

SEPARATE OPINION

MENDOZA, J.:

This suit was instituted to determine the constitutionality of certain provisions of R.A. No. 8371, otherwise known as the Indigenous Peoples Rights Act. Petitioners do not complain of any injury as a result of the application of the statute to them. They assert a right to seek an adjudication of constitutional questions as citizens and taxpayers, upon the plea that the questions raised are of "transcendental importance."

The judicial power vested in this Court by Art. VIII, §1 extends only to cases and controversies for the determination of such proceedings as are established by law for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs.^[1] In this case, the purpose of the suit is not to enforce a property right of petitioners against the government and other respondents or to demand compensation for injuries suffered by them as a result of the enforcement of the law, but only to settle what they believe to be the doubtful character of the law in question. Any judgment that we render in this case will thus not conclude or bind real parties in the future, when actual litigation will bring to the Court the question of the constitutionality of such legislation. Such judgment cannot be executed as it amounts to no more than an expression of opinion upon the validity of the provisions of the law in question.^[2]

I do not conceive it to be the function of this Court under Art. VIII, §1 of the Constitution to determine in the abstract whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the legislative and executive departments in enacting the IPRA. Our jurisdiction is confined to cases or controversies. No one reading Art. VIII, §5 can fail to note that, in enumerating the matters placed in the keeping of this Court, it uniformly begins with the phrase "all cases. . . ."

The statement that the judicial power includes the duty to determine whether there has been a grave abuse of discretion was inserted in Art. VIII, §1 not really to give the judiciary a roving commission to right any wrong it perceives but to preclude courts from invoking the political question doctrine in order to evade the decision of certain cases even where violations of civil liberties are alleged.

The statement is based on the ruling of the Court in *Lansang v. Garcia*,^[3] in which this Court, adopting the submission of the Solicitor General, formulated the following test of its jurisdiction in such cases:

“ [J]udicial inquiry into the basis of the questioned proclamation can go *no further* than to satisfy the Court *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of

the writ, but that in suspending the writ, the President did not act *arbitrarily*.

That is why Art. VII, §18 now confers on any citizen standing to question the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. It is noteworthy that Chief Justice Roberto Concepcion, who chaired the Committee on the Judiciary of the Constitutional Commission, was the author of the opinions of the Court in *Lopez v. Roxas* and *Lansang v. Garcia*.

Indeed, the judicial power cannot be extended to matters which do not involve actual cases or controversies without upsetting the balance of power among the three branches of the government and erecting, as it were, the judiciary, particularly the Supreme Court, as a third branch of Congress, with power not only to invalidate statutes but even to rewrite them. Yet that is exactly what we would be permitting in this case were we to assume jurisdiction and decide wholesale the constitutional validity of the IPRA contrary to the established rule that a party can question the validity of a statute only if, as applied to him, it is unconstitutional. Here the IPRA is sought to be declared void on its face.

The only instance where a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the overbreadth doctrine permits a party to challenge the validity of a statute even though as applied to him it is not unconstitutional but it might be if applied to others not before the Court whose activities are constitutionally protected. Invalidation of the statute "on its face" rather than "as applied" is permitted in the interest of preventing a "chilling" effect on freedom of expression. But in other cases, even if it is found that a provision of a statute is unconstitutional, courts will decree only partial invalidity unless the invalid portion is so far inseparable from the rest of the statute that a declaration of partial invalidity is not possible.

For the Court to exercise its power of review when there is no case or controversy is not only to act without jurisdiction but also to run the risk that, in adjudicating abstract or hypothetical questions, its decision will be based on speculation rather than experience. Deprived of the opportunity to observe the impact of the law, the Court is likely to equate questions of constitutionality with questions of wisdom and is thus likely to intrude into the domain of legislation. Constitutional adjudication, it cannot be too often repeated, cannot take place in a vacuum.

Some of the brethren contend that not deciding the constitutional issues raised by petitioners will be a "galling cop out"^[4] or an "advocacy of timidity, let alone isolationism."^[5] To decline the exercise of jurisdiction in this case is no more a "cop out" or a sign of "timidity" than it was for Chief Justice Marshall in *Marbury v. Madison*^[6] to hold that petitioner had the right to the issuance of his commission as justice of the peace of the District of Columbia only to declare in the end that after all mandamus did not lie, because §13 of the Judiciary Act of 1789, which conferred original jurisdiction on the United States Supreme Court to issue the writ of mandamus, was unconstitutional as the court's jurisdiction is mainly appellate.

