Preliminary Issues

A. The petition presents an actual controversy.

The time-tested standards for the exercise of judicial review are: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question be passed upon in order to decide the case.[28]

Courts can only decide actual controversies, not hypothetical questions or cases.[29] The threshold issue, therefore, is whether an "appropriate case" exists for the exercise of judicial review in the present case.

An "actual case or controversy" means an existing case or controversy which is both ripe for resolution and susceptible of judicial determination, and that which is not conjectural or anticipatory,[30] or that which seeks to resolve hypothetical or feigned constitutional problems.[31] A petition raising a constitutional question does not present an "actual controversy," unless it alleges a legal right or power. Moreover, it must show that a conflict of rights exists, for inherent in the term "controversy" is the presence of opposing views or contentions.[32] Otherwise, the Court will be forced to resolve issues which remain unfocused because they lack such concreteness provided when a question emerges precisely framed from a clash of adversary arguments exploring every aspect of a multi-faceted situation embracing conflicting and demanding interests.[33] The controversy must also be justiciable; that is, it must be susceptible of judicial determination.[34]

In the case at bar, there exists a live controversy involving a clash of legal rights. A law has been enacted, and the Implementing Rules and Regulations approved. Money has been appropriated and the government agencies concerned have been directed to implement the statute. It cannot be successfully maintained that we should await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial resolution. It is precisely the contention of the petitioners that the law, on its face, constitutes an unconstitutional abdication of State ownership over lands of the public domain and other natural resources. Moreover, when the State machinery is set into motion to implement an alleged unconstitutional statute, this Court possesses sufficient authority to resolve and prevent imminent injury and violation of the constitutional process.

> *B. Petitioners, as citizens and taxpayers, have the requisite standing to raise the constitutional questions herein.*

In addition to the existence of an actual case or controversy, a person who assails the validity of a statute must have a personal and substantial interest in the case, such that, he has sustained, or will sustain, a direct injury as a result of its enforcement.[35] Evidently, the rights asserted by petitioners as citizens and taxpayers are held in common by all the citizens, the violation of which may result only in a "generalized grievance".[36] Yet, in a sense, all citizen's and taxpayer's suits are efforts to air generalized grievances about the conduct of government and the allocation of power.[37]

In several cases, the Court has adopted a liberal attitude with regard to standing.[38] The proper party requirement is considered as merely procedural,[39] and the Court has ample discretion with regard thereto.[40] As early as 1910, the Court in the case of *Severino vs. Governor General* [41] held:

> x x x [W]hen the relief is sought merely for the protection of private rights, the relator must show some personal or special interest in the subject matter, since he is regarded as the real party in interest and his right must clearly appear. Upon the other hand, **when the question is one of public right** and the object of the mandamus is to procure the enforcement of a public duty, **the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws.**[42]

This Court has recognized that a "public right," or that which belongs to the people at large, may also be the subject of an actual case or controversy. In *Severino,* we ruled that a private citizen may enforce a "public right" in behalf of other citizens. We opined therein that:

> ... [T]he right which [petitioner] seeks to enforce is not greater or different from that of any other qualified elector in the municipality of Silay. It is also true that the injury which he would suffer in case he fails to obtain the relief sought would not be greater or different from that of the other electors; but **he is seeking to enforce a public right** as distinguished from a private right. **The real party in interest is the public**, or the qualified electors of the town of Silay. **Each elector has the same right and would suffer the same injury. Each elector stands on the same basis with reference to maintaining a**

> **petition** whether or not the relief sought by the relator should be granted.[43]

In *Tañada v. Tuvera*,[44] the Court enforced the "public right" to due process and to be informed of matters of public concern.

In *Garcia vs. Board of Investments,*[45] the Court upheld the "public right" to be heard or consulted on matters of national concern.

