Substantive Issues Primary Issue

The issue of prime concern raised by petitioners and the Solicitor General revolves around the constitutionality of certain provisions of IPRA, specifically Sections 3(a), 3(b), 5, 6, 7, 8, 57, 58 and 59. These provisions allegedly violate Section 2, Article XII of the Constitution, which states:

> "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 citizens, 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 fishworkers 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.

Under IPRA, indigenous peoples may obtain the recognition of their right of ownership[60] over ancestral lands and ancestral domains by virtue of native title.[61] The term "**ancestral lands**" under the statute refers to **lands** occupied by individuals, families and clans who are members of indigenous cultural communities, including residential lots, rice terraces or paddies, private forests, swidden farms and tree lots. These lands are required to have been "occupied, possessed and utilized" by them or through their ancestors "since time immemorial, continuously to the present".[62] On the other hand, "**ancestral domains**" is defined as **areas** generally belonging to indigenous cultural communities, including ancestral lands, forests, pasture, residential and agricultural lands, hunting grounds, worship areas, and lands no longer occupied exclusively by indigenous cultural communities but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators. Ancestral domains also include inland waters, coastal areas and natural resources therein.[63] Again, the same are required to have been "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".[64] Under Section 56, property rights within the ancestral domains already existing and/or vested upon effectivity of said law "shall be recognized and respected."

Ownership is the crux of the issue of whether the provisions of IPRA pertaining to ancestral lands, ancestral domains, and natural resources are unconstitutional. The fundamental question is, who, between the State and the indigenous peoples, are the rightful owners of these properties?

It bears stressing that a statute should be construed in harmony with, and not in violation, of the fundamental law.[65] The reason is that the legislature, in enacting a statute, is assumed to have acted within its authority and adhered to the constitutional limitations. Accordingly, courts should presume that it was the intention of the legislature 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.[66]

> *"A. The provisions of IPRA recognizing the ownership of indigenous peoples over the ancestral lands and ancestral domains are not unconstitutional.*

In support of their theory that ancestral lands and ancestral domains are part of the public domain and, thus, owned by the State, pursuant to Section 2, Article XII of the Constitution, petitioners and the Solicitor General advance the following arguments:

> "First, according to petitioners, the King of Spain under international law acquired exclusive dominion over the Philippines by virtue of discovery and conquest. They contend that the Spanish King under the theory of *jura regalia*, which was introduced into Philippine law upon Spanish conquest in 1521, acquired title to all the lands in the archipelago.
>
> Second, petitioners and the Solicitor General submit that ancestral lands and ancestral domains are owned by the State. They invoke the theory of *jura regalia* which imputes to the State the ownership of all lands and makes the State the original source of all private titles. They argue that the Philippine State, as successor to Spain and the United States, is the source of any asserted right of ownership in land.
>
> Third, petitioners and the Solicitor General concede that the *Cariño* doctrine exists. However, petitioners maintain that the doctrine merely states that title to lands of the public domain may be acquired by prescription. The Solicitor General, for his part, argues that the doctrine applies only to alienable lands of the public domain and, thus, cannot be extended to other lands of the public domain such as forest or timber, mineral lands, and national parks.
>
> Fourth, the Solicitor General asserts that even assuming that native title over ancestral lands and ancestral domains existed by virtue of the *Cariño* doctrine, such native title was extinguished upon the ratification of the 1935 Constitution.
>
> Fifth, petitioners admit that Congress is mandated under Section 5, Article XII of the Constitution to protect that rights of indigenous peoples to their ancestral lands and ancestral domains. However, they contend that the mandate is subject to Section 2, Article XII and the theory of *jura regalia* embodied therein. According to petitioners, the recognition and protection under R.A. 8371 of the right of ownership over ancestral lands and ancestral domains is far in excess of the legislative power and constitutional mandate of Congress.
>
> Finally, on the premise that ancestral lands and ancestral domains are owned by the State, petitioners posit that R.A. 8371 violates Section 2, Article XII of the Constitution which prohibits the alienation of non-agricultural lands of the public domain and other natural resources.

I am not persuaded by these contentions.

Undue reliance by petitioners and the Solicitor General on the theory of *jura regalia* is understandable. Not only is the theory well recognized in our legal system; it has been regarded, almost with reverence, as the immutable postulate of Philippine land law. It has been incorporated into our fundamental law and has been recognized by the Court.[67]

Generally, under the concept of *jura regalia*, private title to land must be traced to some grant, express or implied, from the Spanish Crown or its successors, the American Colonial government, and thereafter, the Philippine Republic. The belief that the Spanish Crown is the origin of all land titles in the Philippines has persisted because title to land must emanate from some source for it cannot issue forth from nowhere.[68]

In its broad sense, the term "*jura regalia*" refers to royal rights,[69] or those rights which the King has by virtue of his prerogatives.[70] In Spanish law, it refers to a right which the sovereign has over anything in which a subject has a right of property or *propriedad*.[71] These were rights enjoyed during feudal times by the king as the sovereign.