Today *Marbury v. Madison* is remembered for the institution of the power of judicial review, and so that there can be no doubt of this power of our Court, we in this country have enshrined its principle in Art. VIII, §1. Now, the exercise of judicial review can result either in the invalidation of

an act of Congress or in upholding it. Hence, the checking and legitimating functions of judicial review so well mentioned in the decisions^[7] of this Court.

To decline, therefore, the exercise of jurisdiction where there is no genuine controversy is not to show timidity but respect for the judgment of a coequal department of government whose acts, unless shown to be clearly repugnant to the fundamental law, are presumed to be valid. The polestar of constitutional adjudication was set forth by Justice Laurel in the *Angara* case when he said that "this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota*, presented."^[8] For the exercise of this power is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals.^[9] Until, therefore, an actual case is brought to test the constitutionality of the IPRA, the presumption of constitutionality, which inheres in every statute, must be accorded to it.

Justice Kapunan, on the other hand, cites the statement in *Severino v. Governor General*,^[10] reiterated in *Tanada v. Tuvera*,^[11] that "when the question is one of public right and the object of mandamus 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 that he is a citizen and as such is interested in the execution of the laws." On the basis of this statement, he argues that petitioners have standing to bring these proceedings.^[12]

In *Severino v. Governor General*,^[13] the question was whether mandamus lay to compel the Governor General to call a special election on the ground that it was his duty to do so. The ruling was that he did not have such a duty. On the other hand, although mandamus was issued in *Tanada v. Tuvera*, it was clear that petitioners had standing to bring the suit, because the public has a right to know and the failure of respondents to publish all decrees and other presidential issuances in the Official Gazette placed petitioners in danger of violating those decrees and issuances. But, in this case, what public right is there for petitioners to enforce when the IPRA does not apply to them except in general and in common with other citizens.

For the foregoing reasons I vote to dismiss the petition in this case.

^[1] *Lopez v. Roxas*, 17 SCRA 756, 761 (1966).

^[2] *Muskrat v. United States*, 279 U.S. 346, 55 L.Ed. 246 (1911).

^[3] 42 SCRA 448, 481 (1971) (emphasis on the original).

^[4] *Panganiban, J.*, Separate Opinion, p. 2.

^[5] *Vitug, J.*, Separate Opinion, p. 1.

[6] 1 Cranch 137, 2 L.Ed. 60 (1803).

[7] *Occeña v. Commission on Elections*; *Gonzales v. The National Treasurer*, 104 SCRA 1 (1981); *Mitra v. Commission on Elections*, 104 SCRA 59 (1981).

[8] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[9] *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806 (1955).

[10] 16 Phil. 366 (1913).

[11] 136 SCRA 27 (1985).

[12] Kapunan, *J.*, Separate Opinion, pp. 21-23.

[13] *Supra* note 10.

SEPARATE OPINION

(Concurring and Dissenting)

PANGANIBAN, *J.*:

I concur with the draft *ponencia* of Mr. Justice Santiago M. Kapunan in its well-crafted handling of the procedural or preliminary issues. In particular, I agree that petitioners have shown an actual case or controversy involving at least two constitutional questions of transcendental importance,^[1] which deserve judicious disposition on the merits directly by the highest court of the land.^[2]

Further, I am satisfied that the various aspects of this controversy have been fully presented and impressively argued by the parties. Moreover, prohibition and mandamus are proper legal remedies^[3] to address the problems raised by petitioners. In any event, this Court has given due course to the Petition, heard oral arguments and required the submission of memoranda. Indeed, it would then be a galling copout for us to dismiss it on mere technical or procedural grounds.

Protection of Indigenous Peoples'
Rights Must Be Within the
Constitutional Framework

With due respect, however, I dissent from the *ponencia's* resolution of the two main substantive

issues, which constitute the core of this case. Specifically, I submit that Republic Act (RA) No. 8371, otherwise known as the Indigenous Peoples' Rights Act (IPRA) of 1997, violates and contravenes the Constitution of the Philippines insofar as --

1. It recognizes or, worse, grants rights of ownership over "lands of the public domain, waters, x x x and other natural resources" which, under Section 2, Article XII of the Constitution, "are owned by the State" and "shall not be alienated." I respectfully reject the contention that "ancestral lands and ancestral domains are not public lands and have never been owned by the State." *Such sweeping statement places substantial portions of Philippine territory outside the scope of the Philippine Constitution and beyond the collective reach of the Filipino people. As will be discussed later, these real properties constitute a third of the entire Philippine territory; and the resources, 80 percent of the nation's natural wealth.*

2. It defeats, dilutes or lessens the authority of the State to oversee the "exploration, development, and utilization of natural resources," which the Constitution expressly requires to "be under the *full* control and supervision of the State."

