

# PER CURIAM

Petitioners Isagani Cruz and Cesar Europa brought this suit for prohibition and mandamus as citizens and taxpayers, assailing the constitutionality of certain provisions of Republic Act No. 8371 (R.A. 8371), otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA), and its Implementing Rules and Regulations (Implementing Rules).

In its resolution of September 29, 1998, the Court required respondents to comment.<sup>[1]</sup> In compliance, respondents Chairperson and Commissioners of the National Commission on Indigenous Peoples (NCIP), the government agency created under the IPRA to implement its provisions, filed on October 13, 1998 their Comment to the Petition, in which they defend the constitutionality of the IPRA and pray that the petition be dismissed for lack of merit.

On October 19, 1998, respondents Secretary of the Department of Environment and Natural Resources (DENR) and Secretary of the Department of Budget and Management (DBM) filed through the Solicitor General a consolidated Comment. The Solicitor General is of the view that the IPRA is partly unconstitutional on the ground that it grants ownership over natural resources to indigenous peoples and prays that the petition be granted in part.

On November 10, 1998, a group of intervenors, composed of Sen. Juan Flavio Velasco, one of the authors of the IPRA, Mr. Ponciano Benaen, a member of the 1986 Constitutional Commission, and the leaders and members of 112 groups of indigenous peoples (Velasco, et. al), filed their Motion for Leave to Intervene. They join the NCIP in defending the constitutionality of IPRA and praying for the dismissal of the petition.

On March 22, 1999, the Commission on Human Rights (CHR) likewise filed a Motion to Intervene and/or to Appear as Amicus Curiae. The CHR asserts that IPRA is an expression of the principle of *parens patriae* and that the State has the responsibility to protect and guarantee the rights of those who are at a serious disadvantage like indigenous peoples. For this reason it prays that the petition be dismissed.

On March 23, 1999, another group, composed of the Ikalahan Indigenous People and the Haribon Foundation for the Conservation of Natural Resources, Inc. (Haribon, et al.), filed a motion to Intervene with attached Comment-in-Intervention. They agree with the NCIP and Velasco, et al. that IPRA is consistent with the Constitution and pray that the petition for prohibition and mandamus be dismissed.

The motions for intervention of the aforesaid groups and organizations were granted.

Oral arguments were heard on April 13, 1999. Thereafter, the parties and intervenors filed their respective memoranda in which they reiterate the arguments adduced in their earlier pleadings and during the hearing.

Petitioners assail the constitutionality of the following provisions of the IPRA and its Implementing Rules on the ground that they amount to an unlawful deprivation of the State's ownership over lands of the public domain as well as minerals and other natural resources therein, in violation of the regalian doctrine embodied in Section 2, Article XII of the Constitution:

“(1)

Section 3(a) which defines the extent and coverage of ancestral domains, and Section 3(b) which, in turn, defines ancestral lands;

“(2)

Section 5, in relation to section 3(a), which provides that ancestral domains including inalienable public lands, bodies of water, mineral and other resources found within ancestral domains are private but community property of the indigenous peoples;

“(3)

Section 6 in relation to section 3(a) and 3(b) which defines the composition of ancestral domains and ancestral lands;

“(4)

Section 7 which recognizes and enumerates the rights of the indigenous peoples over the ancestral domains;

“(5)

Section 8 which recognizes and enumerates the rights of the indigenous peoples over the ancestral lands;

"(6)

Section 57 which provides for priority rights of the indigenous peoples in the harvesting, extraction, development or exploration of minerals and other natural resources within the areas claimed to be their ancestral domains, and the right to enter into agreements with nonindigenous peoples for the development and utilization of natural resources therein for a period not exceeding 25 years, renewable for not more than 25 years; and

"(7)

Section 58 which gives the indigenous peoples the responsibility to maintain, develop, protect and conserve the ancestral domains and portions thereof which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover or reforestation."<sup>[2]</sup>

Petitioners also content that, by providing for an all-encompassing definition of "ancestral domains" and "ancestral lands" which might even include private lands found within said areas, Sections 3(a) and 3(b) violate the rights of private landowners.<sup>[3]</sup>

In addition, petitioners question the provisions of the IPRA defining the powers and jurisdiction of the NCIP and making customary law applicable to the settlement of disputes involving ancestral domains and ancestral lands on the ground that these provisions violate the due process clause of the Constitution.<sup>[4]</sup> These provisions are:

“(1)

Sections 51 to 53 and 59 which detail the process of delineation and recognition of ancestral domains and which vest on the NCIP the sole authority to delineate ancestral domains and ancestral lands;

"(2)