The theory of the feudal system was that title to all lands was originally held by the King, and while the use of lands was granted out to others who were permitted to hold them under certain conditions, the King theoretically retained the title.[72] By fiction of law, the King was regarded as the original proprietor of all lands, and the true and only source of title, and from him all lands were held.[73] The theory of *jura regalia* was therefore nothing more than a natural fruit of conquest.[74]

The Regalian theory, however, does not negate native title to lands held in private ownership since time immemorial. In the landmark case of *Cariño vs. Insular Government*[75] the United States Supreme Court, reversing the decision[76]of the pre-war Philippine Supreme Court, made the following pronouncement:

> "x x x Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that **when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.** x x x.[77] (Emphasis supplied.)

The above ruling institutionalized the recognition of the existence of native title to land, or ownership of land by Filipinos by virtue of possession under a claim of ownership since time immemorial and independent of any grant from the Spanish Crown, as an exception to the theory of *jura regalia*.

In *Cariño*, an Igorot by the name of Mateo Cariño applied for registration in his name of an ancestral land located in Benguet. The applicant established that he and his ancestors had lived on the land, had cultivated it, and had used it as far they could remember. He also proved that they had all been recognized as owners, the land having been passed on by inheritance according to native custom. However, neither he nor his ancestors had any document of title from the Spanish Crown. The government opposed the application for registration, invoking the theory of *jura regalia*. On appeal, the United States Supreme Court held that the applicant was entitled to the registration of his native title to their ancestral land.

Cariño was decided by the U.S. Supreme Court in 1909, at a time when decisions of the U.S. Court were binding as precedent in our jurisdiction.[78] We applied the *Cariño* doctrine in the 1946 case of *Oh Cho vs. Director of Lands*,[79] where we stated that "[a]ll lands that were not acquired from the Government either by purchase or by grant, belong to the public domain, but [a]n exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest."[80]

Petitioners however aver that the U.S. Supreme Court's ruling in *Cariño* was premised on the fact that the applicant had complied with the requisites of acquisitive prescription, having established that he and his predecessors-in-interest had been in possession of the property since time immemorial. In effect, petitioners suggest that title to the ancestral land applied for by Cariño was transferred from the State, as original owner, to Cariño by virtue of prescription. They conclude that the doctrine cannot be the basis for decreeing "by mere legislative fiat...that ownership of vast tracts of land belongs to [indigenous peoples] without judicial confirmation."[81]

The Solicitor General, for his part, claims that the *Cariño* doctrine applies only to alienable lands of the public domain and, as such, cannot be extended to other lands of the public domain such as forest or timber, mineral lands, and national parks.

There is no merit in these contentions.

A proper reading of *Cariño* would show that the doctrine enunciated therein applies only to **lands which have always been considered as private**, and not to lands of the public domain, whether alienable or otherwise. A distinction must be made between ownership of land under native title and ownership by acquisitive prescription against the State. Ownership by virtue of native title presupposes that the land has been held by its possessor and his predecessors-in-interest in the concept of an owner since time immemorial. The land is not acquired from the State, that is, Spain or its successors-in-interest, the United States and the Philippine Government. There has been no transfer of title from the State as the land has been regarded as private in character as far back as memory goes. In contrast, ownership of land by acquisitive prescription against the State involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person. Since native title assumes that the property covered by it is private land and is deemed never to have been part of the public domain, the Solicitor General's thesis that native title under *Cariño* applies only to lands of the public domain is erroneous. Consequently, the classification of lands of the public domain into agricultural, forest or timber, mineral lands, and national parks under the Constitution[82] is irrelevant to the application of the *Cariño* doctrine because the Regalian doctrine which vests in the State ownership of lands of the public domain does not cover ancestral lands and ancestral domains.

Legal history supports the *Cariño* doctrine.

When Spain acquired sovereignty over the Philippines by virtue of its discovery and occupation thereof in the 16th century and the Treaty of Tordesillas of 1494 which it entered into with

Portugal,[83] the continents of Asia, the Americas and Africa were considered as *terra nullius* although already populated by other peoples.[84] The discovery and occupation by the European States, who were then considered as the only members of the international community of civilized nations, of lands in the said continents were deemed sufficient to create title under international law.[85]

Although Spain was deemed to have acquired sovereignty over the Philippines, this did not mean that it acquired title to **all** lands in the archipelago. By virtue of the colonial laws of Spain, the Spanish Crown was considered to have acquired **dominion** only over the unoccupied and unclaimed portions of our islands.[86]

In sending the first expedition to the Philippines, Spain did not intend to deprive the natives of their property. Miguel Lopez de Legazpi was under instruction of the Spanish King to do no harm to the natives and to their property. In this regard, an authority on the early Spanish colonial period in the Philippines wrote:

> "The government of [the King of Spain] Philip II regarded the Philippines as a challenging opportunity to avoid a repetition of the sanguinary conquests of Mexico and Peru. In his written instructions for the *Adelantado* Legazpi, who commanded the expedition, Philip II envisaged a bloodless pacification of the archipelago. This extraordinary document could have been lifted almost verbatim from the lectures of the Dominican theologian, Francisco de Vitoria, delivered in the University of Salamanca. The King instructed Legazpi to inform the natives that the Spaniards had come to do no harm to their persons or to their property. The Spaniards intended to live among them in peace and in friendship and "to explain to them the law of Jesus Christ by which they will be saved." Although the Spanish expedition could defend themselves if attacked, the royal instructions admonished the commander to commit no aggressive act which might arouse native hostility.[87]