True, our fundamental law mandates the protection of the indigenous cultural communities' right to their ancestral lands, but such mandate is "subject to the provisions of this Constitution."^[4] I concede that indigenous cultural communities and indigenous peoples (ICCs/IPs) may be accorded preferential rights to the beneficial use of public domains, as well as priority in the exploration, development and utilization of natural resources. Such privileges, however, must be subject to the fundamental law.

Consistent with the social justice principle of giving more in law to those who have less in life, Congress in its wisdom may grant preferences and prerogatives to our marginalized brothers and sisters, subject to the irreducible caveat that the Constitution must be respected. I personally believe in according every benefit to the poor, the oppressed and the disadvantaged, in order to empower them to *equally* enjoy the blessings of nationhood. *I cannot, however, agree to legitimize perpetual inequality of access to the nation's wealth or to stamp the Court's imprimatur on a law that offends and degrades the repository of the very authority of this Court -- the Constitution of the Philippines.*

The Constitution Is a Compact

My basic premise is that the Constitution is the fundamental law of the land, to which all other laws must conform.^[5] It is the people's quintessential act of sovereignty, embodying the principles upon which the State and the government are founded.^[6] Having the status of a supreme and all-encompassing law, it speaks for all the people all the time, not just for the majority or for the minority at intermittent times. Every constitution is a compact made by and among the citizens of a State to govern themselves in a certain manner.^[7] Truly, the Philippine Constitution is a solemn covenant made by all the Filipinos to govern themselves. No group, however blessed, and no sector, however distressed, is exempt from its compass.

RA 8371, which defines the rights of indigenous cultural communities and indigenous peoples,

admittedly professes a laudable intent. It was primarily enacted pursuant to the state policy enshrined in our Constitution to "recognize and promote the rights of indigenous cultural communities within the framework of national unity and development."^[8] Though laudable and well-meaning, this statute, however, has provisions that run directly afoul of our fundamental law from which it claims origin and authority. More specifically, Sections 3(a) and (b), 5, 6, 7(a) and (b), 8 and other related provisions contravene the Regalian Doctrine -- the basic foundation of the State's property regime.

*Public Domains and Natural Resources
Are Owned by the State and
Cannot Be Alienated or Ceded*

Jura regalia was introduced into our political system upon the "discovery" and the "conquest" of our country in the sixteenth century. Under this concept, the entire earthly territory known as the Philippine Islands was acquired and held by the Crown of Spain. The King, as then head of State, had the supreme power or exclusive dominion over all our lands, waters, minerals and other natural resources. By royal decrees, though, private ownership of real property was recognized upon the showing of (1) a title deed; or (2) ancient possession in the concept of owner, according to which a title could be obtained by prescription.^[9] Refusal to abide by the system and its implementing laws meant the abandonment or waiver of ownership claims.

By virtue of the 1898 Treaty of Paris, the Philippine archipelago was ceded to the United States. The latter assumed administration of the Philippines and succeeded to the property rights of the Spanish Crown. But under the Philippine Bill of 1902, the US Government allowed and granted patents to Filipino and US citizens for the "free and open x x x exploration, occupation and purchase [of mines] and the land in which they are found."^[10] To a certain extent, private individuals were entitled to own, exploit and dispose of mineral resources and other rights arising from mining patents.

This US policy was, however, rejected by the Philippine Commonwealth in 1935 when it crafted and ratified our first Constitution. Instead, the said Constitution embodied the Regalian Doctrine, which more definitively declared as belonging to the State all lands of the public domain, waters, minerals and other natural resources.^[11] Although respecting mining patentees under the Philippine Bill of 1902, it restricted the further exploration, development and utilization of natural resources, both as to who might be entitled to undertake such activities and for how long. The pertinent provision reads:

“SECTION 1 [Art. XIII]. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the

Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant."

The concept was carried over in the 1973 and the 1987 Constitutions. Hence, Sections 8 and 9, Article XIV of the 1973 Constitution, state:

“SEC. 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated and no license, concession, or lease for the exploration, development, exploitation, utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

SEC. 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The National Assembly, in the national interest, may allow such citizens, corporations, or associations to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, technical, management, or other forms of assistance are hereby recognized as such."