In *Oposa v. Factoran*,[46] the Court recognized the "public right" of citizens to "a balanced and healthful ecology which, for the first time in our nation's constitutional history, is solemnly incorporated in the fundamental law."[47] Mr. Justice (now Chief Justice) Hilario G. Davide, Jr., delivering the opinion of the Court, stated that:

> "Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by petitioners—the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, **these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.**[48]

Petitioners, **as citizens**, possess the "public right" to ensure that the national patrimony is not alienated and diminished in violation of the Constitution. Since the government, as the guardian of the national patrimony, holds it for the benefit of all Filipinos without distinction as to ethnicity, it follows that a citizen has sufficient interest to maintain a suit to ensure that any grant of concessions covering the national economy and patrimony strictly complies with constitutional requirements. Thus, the preservation of the integrity and inviolability of the national patrimony is a proper subject of a citizen's suit.

In addition, petitioners, *as taxpayers,* possess the right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute. It is well-settled that a taxpayer has the right to enjoin public officials from wasting public funds through the implementation of an unconstitutional statute,[49] and by necessity, he may assail the validity of a statute appropriating public funds.[50] The taxpayer has paid his taxes and contributed to the public coffers and, thus, may inquire into the manner by which the proceeds of his taxes are spent. The expenditure by an official of the State for the purpose of administering an invalid law constitutes a misapplication of such funds.[51]

The IPRA appropriates funds as indicated in its title: "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating the National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, **Appropriating Funds Therefor**, and for Other Purposes." In the same manner, Section 79 authorizes for the expenditure of public

funds by providing that "the amount necessary to finance [its] initial implementation shall be charged against the current year's appropriation for the Office for Northern Cultural Communities (the "ONCC") and the Office for Southern Cultural Communities (the "OSCC")."[52] which were merged as organic offices of the NCIP.[53] Thus, the IPRA is a valid subject of a taxpayer's suit.

> *C. The petition for prohibition and mandamus is not an improper remedy.*

Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[54] *Mandamus*, on the other hand, is an extraordinary writ commanding a tribunal, corporation, board, officer or person, immediately or at some other specified time, to do the act required to be done, when said entity or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or when said entity or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[55]

In this case, the petitioners pray that respondents be restrained from implementing the challenged provisions of the IPRA and its Implementing Rules and the assailed DENR Circular No. 2, series of 1998, and that the same officials be enjoined from disbursing public funds for the implementation of the said law and rules. They further ask that the Secretary of the DENR be compelled to perform his duty to control and supervise the activities pertaining to natural resources.

Prohibition will lie to restrain the public officials concerned from implementing the questioned provisions of the IPRA and from disbursing funds in connection therewith if the law is found to be unconstitutional. Likewise, *mandamus* will lie to compel the Secretary of the DENR to perform his duty to control and supervise the exploration, development, utilization and conservation of the country's natural resources. Consequently, the petition for prohibition and *mandamus* is not an improper remedy for the relief sought.

> D. Notwithstanding the failure of petitioners to observe the hierarchy of courts, the Court assumes jurisdiction over the petition in view of the importance of the issues raised therein.

Between two courts of concurrent original jurisdiction, it is the lower court that should initially pass upon the issues of a case. That way, as a particular case goes through the hierarchy of courts, it is shorn of all but the important legal issues or those of first impression, which are the proper subject of attention of the appellate court. This is a procedural rule borne of experience and

adopted to improve the administration of justice.

This Court has consistently enjoined litigants to respect the hierarchy of courts. Although this Court has concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction,[56] such concurrence does not give a party unrestricted freedom of choice of court forum. The resort to this Court's primary jurisdiction to issue said writs shall be allowed only where the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify such invocation.[57] We held in *People v. Cuaresma*[58] that:

> "A becoming regard for judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only where there are special and important reasons therefor, clearly and specifically set out in the petition.** This is established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket x x x.[59] (Emphasis supplied.)

IPRA aims to rectify the historical injustice inflicted upon indigenous peoples. Its impact upon the lives not only of the indigenous peoples but also upon the lives of all Filipinos cannot be denied. The resolution of this case by the Court at the earliest opportunity is necessary if the aims of the law are to be achieved. This reason is compelling enough to allow petitioners' invocation of this Court's jurisdiction in the first instance.

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