Spanish colonial laws recognized and respected Filipino landholdings including native land occupancy.[88] Thus, the *Recopilación de Leyes de las Indias* expressly conferred ownership of lands already held by the natives.[89] The royal decrees of 1880 and 1894 did not extinguish native title to land in the Philippines. The earlier royal decree, dated June 25, 1880, provided that all those in "unlawful possession of royal lands" must legalize their possession by means of adjustment proceedings,[90] and within the period specified. The later royal decree, dated February 13, 1894, otherwise known as the Maura Law, declared that titles that were capable of adjustment under the royal decree of 1880, but for which adjustment was not sought, were forfeited. Despite the harsh wording of the Maura Law, it was held in the case of *Cariño* that the royal decree of 1894 should not be construed as confiscation of title, but merely as the withdrawal of the privilege of registering such title.[91]

Neither was native title disturbed by the Spanish cession of the Philippines to the United States,

contrary to petitioners' assertion that the US merely succeeded to the rights of Spain, including the latter's rights over lands of the public domain.[92] Under the Treaty of Paris of December 10, 1898, the cession of the Philippines did not impair any right to property existing at the time.[93] During the American colonial regime, native title to land was respected, even protected. The Philippine Bill of 1902 provided that property and rights acquired by the US through cession from Spain were to be administered for the benefit of the Filipinos.[94] In obvious adherence to libertarian principles, McKinley's Instructions, as well as the Philippine Bill of 1902, contained a bill of rights embodying the safeguards of the US Constitution. One of these rights, which served as an inviolable rule upon every division and branch of the American colonial government in the Philippines,[95] was that "no person shall be deprived of life, liberty, or property without due process of law."[96] These vested rights safeguarded by the Philippine Bill of 1902 were in turn expressly protected by the due process clause of the 1935 Constitution. Resultantly, property rights of the indigenous peoples over their ancestral lands and ancestral domains were firmly established in law.

Nonetheless, the Solicitor General takes the view that the vested rights of indigenous peoples to their ancestral lands and domains were "abated by the direct act by the sovereign Filipino people of ratifying the 1935 Constitution."[97] He advances the following arguments:

> "The Sovereign, which is the source of all rights including ownership, has the power to restructure the consolidation of rights inherent in ownership in the State. Through the mandate of the Constitutions that have been adopted, the State has wrested control of those portions of the natural resources it deems absolutely necessary for social welfare and existence. It has been held that the State may impair vested rights through a legitimate exercise of police power.
>
> Vested rights do not prohibit the Sovereign from performing acts not only essential to but determinative of social welfare and existence. To allow otherwise is to invite havoc in the established social system. x x x
>
> Time-immemorial possession does not create private ownership in cases of natural resources that have been found from generation to generation to be critical to the survival of the Sovereign and its agent, the State.[98]

Stated simply, the Solicitor General's argument is that the State, as the source of all titles to land, had the power to re-vest in itself, through the 1935 Constitution, title to all lands, including ancestral lands and ancestral domains. While the Solicitor General admits that such a theory would necessarily impair vested rights, he reasons out that even vested rights of ownership over ancestral lands and ancestral domains are not absolute and may be impaired by the legitimate exercise of police power.

I cannot agree. The text of the provision of the 1935 Constitution invoked by the Solicitor General, while embodying the theory of *jura regalia*, is too clear for any misunderstanding. It simply declares that "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."[99] Nowhere does it state that certain lands which are "absolutely necessary for social welfare and existence," including those which are **not** part of the public domain, shall thereafter be owned by the State. If there is any room for constitutional construction, the provision should be interpreted in favor of the preservation, rather than impairment or extinguishment, of vested rights. Stated otherwise, Section 1, Article XII of the 1935 Constitution cannot be construed to mean that vested right which had existed then were extinguished and that the landowners were divested of their lands, all in the guise of "wrest[ing] control of those portions of the natural resources [which the State] deems absolutely necessary for social welfare and existence." On the contrary, said Section restated the fundamental rule against the diminution of existing rights by expressly providing that the ownership of lands of the public domain and other natural resources by the State is "subject to any existing right, grant, lease, or concessions." The "existing rights" that were intended to be protected must, perforce, include the **right of ownership** by indigenous peoples over their ancestral lands and domains. The words of the law should be given their ordinary or usual meaning,[100] and the term "existing rights" cannot be assigned an unduly restrictive definition.

Petitioners concede that Congress is mandated under Section 5, Article XII of the 1987 Constitution [101]to protect the rights of indigenous peoples to their ancestral lands and ancestral domains. Nonetheless, they contend that the recognition and protection under IPRA of the right of ownership of indigenous peoples over ancestral lands and ancestral domains are far in excess of the legislative power and constitutional mandate of the Congress,[102] since such recognition and protection amount to the alienation of lands of the public domain, which is proscribed under Section 2, Article XII of the Constitution.