Similarly, Section 2, Article XII of the 1987 Constitution, provides:

“SEC. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber,

wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizen, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

"The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

"The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays and lagoons.

"The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

"The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution."

The adoption of the Regalian Doctrine by the Philippine Commonwealth was initially impelled by the desire to preserve the nation's wealth in the hands of the Filipinos themselves. Nationalism was fervent at the time, and our constitutional framers decided to embody the doctrine in our fundamental law. Charging the State with the conservation of the national patrimony was deemed necessary for Filipino posterity. The arguments in support of the provision are encapsulated by Aruego as follows: "[T]he natural resources, particularly the mineral resources which constituted a great source of wealth, belonged not only to the generation then but also to the succeeding generation and consequently should be conserved for them."^[12]

Thus, after expressly declaring that all lands of the public domain, waters, minerals, all forces of energy and other natural resources belonged to the Philippine State, the Commonwealth absolutely prohibited the alienation of these natural resources. Their disposition, exploitation, development

and utilization were further restricted only to Filipino citizens and entities that were 60 percent Filipino-owned. The present Constitution even goes further by declaring that such activities "shall be under the full control and supervision of the State." Additionally, it enumerates land classifications and expressly states that only agricultural lands of the public domain shall be alienable. We quote below the relevant provision:^[13]

“SEC. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. x x x.”

Mr. Justice Kapunan upholds private respondents and intervenors in their claim that all ancestral domains and lands are outside the coverage of public domain; and that these properties -- including forests, bodies of water, minerals and parks found therein -- are private and have never been part of the public domain, because they have belonged to the indigenous people's ancestors since time immemorial.

I submit, however, that all Filipinos, whether indigenous or not, are subject to the Constitution. Indeed, no one is exempt from its all-encompassing provisions. Unlike the 1935 Charter, which was subject to "any existing right, grant, lease or concession," the 1973 and the 1987 Constitutions spoke in absolute terms. Because of the State's implementation of policies considered to be for the common good, all those concerned have to give up, under certain conditions, even vested rights of ownership.

In *Republic v. Court of Appeals*,^[14] this Court said that once minerals are found even in private land, the State may intervene to enable it to extract the minerals in the exercise of its sovereign prerogative. The land is converted into mineral land and may not be used by any private person, including the registered owner, for any other purpose that would impede the mining operations. Such owner would be entitled to just compensation for the loss sustained.

In *Atok Big-Wedge Mining Company v. IAC*,^[15] the Court clarified that while mining claim holders and patentees have the exclusive right to the possession and enjoyment of the located claim, their rights are not absolute or strictly one of ownership. Thus, failure to comply with the requirements of pertinent mining laws was deemed an abandonment or a waiver of the claim.

Verily, as petitioners undauntedly point out, four hundred years of Philippine political history cannot be set aside or ignored by IPRA, however well-intentioned it may be. The perceived lack of understanding of the cultural minorities cannot be remedied by conceding the nation's resources to their exclusive advantage. They cannot be more privileged simply because they have chosen to

ignore state laws. For having chosen not to be enfolded by statutes on perfecting land titles, ICCs/IPs cannot now maintain their ownership of lands and domains by insisting on their concept of "native title" thereto. It would be plain injustice to the majority of Filipinos who have abided by the law and, consequently, deserve equal opportunity to enjoy the country's resources.

Respondent NCIP claims that IPRA does not violate the Constitution, because it does not grant ownership of public domains and natural resources to ICCs/IPs. "Rather, it recognizes and mandates respect for the rights of indigenous peoples over their ancestral lands and domains that had never been lands of the public domain."^[16] I say, however, that such claim finds no legal support. Nowhere in the Constitution is there a provision that exempts such lands and domains from its coverage. Quite the contrary, it declares that *all* lands of the public domain and natural resources "are owned by the State"; and "with the exception of agricultural lands, all other natural resources shall not be alienated."

As early as *Oh Cho v. Director of Lands*,^[17] the Court declared as belonging to the public domain all lands not acquired from the government, either by purchase or by grant under laws, orders or decrees promulgated by the Spanish government; or by possessory information under Act 496 (Mortgage Law).

On the other hand, Intervenors Flavio et al.^[18] differentiate the concept of ownership of ICCs/IPs from that which is defined in Articles 427 and 428 of the Civil Code. They maintain that "[t]here are variations among ethnolinguistic groups in the Cordillera, but a fair synthesis of these refers to 'x x x the tribal right to use the land or to territorial control x x x, a collective right to freely use the particular territory x x x [in] the concept of trusteeship.'"

