws, however, Senator Flavio continued:

“x x x the executive department of government since the American occupation has not implemented the policy. In fact, it was more honored in its breach than in its observance, its wanton disregard shown during the period unto the Commonwealth and the early years of the Philippine Republic when government organized and supported massive resettlement of the people to the land of the ICCs.”

Senate Bill No. 1728 seeks to genuinely recognize the IPs right to own and possess their ancestral land. The bill was prepared also under the principle of *parens patriae* inherent in the supreme power of the State and deeply embedded in Philippine legal tradition. This principle mandates that persons suffering from serious disadvantage or handicap, which places them in a position of actual inequality in their relation or transaction with others, are entitled to the protection of the State.

**Senate Bill No. 1728 was passed on Third Reading by twenty-one (21) Senators voting in favor and none against, with no abstention.**<sup>[112]</sup>

**House Bill No. 9125** was sponsored by **Rep. Zapata**, Chairman of the Committee on Cultural Communities. It was originally authored and subsequently presented and defended on the floor by **Rep. Gregorio Andolana** of North Cotabato.<sup>[113]</sup>

Rep. Andolana's sponsorship speech reads as follows:

“This Representation, as early as in the 8th Congress, filed a bill of similar implications that would promote, recognize the rights of indigenous cultural communities within the framework of national unity and development.

Apart from this, Mr. Speaker, is our obligation, the government's obligation to assure and ascertain that these rights shall be well-preserved and the cultural traditions as well as the indigenous laws that remained long before this Republic was established shall be preserved and promoted. There is a need, Mr. Speaker, to look into these matters seriously and early approval of the substitute bill shall bring into reality the aspirations, the hope and the dreams of more than 12 million Filipinos that they be considered in the mainstream of the Philippine society as we fashion for the year 2000.”<sup>[114]</sup>

Rep. Andolana stressed that H.B. No. 9125 is based on the policy of preservation as mandated in the Constitution. He also emphasized that the rights of IPs to their land was enunciated in ***Cariño v. Insular Government*** which recognized the fact that they had vested rights prior to the establishment of the Spanish and American regimes.<sup>[115]</sup>

**After exhaustive interpellation, House Bill No. 9125, and its corresponding amendments, was approved on Second Reading with no objections.**

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