Section 5, Article XII of the Constitution expresses the sovereign intent to "protect the **rights** of indigenous peoples to their ancestral lands." In its general and ordinary sense, the term "right" refers to any legally enforceable claim.[103] It is a power, privilege, faculty or demand inherent in one person and incident upon another.[104] When used in relation to property, "right" includes any interest in or title to an object, or any just and legal claim to hold, use and enjoy it.[105] Said provision in the Constitution cannot, by any reasonable construction, be interpreted to exclude the protection of the **right of ownership** over such ancestral lands. For this reason, Congress cannot be said to have exceeded its constitutional mandate and power in enacting the provisions of IPRA, specifically Sections 7(a) and 8, which recognize the right of ownership of the indigenous peoples over ancestral lands.

The second paragraph of Section 5, Article XII also grants Congress the power to "provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains." In light of this provision, does Congress have the power to decide whether ancestral domains shall be private property or part of the public domain? Also, does Congress have the power to determine whether the "extent" of ancestral domains shall include the natural resources found therein?

It is readily apparent from the constitutional records that the framers of the Constitution did not intend Congress to decide whether ancestral domains shall be public or private property. Rather, they acknowledged that ancestral domains shall be treated as private property, and that

customary laws shall merely determine whether such private ownership is by the entire indigenous cultural community, or by individuals, families, or clans within the community. The discussion below between Messrs. Regalado and Bennagen and Mr. Chief Justice Davide, then members of the 1986 Constitutional Commission, is instructive:

> "MR. REGALADO. Thank you, Madame President. May I seek some clarifications from either Commissioner Bennagen or Commissioner Davide regarding this phrase "CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS in determining the ownership and extent of the ancestral domain," because ordinarily it is the law on ownership and the extent thereof which determine the property rights or relations arising therefrom. On the other hand, in this proposed amendment the phraseology is that it is the property rights or relations which shall be used as the basis in determining the ownership and extent of the ancestral domain. I assume there must be a certain difference in the customary laws and our regular civil laws on property.
>
> MR. DAVIDE. That is exactly the reason, Madam President, why we will leave it to Congress to make the necessary exception to the general law on property relations.
>
> MR. REGALADO. I was thinking if Commissioner Bennagen could give us an example of such a customary law wherein it is the property rights and relations that determine the ownership and the extent of that ownership, unlike the basic fundamental rule that it is the ownership and the extent of ownership which determine the property rights and relations arising therefrom and consequent thereto. Perhaps, these customary laws may have a different provision or thrust so that we could make the corresponding suggestions also by way of an amendment.
>
> MR. DAVIDE. That is exactly my own perception.
>
> MR. BENNAGEN. Let me put it this way.
>
> There is a range of customary laws governing certain types of ownership. **There would be ownership based on individuals, on clan or lineage, or on community.** And the thinking expressed in the consultation is that this should be codified and should be recognized in relation to existing national laws. That is essentially the concept. [106] (Emphasis supplied.)

The intention to treat ancestral domains as private property is also apparent from the following exchange between Messrs. Suarez and Bennagen:

> "MR. SUAREZ. When we speak of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain, are we thinking in terms of the tribal ownership or community ownership or of private ownership within the ancestral lands or ancestral domain?
>
> MR. BENNAGEN. **The concept of customary laws is that it is considered as ownership by private individuals, clans and even communities.**
>
> MR. SUAREZ. So, there will be two aspects to this situation. This means that the State will set aside the ancestral domain and there is a separate law for that. Within the ancestral domain it could accept more specific ownership in terms of individuals within the ancestral lands.
>
> MR. BENNAGEN. Individuals and groups within the ancestral domain. [107] (Emphasis supplied.)

It cannot be correctly argued that, because the framers of the Constitution never expressly mentioned *Cariño* in their deliberations, they did not intend to adopt the concept of native title to land, or that they were unaware of native title as an exception to the theory of *jura regalia*.[108] The framers of the Constitution, as well as the people adopting it, were presumed to be aware of the prevailing judicial doctrines concerning the subject of constitutional provisions, and courts should take these doctrines into consideration in construing the Constitution.[109]

Having thus recognized that ancestral domains under the Constitution are considered as private property of indigenous peoples, the IPRA, by affirming or acknowledging such ownership through its various provisions, merely abides by the constitutional mandate and does not suffer any vice of unconstitutionality.

Petitioners interpret the phrase "subject to the provisions of this Constitution and national development policies and programs" in Section 5, Article XII of the Constitution to mean "as subject to the provision of Section 2, Article XII of the Constitution," which vests in the State ownership of all lands of the public domain, mineral lands and other natural resources. Following this interpretation, petitioners maintain that ancestral lands and ancestral domains are the property of the State.