In other words, the "owner" is not an individual. Rather, it is a tribal community that preserves the property for the common but nonetheless exclusive and perpetual benefit of its members, without the attributes of alienation or disposition. *This concept, however, still perpetually withdraws such property from the control of the State and from its enjoyment by other citizens of the Republic. The perpetual and exclusive character of private respondents' claims simply makes them repugnant to basic fairness and equality.*

Private respondents and intervenors trace their "ownership" of ancestral domains and lands to the pre-Spanish conquest. I should say that, at the time, their claims to such lands and domains was limited to the surfaces thereof since their ancestors were agriculture-based. This must be the continuing scope of the indigenous groups' ownership claims: limited to land, excluding the natural resources found within.

In any event, if all that the ICCs/IPs demand is preferential *use -- not ownership --* of ancestral domains, then I have no disagreement. Indeed, consistent with the Constitution is IPRA's Section 57^[19]-- without the too-broad definitions under Section 3 (a) and (b) -- insofar as it grants them priority rights in harvesting, extracting, developing or exploiting natural resources within ancestral domains.

The concerted effort to malign the Regalian Doctrine as a vestige of the colonial past must fail. Our Constitution vests the ownership of natural resources, not in colonial masters, but in *all the*

Filipino people. As the protector of the Constitution, this Court has the sworn duty to uphold the tenets of that Constitution -- not to dilute, circumvent or create exceptions to them.

*Cariño v. Insular Government
Was Modified by the Constitution*

In this connection, I submit that *Cariño v. Insular Government*^[20] has been modified or superseded by our 1935, 1973 and 1987 Constitutions. Its *ratio* should be understood as referring only to a means by which public agricultural land may be acquired by citizens. I must also stress that the claim of Petitioner Cariño refers to land ownership only, not to the natural resources underneath or to the aerial and cosmic space above.

Significantly, in *Director of Land Management v. Court of Appeals*,^[21] a Decision handed down after our three Constitutions had taken effect, the Court rejected a cultural minority member's registration of land under CA 141, Section 48 (c).^[22] The reason was that the property fell within the Central Cordillera Forest Reserve. This Court quoted with favor the solicitor general's following statements:

“3. The construction given by respondent Court of Appeals to the particular provision of law involved, as to include even forest reserves as susceptible to private appropriation, is to unconstitutionally apply such provision. For, both the 1973 and present Constitutions do not include timber or forest lands as alienable. Thus, Section 8, Article XIV of 1973 Constitution states that ‘with the exception of agricultural, industrial or commercial, residential and resettlement lands of the public domain, natural resources shall not be alienated.’ The new Constitution, in its Article XII, Section 2, also expressly states that ‘with the exception of agricultural lands, all other natural resources shall not be alienated’.”

Just recently, in *Gordula v. Court of Appeals*,^[23] the Court also stated that “forest land is incapable of registration, and its inclusion in a title nullifies that title. To be sure, the defense of indefeasibility of a certificate of title issued pursuant to a free patent does not lie against the state in an action for reversion of the land covered thereby when such land is a part of a public forest or of a forest reservation, the patent covering forest land being void ab initio.”

*RA 8371 Violates the Inalienability
of Natural Resources and of
Public Domains*

The *ponencia* theorizes that RA 8371 does not grant to ICCs/IPs ownership of the natural resources found within ancestral domains. However, a simple reading of the very wordings of the law belies this statement.

Section 3 (a)^[24] defines and delineates ancestral domains as "all areas generally belonging to ICCs/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 x x x. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds x x x bodies of water, *mineral and other natural resources* x x x." (Emphasis ours.)

Clearly, under the above-quoted provision of IPRA, ancestral domains of ICCs/IPs encompass the natural resources found therein. And Section 7 guarantees recognition and protection of their *rights of ownership and possession* over such domains.

The indigenous concept of ownership, as defined under Section 5 of the law, "holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed." Simply put, the law declares that ancestral domains, including the natural resources found therein, are *owned* by ICCs/IPs and cannot be sold, disposed or destroyed. Not only does it vest ownership, as understood under the Civil Code; it adds perpetual exclusivity. This means that while ICCs/IPs could own vast ancestral domains, the majority of Filipinos who are not indigenous can never own any part thereof.

