

SEPARATE OPINION

VITUG, J.:

An issue of grave national interest indeed deserves a proper place in any forum and, when it shows itself in a given judicial controversy, the rules of procedure, like *locus standi*, the propriety of the specific remedy invoked, or the principle of hierarchy of courts, that may ordinarily be raised by party-litigants, should not be so perceived as good and inevitable justifications for advocating timidity, let alone isolationism, by the Court.

A cardinal requirement, to which I agree, is that one who invokes the Court's adjudication must have a personal and substantial interest in the dispute;^[1] indeed, the developing trend would require a *logical nexus* between the status asserted and the claim sought to be adjudicated in order to ensure that one is the proper and appropriate party to invoke judicial power.^[2] The rule requires a party to aptly show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision so as to warrant his invocation of the Court's jurisdiction and to render legally feasible the exercise of the Court's remedial powers in his behalf. If it were otherwise, the exercise of that power can easily become too unwieldy by its sheer magnitude and scope to a point that may, in no small measure, adversely affect its intended essentiality, stability and consequentiality.

Nevertheless, where a most compelling reason exits, such as when the matter is of transcendental importance and paramount interest to the nation,^[3] the Court must take the liberal approach that recognizes the legal standing of nontraditional plaintiffs, such as citizens and taxpayers, to raise constitutional issues that affect them.^[4] This Court thus did so in a case^[5] that involves the conservation of our forests for ecological needs. **Until and exact balance is struck, the Court must accept an eclectic notion that can free itself from the bondage of legal nicety and hold trenchant technicalities subordinate to what may be considered to be of overriding concern.**

The petition seeks a declaration by the Court of unconstitutionality of certain provisions of Republic Act No. 8371, a law that obviously is yet incapable of exact equation in its significance to the nation and its people now and in the generations yet to come. Republic Act No. 8371, otherwise also known as the Indigenous Peoples Rights Act of 1997 ("IPRA"), enacted into law in 1997 and made effective on 22 November 1997, is apparently intended to be a legislative response to the 1987 Constitution which recognizes the rights of indigenous cultural communities "within the framework of national unity and development"^[6] and commands the State, "**subject to the provisions of this Constitution and national development policies and programs,**" to protect the rights of indigenous cultural communities to their ancestral lands in order to ensure their economic, social, and cultural well-being.^[7]

Among the assailed provisions in IPRA is its Section 3(a) which defines "ancestral domains" to embrace **"all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources" including "ancestral lands, forest, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise," over which indigenous cultural communities/indigenous peoples ("ICCs/IPs") could exercise virtual ownership and control.**

IPRA effectively withdraws from the public domain the so-called ancestral domains covering literally millions of hectares. The notion of community property would comprehend not only matters of proprietary interest but also some forms of self-governance over the curved-out territory. This concept is elaborated in Section 7 of the law which states that the "rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected," subsumed under which would encompass the **right of ownership** (paragraph a); **the right to develop, control and use lands and natural resources**, including **"the right to negotiate the terms and conditions for the exploration of natural resources** in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws;" (par. b); the **right to stay in the territories** (par. c); the **right to return to their abandoned lands in case of displacement** (par. d); **the right to regulate entry of migrants (par. e); the right to claim parts of ancestral domains previously reserved (par. g); and the right to resolve land conflicts in accordance primarily with customary law (par. h).** Concurrently, Section 57 states that ICCs/IPs shall be given "priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains." **These provisions of IPRA, in their totality, are, in my view, beyond the context of the fundamental law and virtually amount to an undue delegation, if not an unacceptable abdication, of State authority over a significant area of the country and its patrimony.**

Article XII of the 1987 Constitution expresses that all **"lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forest or timber, wildlife, flora and fauna, and other natural resources are owned by the State,"** and, with the exception of agricultural lands, **"shall not be alienated."** It ordains that **the "exploration, development, and utilization of natural resources shall be under the full control and supervision of the State."**^[8]

These provisions had roots in the 1935 Constitution which, along with some other specific mandates in the 1935 Constitution, forming Article XII under the title "Conservation and Utilization of Natural Resources", were derived largely from the report of the Committee on Nationalization and Preservation of Lands and other Natural Resources.^[9] According to the Committee report, among the principles upon which these provisions were based, was "that the land, minerals, forest and other natural resources constitute the exclusive heritage of the Filipino Nation," and should thereby "be preserved for those under the sovereign authority of the Nation and for their posterity."^[10] The delegates to the 1934 Constitutional Convention were of the unanimous view that the "policy on natural resources, being fundamental to the nation's survival should not be left to the changing mood of the lawmaking body."^[11]

The 1987 Constitution, like the precursor provisions in the 1935 and 1973 Constitutions, thus

expresses this *regalian doctrine* of the old, and the *domainial doctrine* of the new, that all lands and natural resources belong to the state other than those which it recognizes to be of private ownership. **Except for agricultural lands of the public domain which alone may be alienated, forest or timber, and mineral lands, as well as all other natural resources, of the country must remain with the state, the exploration, development and utilization of which shall be subject to its full control and supervision** *albeit* allowing it to enter into co-production, joint venture or production-sharing agreements, or into agreements with foreign-owned corporations involving technical or financial assistance for large-scale exploration, development and utilization.^[12]