This proposition is untenable. Indeed, Section 2, Article XII reiterates the declarations made in the 1935 and 1973 Constitutions on the state policy of conservation and nationalization of lands of the public domain and natural resources, and is of paramount importance to our national economy and patrimony. A close perusal of the records of the 1986 Constitutional Commission reveals that the framers of the Constitution inserted the phrase "subject to the provisions of this Constitution" mainly to prevent the impairment of Torrens titles and other prior rights in the determination of what constitutes ancestral lands and ancestral domains, to wit:

> "MR. NATIVIDAD. Just one question. I want to clear this section protecting ancestral lands. How does this affect the Torrens title and other prior rights?
>
> MR. BENNAGEN. I think that was also discussed in the committee hearings and we did say that in cases where due process is clearly established in terms of prior rights, these two have to be respected.
>
> MR. NATIVIDAD. The other point is: How vast is this ancestral land? Is it true that parts of Baguio City are considered as ancestral lands?
>
> MR. BENNAGEN. They could be regarded as such. If the Commissioner still recalls, in one of the publications that I provided the Commissioners, the parts could be considered as ancestral domain in relation to the whole population of Cordillera but not in relation to certain individuals or certain groups.
>
> MR. NATIVIDAD. The Commissioner means that the whole Baguio City is considered as ancestral land?
>
> MR. BENNAGEN. Yes, in the sense that it belongs to Cordillera or in the same manner that Filipinos can speak of the Philippine archipelago as ancestral land, but not in terms of the right of a particular person or particular group to exploit, utilize, or sell it.
>
> MR. NATIVIDAD. But is clear that the prior rights will be respected.
>
> MR. BENNAGEN. Definitely. [110]

Thus, the phrase "subject to the provisions of this Constitution" was intended by the framers of the Constitution as a reiteration of the constitutional guarantee that no person shall be deprived of property without due process of law.

There is another reason why Section 5 of Article XII mandating the protection of rights of the indigenous peoples to their ancestral lands cannot be construed as subject to Section 2 of the same Article ascribing ownership of all public lands to the State. The Constitution must be construed as a whole. It is a rule that when construction is proper, the whole Constitution is examined in order to determine the meaning of any provision. That construction should be used which would give effect to the entire instrument.[111]

Thus, the provisions of the Constitution on State ownership of public lands, mineral lands and other natural resources should be read together with the other provisions thereof which firmly recognize the rights of the indigenous peoples. These, as set forth hereinbefore,[112] include: **Section 22, Article II**, providing that the State recognizes and promotes the rights of indigenous peoples within the framework of national unity and development; **Section 5, Article XII**, calling for the protection of the rights of indigenous cultural communities to their ancestral lands to ensure their

economic, social, and cultural well-being, and for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domains; **Section 1, Article XIII**, directing the removal or reduction of social, economic, political and cultural inequities and inequalities by equitably diffusing wealth and political power for the common good; **Section 6, Article XIII**, directing the application of the principles of agrarian reform or stewardship in the disposition and utilization of other natural resources, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands; **Section 17, Article XIV**, decreeing that the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions; and **Section 12, Article XVI**, authorizing the Congress to create a consultative body to advise the President on policies affecting indigenous cultural communities.

Again, as articulated in the Constitution, the first goal of the national economy is the **more equitable distribution of opportunities, income, and wealth**.[113] Equity is given prominence as the first objective of national economic development.[114] The framers of the Constitution did not, by the phrase "subject to the provisions of this Constitution and national development policies and programs," intend to establish a hierarchy of constitutional norms. As explained by then Commissioner (now Chief Justice) Hilario G. Davide, Jr., it was not their objective to make certain interests primary or paramount, or to create absolute limitations or outright prohibitions; rather, the idea is towards the balancing of interests:

> "BISHOP BACANI. In Commissioner Davide's formulation of the first sentence, he says: "The State, SUBJECT TO THE provisions of this Constitution AND NATIONAL DEVELOPMENT POLICIES AND PROGRAMS shall guarantee the rights of cultural or tribal communities to their ancestral lands to insure their economic, social and cultural well-being." There are at least two concepts here which receive different weights very often. They are the concepts of national development policies and programs, and the rights of cultural or tribal communities to their ancestral lands, et cetera. I would like to ask: When the Commissioner proposed this amendment, which was the controlling concept? I ask this because sometimes the rights of cultural minorities are precisely transgressed in the interest of national development policies and programs. Hence, I would like to know which is the controlling concept here. Is it the rights of indigenous peoples to their ancestral lands or is it national development policies and programs.
>
> MR. DAVIDE. **It is not really a question of which is primary or which is more paramount. The concept introduced here is really the balancing of interests.** That is what we seek to attain. We have to balance the interests taking into account the specific needs and the specific interests also of these cultural communities in like manner that we did so in the autonomous regions. [115] (Emphasis supplied.)

> *"B. The provisions of R.A. 8371 do not infringe upon the State's ownership over the natural resources within the ancestral domains.*

Petitioners posit that IPRA deprives the State of its ownership over mineral lands of the public domain and other natural resources,[116] as well as the State's full control and supervision over the exploration, development and utilization of natural resources.[117] Specifically, petitioners and the Solicitor General assail Sections 3 (a),[118] 5,[119] and 7[120] of IPRA as violative of Section 2, Article XII of the Constitution which states, in part, that "[a]ll 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."[121] They would have the Court declare as unconstitutional Section 3(a) of IPRA because the inclusion of natural resources in the definition of ancestral domains purportedly results in the abdication of State ownership over these resources.

I am not convinced.