On the other hand, Section 3 (b)^[25] of IPRA defines ancestral lands as referring to "lands occupied, possessed and utilized by individuals, families and clans of the ICCs/IPs since time immemorial x x x, under claims of individual or traditional group ownership, x x x including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots." Section 8 recognizes and protects "the right of ownership and possession of ICCs/IPs to their ancestral lands." Such ownership need not be by virtue of a certificate of title, but simply by possession since time immemorial.

I believe these statutory provisions directly contravene Section 2, Article XII of the Constitution, more specifically the declaration that the State owns all lands of the public domain, minerals and natural resources - none of which, except agricultural lands, can be alienated. In several cases, this Court has consistently held that non-agricultural land must first be reclassified and converted into alienable or disposable land for agricultural purposes by a positive act of the government.^[26] Mere possession or utilization thereof, however long, does not automatically convert them into private properties.^[27] The presumption is that "all lands not appearing to be clearly within private ownership are presumed to belong to the State. Hence, x x x all applicants in land registration proceedings have the burden of overcoming the presumption that the land thus sought to be registered forms part of the public domain. Unless the applicant succeeds in showing by clear and convincing evidence that the property involved was acquired by him or his ancestors either by composition title from the Spanish Government or by possessory information title, or any other means for the proper acquisition of public lands, the property must be held to be part of the public domain. The applicant must present competent and persuasive proof to substantiate his claim; he may not rely on general statements, or mere conclusions of law other than factual evidence of possession and title."^[28]

Respondents insist, and the *ponencia* agrees, that paragraphs (a) and (b) of Sections 3 are merely definitions and should not be construed independently of the other provisions of the law. But, precisely, a definition is "a statement of the meaning of a word or word group."^[29] It determines or settles the nature of the thing or person defined.^[30] Thus, after defining a term as encompassing several items, one cannot thereafter say that the same term should be interpreted as excluding one or more of the enumerated items in its definition. For that would be misleading the people who would be bound by the law. In other words, since RA 8371 defines ancestral domains as including the natural resources found therein and further states that ICCs/IPs own these *ancestral domains*, then it means that ICCs/IPs can own natural resources.

In fact, Intervenors Flavier et al. submit that *everything above and below* these ancestral domains, with no specific limits, likewise belongs to ICCs/IPs. I say that this theory directly contravenes the Constitution. Such outlandish contention further disregards international law which, by constitutional fiat, has been adopted as part of the law of the land.^[31]

No Land Area Limits Are Specified by RA 8371

Under Section 3, Article XII of the Constitution, Filipino citizens may acquire no more than 12 hectares of alienable public land, whether by purchase, homestead or grant. More than that, but not exceeding 500 hectares, they may hold by lease only.

RA 8371, however, speaks of no area or term limits to ancestral lands and domains. In fact, by their mere definitions, they could cover vast tracts of the nation's territory. The properties under the assailed law cover everything held, occupied or possessed "by themselves or through their ancestors, communally or individually since time immemorial." It also includes all "lands which may no longer be exclusively occupied by [them] 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."

Nomadic groups have no fixed area within which they hunt or forage for food. As soon as they have used up the resources of a certain area, they move to another place or go back to one they used to occupy. From year to year, a growing tribe could occupy and use enormous areas, to which they could claim to have had "traditional access." If nomadic ICCs/IPs succeed in acquiring title to their enlarging ancestral domain or land, several thousands of hectares of land may yet be additionally delineated as their private property.

Similarly, the Bangsa Moro people's claim to their ancestral land is not based on compounded or consolidated title, but "on a collective stake to the right to claim what their forefathers secured for them when they first set foot on our country."^[32] They trace their right to occupy what they deem to be their ancestral land way back to their ancient sultans and datus, who had settled in many islands that have become part of Mindanao. This long history of occupation is the basis of their claim to their ancestral lands.^[33]

Already, as of June 1998, over 2.5 million hectares have been claimed by various ICCs/IPs as ancestral domains; and over 10 thousand hectares, as ancestral lands.^[34] Based on ethnographic

surveys, the solicitor general estimates that ancestral domains cover 80 percent of our mineral resources and between 8 and 10 million of the 30 million hectares of land in the country.^[35] *This means that four fifths of its natural resources and one third of the country's land will be concentrated among 12 million Filipinos constituting 110 ICCs,^[36] while over 60 million other Filipinos constituting the overwhelming majority will have to share the remaining.* These figures indicate a violation of the constitutional principle of a "more equitable distribution of opportunities, income, and wealth" among Filipinos.