Section 52[i] which provides that upon certification by the NCIP that a particular area is an ancestral domain and upon notification to the following officials, namely, the Secretary of Environment and Natural Resources, Secretary of Interior and Local Governments, Secretary of Justice and Commissioner of the National Development Corporation, the jurisdiction of said officials over said area terminates;

"(3)

Section 63 which provides the customary law, traditions and practices of indigenous peoples shall be applied first with respect to property rights, claims of ownership, hereditary succession and settlement of land disputes, and that any doubt or ambiguity in the interpretation thereof shall be resolved in favor of the indigenous peoples;

"(4)

Section 65 which states that customary laws and practices shall be used to resolve disputes involving indigenous peoples; and

"(5)

Section 66 which vests on the NCIP the jurisdiction over all claims and disputes involving rights of the indigenous peoples."<sup>[5]</sup>

Finally, petitioners assail the validity of Rule VII, Part II, Section 1 of the NCIP Administrative Order No. 1, series of 1998, which provides that "the administrative relationship of the NCIP to the Office of the President is characterized as a lateral but autonomous relationship for purposes of policy and program coordination." They contend that said Rule infringes upon the President's power of control over executive departments under Section 17, Article VII of the Constitution.<sup>[6]</sup>

Petitioners pray for the following:

““(1)

A declaration that Sections 3, 5, 6, 7, 8, 52[I], 57, 58, 59, 63, 65 and 66 and other related provisions of R.A. 8371 are unconstitutional and invalid;

"(2)	The issuance of a writ of prohibition directing the Chairperson and Commissioners of the NCIP to cease and desist from implementing the assailed provisions of R.A. 8371 and its Implementing Rules;
"(3)	The issuance of a writ of prohibition directing the Secretary of the Department of Environment and Natural Resources to cease and desist from implementing Department of Environment and Natural Resources Circular No. 2, series of 1998;
"(4)	The issuance of a writ of prohibition directing the Secretary of Budget and Management to cease and desist from disbursing public funds for the implementation of the assailed provisions of R.A. 8371; and
"(5)	The issuance of a writ of mandamus commanding the Secretary of Environment and Natural Resources to comply with his duty of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization and conservation of Philippine natural resources." <sup>[7]</sup>

After due deliberation on the petition, the members of the Court voted as follows:

Seven (7) voted to dismiss the petition. Justice Kapunan filed an opinion, which the Chief Justice and Justices Bellosillo, Quisumbing, and Santiago join, sustaining the validity of the challenged provisions of R.A. 8371. Justice Puno also filed a separate opinion sustaining all challenged provisions of the law with the exception of Section 1, Part II, Rule III of NCIP Administrative Order No. 1, series of 1998, the Rules and Regulations Implementing the IPRA, and Section 57 of the IPRA which he contends should be interpreted as dealing with the large-scale exploitation of natural resources and should be read in conjunction with Section 2, Article XII of the 1987 Constitution. On the other hand, Justice Mendoza voted to dismiss the petition solely on the ground that it does not raise a justiciable controversy and petitioners do not have standing to question the constitutionality of R.A. 8371.

Seven (7) other members of the Court voted to grant the petition. Justice Panganiban filed a separate opinion expressing the view that Sections 3 (a)(b), 5, 6, 7 (a)(b), 8, and related provisions of R.A. 8371 are unconstitutional. He reserves judgment on the constitutionality of Sections 58, 59, 65, and 66 of the law, which he believes must await the filing of specific cases by those whose rights may have been violated by the IPRA. Justice Vitug also filed a separate opinion expressing the view that Sections 3(a), 7, and 57 of R.A. 8371 are unconstitutional. Justices Melo, Pardo, Buena, Gonzaga-Reyes, and De Leon join in the separate opinions of Justices Panganiban and Vitug.

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.

Attached hereto and made integral parts thereof are the separate opinions of Justices Puno, Vitug, Kapunan, Mendoza, and Panganiban.

SO ORDERED.

*Davide, Jr., C.J., Bellosillo, Melo, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.*

*Puno, Vitug, Kapunan, Mendoza and Panganiban JJ., see separate opinion*

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<sup>[1]</sup> Rollo, p. 114.

<sup>[2]</sup> Petition, Rollo, pp. 16-23.

<sup>[3]</sup> *Id.* at 23-25.

<sup>[4]</sup> Section 1, Article III of the Constitution states: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

<sup>[5]</sup> Rollo, pp. 25-27.

<sup>[6]</sup> *Id.* at 27-28.

<sup>[7]</sup> Transcript of Stenographic Notes of the hearing held on April 13, 1999, pp. 5-6.

PUNO, J.:

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