Section 3(a) merely defines the coverage of ancestral domains, and describes the extent, limit and composition of ancestral domains by setting forth the standards and guidelines in determining whether a particular area is to be considered as part of and within the ancestral domains. In other words, Section 3(a) serves only as a yardstick which points out what properties are within the ancestral domains. It does not confer or recognize any right of ownership over the natural resources to the indigenous peoples. Its purpose is definitional and not declarative of a right or title.

The specification of what areas belong to the ancestral domains is, to our mind, important to ensure that no unnecessary encroachment on private properties outside the ancestral domains will result during the delineation process. The mere fact that Section 3(a) defines ancestral domains to include the natural resources found therein does not *ipso facto* convert the character of such natural resources as private property of the indigenous peoples. Similarly, Section 5 in relation to Section 3(a) cannot be construed as a source of ownership rights of indigenous people over the natural resources simply because it recognizes ancestral domains as their "private but community property."

The phrase "private but community property" is merely descriptive of the indigenous peoples' concept of ownership as distinguished from that provided in the Civil Code. In Civil Law, "ownership" is the "independent and general power of a person over a thing for purposes recognized by law and within the limits established thereby."[122] The civil law concept of ownership has the following attributes: *jus utendi* or the right to receive from the thing that which it produces, *jus abutendi* or the right to consume the thing by its use, *jus disponendi* or the power to alienate, encumber, transform and even destroy that which is owned and *jus vidicandi* or the right to exclude other persons from the possession the thing owned.[123] In contrast, the indigenous peoples' concept of ownership emphasizes the importance of communal or group ownership. By virtue of the communal character of ownership, the property held in common "cannot be sold, disposed or destroyed"[124] because it was meant to benefit the whole indigenous

community and not merely the individual member.[125]

That IPRA is not intended to bestow ownership over natural resources to the indigenous peoples is also clear from the deliberations of the bicameral conference committee on Section 7 which recites the rights of indigenous peoples over their ancestral domains, to wit:

> "CHAIRMAN FLAVIER. Accepted. Section 8[126] rights to ancestral domain, this is where we transferred the other provision but here itself ---
>
> HON. DOMINGUEZ. Mr. Chairman, if I maybe allowed to make a very short Statement. Earlier, Mr. Chairman, **we have decided to remove the provisions on natural resources because we all agree that that belongs to the State**. Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras. So, if there could be, if our lawyers or the secretariat could just propose a provision for incorporation here so that maybe the right to consultation and the right to be compensated when there are damages within their ancestral lands.
>
> CHAIRMAN FLAVIER. Yes, very well taken but to the best of my recollection both are already considered in subsequent sections which we are now looking for.
>
> HON. DOMINGUEZ. Thank you.
>
> CHAIRMAN FLAVIER. First of all there is a line that gives priority use for the indigenous people where they are. Number two, in terms of the mines there is a need for prior consultation of source which is here already. So, anyway it is on the record that you want to make sure that the secretariat takes note of those two issues and my assurance is that it is already there and I will make sure that they cross check.
>
> HON. ADAMAT. I second that, Mr. Chairman.
>
> CHAIRMAN FLAVIER. Okay, thank you. So we now move to Section 8, there is a Senate version you do not have and if you agree we will adopt that.[127]
> (Emphasis supplied.)

Further, Section 7 makes no mention of any right of ownership of the indigenous peoples over the natural resources. In fact, Section 7(a) merely recognizes the "right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places,

traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." Neither does Section 7(b), which enumerates certain rights of the indigenous peoples over the natural resources found within their ancestral domains, contain any recognition of ownership *vis-a-vis* the natural resources.

What is evident is that the IPRA protects the indigenous peoples' rights and welfare in relation to the natural resources found within their ancestral domains,[128] including the preservation of the ecological balance therein and the need to ensure that the indigenous peoples will not be unduly displaced when State-approved activities involving the natural resources located therein are undertaken.

Finally, the concept of native title to **natural resources**, unlike native title to **land**, has not been recognized in the Philippines. NCIP and Flavier, *et al.* invoke the case of *Reavies v. Fianza*[129] in support of their thesis that native title to natural resources has been upheld in this jurisdiction.[130] They insist that "it is possible for rights over natural resources to vest on a private (as opposed to a public) holder if these were held prior to the 1935 Constitution."[131] However, a judicious examination of *Reavies* reveals that, contrary to the position of NCIP and Flavier, *et al*., the Court did not recognize native title to natural resources. Rather, it merely upheld the right of the indigenous peoples to claim ownership of minerals **under the Philippine Bill of 1902**.