*RA 8371 Abdicates the
State Duty to Take Full Control
and Supervision of Natural Resources*

Section 2, Article XII of the Constitution, further provides that "[t]he exploration, development, and utilization of natural resources shall be under the full control and supervision of the State." The State may (1) directly undertake such activities; or (2) enter into co-production, joint venture or production-sharing agreements with Filipino citizens or entities, 60 percent of whose capital is owned by Filipinos.^[37] Such agreements, however, shall not exceed 25 years, renewable for the same period and under terms and conditions as may be provided by law.

But again, RA 8371 relinquishes this constitutional power of *full control* in favor of ICCs/IPs, insofar as natural resources found within their territories are concerned. Pursuant to their rights of ownership and possession, they may develop and manage the natural resources, benefit from and share in the profits from the allocation and the utilization thereof.^[38] And they may exercise such right without any time limit, unlike non-ICCs/IPs who may do so only for a period not exceeding 25 years, renewable for a like period.^[39] Consistent with the Constitution, the rights of ICCs/IPs to exploit, develop and utilize natural resources must also be limited to such period.

In addition, ICCs/IPs are given the right to negotiate directly the terms and conditions for the exploration of natural resources,^[40] a right vested by the Constitution only in the State. Congress, through IPRA, has in effect abdicated in favor of a minority group the State's power of ownership and full control over a substantial part of the national patrimony, in contravention of our most fundamental law.

I make clear, however, that to the extent that ICCs/IPs may undertake small-scale utilization of natural resources and cooperative fish farming, I absolutely have no objection. These undertakings are certainly allowed under the third paragraph of Section 2, Article XII of the Constitution.

Having already disposed of the two major constitutional dilemmas wrought by RA 8371 - (1) ownership of ancestral lands and domains and the natural resources therein; and (2) the ICCs/IPs' control of the exploration, development and utilization of such resources - I believe I should no longer tackle the following collateral issues petitioners have brought up:

1. Whether the inclusion of private lands within the coverage of ancestral domains amounts to undue deprivation of private property
2. Whether ICCs/IPs may regulate the entry/exit of migrants

3. Whether ancestral domains are exempt from real property taxes, special levies and other forms of exaction
4. Whether customary laws and traditions of ICCs/IPs should first be applied in the settlements of disputes over their rights and claims
5. Whether the composition and the jurisdiction of the National Commission of Indigenous Peoples (NCIP) violate the due process and equal protection clauses
6. Whether members of the ICCs/IPs may be recruited into the armed forces against their will

I believe that the first three of the above collateral issues have been rendered academic or, at least, no longer of "transcendental importance," in view of my contention that the two major IPRA propositions are based on unconstitutional premises. On the other hand, I think that in the case of the last three, it is best to await specific cases filed by those whose rights may have been injured by specific provisions of RA 8371.

Epilogue

Section 5, Article XII of the Constitution, provides:

“SEC. 5. 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.

"The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domain."

Clearly, there are two parameters that must be observed in the protection of the rights of ICCs/IPs: (1) the provisions of the 1987 Constitution and (2) national development policies and programs.

Indigenous peoples may have long been marginalized in Philippine politics and society. This does not, however, give Congress any license to accord them rights that the Constitution withholds from the rest of the Filipino people. I would concede giving them *priority* in the use, the enjoyment and the preservation of their ancestral lands and domains.^[41] But to grant *perpetual* ownership and control of the nation's substantial wealth to them, to the exclusion of other Filipino citizens who have chosen to live and abide by our previous and present Constitutions, would be not only unjust but also subversive of the rule of law.

In giving ICCs/IPs rights in derogation of our fundamental law, Congress is effectively mandating "reverse discrimination." In seeking to improve their lot, it would be doing so at the expense of the majority of the Filipino people. Such short-sighted and misplaced generosity will spread the roots of discontent and, in the long term, fan the fires of turmoil to a conflagration of national proportions.

Peace cannot be attained by brazenly and permanently depriving the many in order to coddle the few, however disadvantaged they may have been. Neither can a just society be approximated by maiming the healthy to place them at par with the injured. Nor can the nation survive by enclaving its wealth for the exclusive benefit of favored minorities.

Rather, the law must help the powerless by enabling them to take advantage of opportunities and privileges that are open to all and by preventing the powerful from exploiting and oppressing them. This is the essence of social justice - empowering and enabling the poor to be able to compete with the rich and, thus, equally enjoy the blessings of prosperity, freedom and dignity.

WHEREFORE, I vote to partially *GRANT* the Petition and to *DECLARE* as *UNCONSTITUTIONAL* Sections 3(a) and (b), 5, 6, 7(a) and (b), 8 and related provisions of RA 8371.