The decision of the United States Supreme Court in *Cariño vs. Insular Government*,^[13] holding that a parcel of land held since time immemorial by individuals under a claim of private ownership is presumed never to have been public land and cited to downgrade the application of the *regalian doctrine*, cannot override the **collective will of the people** expressed in the Constitution. It is in them that sovereignty resides and from them that all government authority emanates.^[14] It is not then for a court ruling or any piece of legislation to be conformed to by the fundamental law, but it is for the former to adapt to the latter, and **it is the sovereign act that must, between them, stand inviolate.**

The second paragraph of Section 5 of Article XII of the Constitution allows Congress to provide "for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains." I do not see this statement as saying that Congress may enact a law that would simply express that "customary laws shall govern" and end it there. Had it been so, the Constitution could have itself easily provided without having to still commission Congress to do it. Mr. Chief Justice Davide has explained this authority of Congress, during the deliberations of the 1986 Constitutional Convention, thus:

“**Mr. Davide.** x x x Insofar as the application of the customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain is concerned, it is respectfully submitted that the particular matter must be submitted to Congress. I understand that the idea of Comm. Bennagen is for the possibility of the codification of these customary laws. So before these are codified, we cannot now mandate that the same must immediately be applicable. We leave it to Congress to determine the extent of the ancestral domain and the ownership thereof in relation to whatever may have been codified earlier. So, in short, let us not put the cart ahead of the horse.”^[15]

The constitutional aim, it seems to me, is to get Congress to look closely into the customary laws and, with specificity and by proper recitals, to hew them to, and make them part of, the stream of laws. The "due process clause," as I so understand it in *Tanada vs. Tuvera*^[16] would require an apt publication of a legislative enactment before it is permitted to take force and effect. So, also, customary laws, when specifically enacted to become part of statutory

law, must first undergo that publication to render them correspondingly binding and effective as such.

Undoubtedly, IPRA has several good points, and I would respectfully urge Congress to re-examine the law. Indeed, the State is exhorted to protect the rights of indigenous cultural communities to their ancestral lands, a task that would entail a balancing of interest between their specific needs and the imperatives of national interest.

WHEREFORE, I vote to grant the petition.

[¹] *People vs. Vera*, 65 Phil. 56, 89; *Macasiano vs. National Housing Authority*, 224 SCRA 236, 244.

[²] *Am Jur* § 189, p. 591, S. vD., 410 US 641, 35 L Ed 2d 536, 93 S Ct 1146.

[³] *Legaspi vs. Civil Service Commission*, 150 SCRA 530, 540; *Tañada vs. Tuvera*, 136 SCRA 27, 36, 37.

[⁴] *Defensor Santiago, Miriam*, Constitutional Law, First Edition, 1994, p. 11; see also Rev. Fr. Joaquin Bernas, S.J., on the 1987 Constitution of the Republic of the Philippines, 1996 Ed., pp. 336-337.

[⁵] *Oposa vs. Factoran, Jr.*, 224 SCRA 792.

[⁶] Art. 11, Sec. 22.

[⁷] Art. XII, Sec. 5.

[⁸] Sec. 2.

[⁹] *II Aruego*, The Framing of the Philippine Constitution, p. 594.

[¹⁰] *Ibid.*, p. 595.

[¹¹] *Ibid.*, p. 600.

[¹²] CONST., Art. XII, Sec. 2; *Miners Association of the Philippines, Inc., vs. Factoran, Jr.*, 240 SCRA 100.

[¹³] 41 Phil. 935.

[¹⁴] CONST., Art. II, Sec. 1.

[¹⁵] 4 Record of the Constitutional Commission 32.

SEPARATE OPINION

KAPUNAN, J.:

“ You ask if we own the land. . . How can you own that which will outlive you? Only the race own the land because only the race lives forever. To claim a piece of land is a birthright of every man. The lowly animals claim their place; how much more man? Man is born to live. Apu Kabunian, lord of us all, gave us life and placed us in the world to live human lives. And where shall we obtain life? From the land. To work (the land) is an obligation, not merely a right. In tilling the land, you possess it. And so land is a grace that must be nurtured. To enrich it and make it fructify is the eternal exhortation of Apu Kabunian to all his children. Land is sacred. Land is beloved. From its womb springs ...life.

- Macli-ing Dulag, Chieftain of the Kalinga Tribe (quoted in Ponciano L. Bennagen, "Tribal Filipinos" in *Indigenous View of Land and the Environment*, ed. Shelton H. Davis, the World Bank Discussion Papers, No. 188, pp. 71-72.)

It is established doctrine that a statute should be construed whenever possible in harmony with, rather than in violation of, the Constitution.^[1] The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.^[2]

The challenged provisions of the Indigenous Peoples Rights Act (IPRA) must be construed in view of such presumption of constitutionality. Further, the interpretation of these provisions should take into account the purpose of the law, which is to give life to the constitutional mandate that the rights of the indigenous peoples be recognized and protected.

The struggle of our indigenous peoples to reclaim their ancestral lands and domains and therefore, their heritage, is not unique. It is one that they share with the red-skinned "Indians" of the United States, with the aborigines of Australia, the Maori of New Zealand and the Sazmi of Sweden, to name a few. Happily, the nations in which these indigenous peoples live all have enacted measures in an attempt to heal an oppressive past by the promise of a progressive future. Thus has the international community realized the injustices that have been perpetrated upon the indigenous peoples. This sentiment among the family of nations is expressed in a number of documents, the most recent and most comprehensive of which is the Draft United Nations Declaration on the Rights of Indigenous Peoples which was adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities by its resolution on August 26, 1994.

Among the rights recognized by the UN Draft is the restitution of lands, territories and even the resources which the indigenous peoples have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without the free and informed consent of the indigenous peoples.

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