While as previously discussed, native title to **land** or private ownership by Filipinos of land by virtue of time immemorial possession in the concept of an owner was acknowledged and recognized as far back during the Spanish colonization of the Philippines, there was no similar favorable treatment as regards natural resources. The unique value of natural resources has been acknowledged by the State and is the underlying reason for its consistent assertion of ownership and control over said natural resources from the Spanish regime up to the present.[132] Natural resources, especially minerals, were considered by Spain as an abundant source of revenue to finance its battles in wars against other nations. Hence, Spain, by asserting its ownership over minerals wherever these may be found, whether in public or private lands, recognized the separability of title over lands and that over minerals which may be found therein. [133]

On the other hand, the United States viewed natural resources as a source of wealth for its nationals. As the owner of natural resources over the Philippines after the latter's cession from Spain, the United States saw it fit to allow both Filipino and American citizens to explore and exploit minerals in public lands, and to grant patents to private mineral lands. A person who acquired ownership over a parcel of private mineral land pursuant to the laws then prevailing could exclude other persons, even the State, from exploiting minerals within his property.[134] Although the United States made a distinction between minerals found in public lands and those found in private lands, title in these minerals was in all cases sourced from the State. The framers of the 1935 Constitution found it necessary to maintain the State's ownership over natural resources to insure their conservation for future generations of Filipinos, to prevent foreign control of the country through economic domination; and to avoid situations whereby the Philippines would become a source of international conflicts, thereby posing danger to its internal security and independence.[135]

The declaration of State ownership and control over minerals and other natural resources in the 1935 Constitution was reiterated in both the 1973[136] and 1987 Constitutions.[137]

Having ruled that the natural resources which may be found within the ancestral domains belong to the State, the Court deems it necessary to clarify that the jurisdiction of the NCIP with respect to ancestral domains under Section 52 [i] of IPRA extends only to the **lands** and not to the **natural resources** therein.

Section 52[i] provides:

> "*Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies.* -- The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed.

Undoubtedly, certain areas that are claimed as ancestral domains may still be under the administration of other agencies of the Government, such as the Department of Agrarian Reform, with respect to agricultural lands, and the Department of Environment and Natural Resources with respect to timber, forest and mineral lands. Upon the certification of these areas as ancestral domain following the procedure outlined in Sections 51 to 53 of the IPRA, jurisdiction of the government agency or agencies concerned over **lands** forming part thereof ceases. Nevertheless, the jurisdiction of government agencies over the **natural resources** within the ancestral domains does not terminate by such certification because said agencies are mandated under existing laws to administer the natural resources for the State, which is the owner thereof. To construe Section 52[i] as divesting the State, through the government agencies concerned, of jurisdiction over the natural resources within the ancestral domains would be inconsistent with the established doctrine that all natural resources are owned by the State.

> "*C. The provisions of IPRA pertaining to the utilization of natural resources are not unconstitutional.*

The IPRA provides that indigenous peoples shall have the right to manage and conserve the natural resources found on the ancestral domains, to benefit from and share in the profits from the allocation and utilization of these resources, and to negotiate the terms and conditions for the exploration of such natural resources.[138] The statute also grants them priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains.[139] Before the NCIP can issue a certification for the renewal, or grant of any concession,

license or lease, or for the perfection of any production-sharing agreement the prior informed written consent of the indigenous peoples concerned must be obtained.[140] In return, the indigenous peoples are given the responsibility to maintain, develop, protect and conserve the ancestral domains or portions thereof which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation.[141]

The Solicitor General argues that these provisions deny the State an active and dominant role in the utilization of our country's natural resources. Petitioners, on the other hand, allege that under the Constitution the exploration, development and utilization of natural resources may only be undertaken by the State, either directly or indirectly through co-production, joint venture, or production-sharing agreements.[142] To petitioners, no other method is allowed by the Constitution. They likewise submit that by vesting ownership of ancestral lands and ancestral domains in the indigenous peoples, IPRA necessarily gives them control over the use and enjoyment of such natural resources, to the prejudice of the State.[143]

Section 2, Article XII of the Constitution provides in paragraph 1 thereof that the exploration, development and utilization of natural resources must be under the full control and supervision of the State, which may directly undertake such activities or enter into co-production, joint venture, or production-sharing agreements. This provision, however, should not be read in isolation to avoid a mistaken interpretation that any and all forms of utilization of natural resources other than the foregoing are prohibited. The Constitution must be regarded as consistent with itself throughout.[144] No constitutional provision is to be separated from all the others, or to be considered alone, all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the fundamental law.[145]

In addition to the means of exploration, development and utilization of the country's natural resources stated in paragraph 1, Section 2 of Article XII, the Constitution itself states in the third paragraph of the same section that Congress may, by law, allow **small-scale utilization of natural resources** by its citizens.[146] Further, Section 6, Article XIII, directs the State, in the disposition and **utilization** of natural resources, to apply the principles of agrarian reform or stewardship.[147] Similarly, Section 7, Article XIII mandates the State to protect the rights of subsistence fishermen to the **preferential use** of marine and fishing resources.[148] Clearly, Section 2, Article XII, when interpreted in view of the pro-Filipino, pro-poor philosophy of our fundamental law, and in harmony with the other provisions of the Constitution rather as a sequestered pronouncement,[149] cannot be construed as a prohibition against any and all forms of utilization of natural resources without the State's direct participation.

Through the imposition of certain requirements and conditions for the exploration, development and utilization of the natural resources under existing laws,[150] the State retains full control over such activities, whether done on small-scale basis[151] or otherwise.