[1] *Kilosbayan v. Morato*, 250 SCRA 130, 140, November 16, 1995; *Association of Small Landowners v. Secretary of Agrarian Reform*, 175 SCRA 343, 365, July 14, 1989; *Antonio v. Dinglasan*, 84 Phil 368 (1949).

[2] *Tañada v. Angara*, 272 SCRA 18, 46, May 2, 1997; *Santiago v. Comelec*, 270 SCRA 106, 123-24, March 19, 1997; *Basco v. PAGCOR*, 197 SCRA 52, 60, May 14, 1991.

[3] *Tanada v. Angara*, *ibid.*

[4] §5, Art. XII, 1987 Constitution.

[5] 16 CJS §3.

[6] 16 Am Jur 2d §2.

[7] *Ibid.*

[8] §22, Art. II of the Constitution.

[9] *Abaoag v. Director of Lands*, 45 Phil 518 (1923), cited in petitioners' Memorandum.

[10] Soledad M. Cagampang-de Castro, "The Economic Policies on Natural Resources Under the 1987 Constitution Revisited," *Journal of the Integrated Bar of the Philippines*, Vol. XXV, Nos. 3 & 4 (1999), p. 51.

[11] In a republican system of government, the concept of *jura regalia* is stripped of royal overtones; ownership is vested in the State, instead. (Joaquin G. Bernas, SJ, *The Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 1009-1010.)

[12] Il Aruego, *The Framing of the Philippine Constitution* 603, quoted in Bernas, *supra*, p. 1010.

[13] §3, Art. XII, 1987 Constitution.

[14] 160 SCRA 228, 239, April 15, 1988.

[15] 261 SCRA 528, September 9, 1996.

[16] NCIP's Memorandum, p. 24.

[17] 75 Phil 890, 892, August 31, 1946.

[18] Intervenors' Memorandum, pp. 33 *et seq.*

[19] "SEC. 57. *Natural Resources within Ancestral Domains.* - The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. x x x."

[20] 41 Phil 935, February 23, 1909.

[21] 172 SCRA 455, 463, April 18, 1989, per Gutierrez Jr., *J.*

[22] "(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in subsection (b) hereof. (As amended by R.A. No. 3872, section 1, approved June 18, 1964)."

[23] 284 SCRA 617, 633, January 22, 1998, per Puno, *J.*

[24] "a) *Ancestral Domains* -- Subject to Section 56 hereof, refers to all areas generally belonging to ICCs/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 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."

[25] "b) *Ancestral Lands* -- Subject to Section 56 hereof, refers to lands 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."

[26] *Director of Lands and Director of Forest Development v. Intermediate Appellate Court*, March 2, 1993; *Director of Lands v. Aquino*, 192 SCRA 296, December 17, 1990; *Sunbeam Convenience Foods, Inc. v. Court of Appeals*, January 29, 1990.

[27] *Ibid.*, *Margolles v. Court of Appeals*, February 14, 1994; *Gordula v. Court of Appeals*, *supra*.

[28] *Republic v. Sayo*, October 31, 1990, per Narvasa, J. (later CJ). See also *Republic v. Court of Appeals*, *supra*.

[29] Webster's Third New International Dictionary; Petitioners' Memorandum, p. 41.

[30] *Ibid.*

[31] §2, Art. II of the Constitution.

[32] Cecilio R. Laurente, "The King's Hand: The Regalian Doctrine as a Contributing Factor in the Mindanao Conflict," *Human Rights Agenda*, Vol. 5, Issue No. 7, July & August 2000, pp. 6-7.

[33] *Ibid.*

[34] Solicitor General's Memorandum, p. 3; *rollo*, p. 651.

[35] *Ibid.*, pp. 4-5.

[36] *Ibid.* See also Datu Vic Saway, "Indigenous Peoples and the Uplands: A Situationer," *Proceedings of the 6th Upland NGO Consultative Conference, 23-27 August 1998*, p. 30.

[37] Or (3) in case of large-scale exploration, development and utilization of minerals, enter - through the President - into "agreements with foreign-owned corporations involving either technical or financial assistance." (*Miners Association of the Philippines v. Factoran Jr.*, 240 SCRA 100, January 16, 1995.)

[38] §7(b), RA 7381.

[39] §57, *ibid.*

[40] §7(b), *ibid.*

[⁴¹] As stated earlier, Sec. 57 of IPRA, insofar as it grants them such priority, is constitutional.

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