The rights given to the indigenous peoples regarding the exploitation of natural resources under Sections 7(b) and 57 of IPRA amplify what has been granted to them under existing laws, such as the Small-Scale Mining Act of 1991 (R.A. 7076) and the Philippine Mining Act of 1995 (R.A. 7942). R.A. 7076 expressly provides that should an ancestral land be declared as a people's small-scale mining area, the members of the indigenous peoples living within said area shall be given **priority in the awarding of small-scale mining contracts**.[152] R.A. 7942 declares that

no ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned[153] and in the event that the members of such indigenous cultural community give their consent to mining operations within their ancestral land, **royalties shall be paid to them** by the parties to the mining to the contract.[154]

In any case, a careful reading of Section 7(b) would reveal that the rights given to the indigenous peoples are duly circumscribed. These rights are limited only to the following: "**to manage and conserve** natural resources within territories and **uphold** it for future generations; **to benefit and share the profits** from allocation and utilization of the natural resources found therein; **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; **to an informed and intelligent participation** in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and **to receive just and fair compensation** for any damages which they may sustain as a result of the project, and the right **to effective measures** by the government to prevent any interference with, alienation and encroachment of these rights."

It must be noted that the right to negotiate terms and conditions granted under Section 7(b) pertains only to the **exploration** of natural resources. The term "exploration" refers only to the search or prospecting of mineral resources, or any other means for the purpose of determining the existence and the feasibility of mining them for profit.[155] The exploration, which is merely a preliminary activity, cannot be equated with the entire process of "exploration, development and utilization" of natural resources which under the Constitution belong to the State.

Section 57, on the other hand, grants the indigenous peoples "priority rights" in the utilization of natural resources and not absolute ownership thereof. Priority rights does not mean exclusive rights. What is granted is merely the right of preference or first consideration in the award of privileges provided by existing laws and regulations, with due regard to the needs and welfare of indigenous peoples living in the area.

There is nothing in the assailed law which implies an automatic or mechanical character in the grant of concessions. Nor does the law negate the exercise of sound discretion by government entities. Several factors still have to be considered. For example, the extent and nature of utilization and the consequent impact on the environment and on the indigenous peoples' way of life are important considerations. Moreover, the indigenous peoples must show that they live in the area and that they are in the best position to undertake the required utilization.

It must be emphasized that the grant of said priority rights to indigenous peoples is not a blanket authority to disregard pertinent laws and regulations. The utilization of said natural resources is always subject to compliance by the indigenous peoples with existing laws, such as R.A. 7076 and R.A. 7942 since it is not they but the State, which owns these resources.

It also bears stressing that the grant of priority rights does not preclude the State from undertaking activities, or entering into co-production, joint venture or production-sharing agreements with private entities, to utilize the natural resources which may be located within the ancestral domains. There is no intention, as between the State and the indigenous peoples, to create a hierarchy of values; rather, the object is to balance the interests of the State for national development and

those of the indigenous peoples.

Neither does the grant of priority rights to the indigenous peoples exclude non-indigenous peoples from undertaking the same activities within the ancestral domains upon authority granted by the proper governmental agency. To do so would unduly limit the ownership rights of the State over the natural resources.

To be sure, the act of the State of giving preferential right to a particular sector in the utilization of natural resources is nothing new. As previously mentioned, Section 7, Article XIII of the Constitution mandates the protection by the State of "the rights of subsistence fishermen, especially of local communities, to the preferential use of communal marine and fishing resources, both inland and offshore."

Section 57 further recognizes the possibility that the exploration and exploitation of natural resources within the ancestral domains may disrupt the natural environment as well as the traditional activities of the indigenous peoples therein. Hence, the need for the prior informed consent of the indigenous peoples before any search for or utilization of the natural resources within their ancestral domains is undertaken.

In a situation where the State intends to directly or indirectly undertake such activities, IPRA requires that the prior informed consent of the indigenous peoples be obtained. The State must, as a matter of policy and law, consult the indigenous peoples in accordance with the intent of the framers of the Constitution that national development policies and programs should involve a systematic consultation to balance local needs as well as national plans. As may be gathered from the discussion of the framers of the Constitution on this point, the national plan presumably takes into account the requirements of the region after thorough consultation.[156] To this end, IPRA grants to the indigenous peoples the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, and the right not to be removed therefrom without their free and prior informed consent.[157] As to non-members, the prior informed consent takes the form of a formal and written agreement between the indigenous peoples and non-members under the proviso in Section 57 in case the State enters into a co-production, joint venture, or production-sharing agreement with Filipino citizens, or corporations. This requirement is not peculiar to IPRA. Existing laws and regulations such as the Philippine Environmental Policy,[158] the Environmental Impact System,[159] the Local Government Code[160] and the Philippine Mining Act of 1995[161]already require increased consultation and participation of stakeholders, such as indigenous peoples, in the planning of activities with significant environment impact.

The requirement in Section 59 that prior written informed consent of the indigenous peoples must be procured before the NCIP can issue a certification for the "issuance, renewal, or grant of any concession, license or lease, or to the perfection of any production-sharing agreement," must be interpreted, not as a grant of the power to control the exploration, development and utilization of natural resources, but merely the imposition of an additional requirement for such concession or agreement. The clear intent of the law is to protect the rights and interests of the indigenous peoples which may be adversely affected by the operation of such entities or licensees.

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