

# CHAPTER III Rights to Ancestral Domains

“SECTION 7. Rights to Ancestral Domains. — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a) Right of Ownership. — **The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements** made by them at any time within the domains;

b) Right to Develop Lands and Natural Resources. — Subject to Section 56 hereof, **right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; 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; the **right 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** upon these rights;

c) Right to Stay in the Territories. — The **right to stay in the territory and not to be removed therefrom**. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with

lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

e) Right to Regulate Entry of Migrants. — **Right to regulate the entry of migrant settlers and organizations into the domains;**

g) Right to Claim Parts of Reservations. — The **right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common public welfare and service;** and

h) Right to Resolve Conflict. — Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

SECTION 8. **Rights to Ancestral Lands.** — The right of ownership and possession of the ICCs/IPs to their ancestral lands shall be recognized and protected.

a) Right to transfer land/property. — Such right shall include the **right to transfer land or property rights to/among members of the same ICCs/IPs**, subject to customary laws and traditions of the community concerned.

b) Right to Redemption. — In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is **tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.**

But **IP title** is **not** the **same** as the concept of **ownership in the Civil Code**. In his 2002 Philippine Judicial Academy (PHILJA) Judicial Journal article entitled "Introducing the Indigenous Peoples' Rights Act (IPRA)," one of the leading constitutionalists in the country, Professor Sedfrey M. Candelaria, clarified that the **civil law concept of land ownership is nonexistent within the IP sector**.

Traditionally, **under civil law**, ownership over property carries with it a bundle of rights comprised of *jus possidendi*, *jus abutendi*, *jus dispendendi*, *jus utendi*, *jus fruendi*, *jus vindicandi*, and *jus accessiones*. In contrast, **IP title** is *sui generis* as it carries an **important restriction** — it is **collective** and **communal title** held **not only for the present generation but for all succeeding generations**.<sup>[85]</sup> What IPs have is the **concept of mutual sharing of resources**

**wherein no individual, regardless of status, is without sustenance.** This means the land and its resources **cannot be alienated or encumbered** except to the State and in ways that would **prevent future generations** of the group from using and enjoying it.<sup>[86]</sup> **Nor** can the **land be developed** or **misused** in a way that would **substantially deprive future generations** of the benefit of the land<sup>[87]</sup> though some changes even permanent changes to the land may be possible. These uses must also be **reconciled with the ongoing communal nature** of the IPs or ICCs' attachment to the land.<sup>[88]</sup>

Professor (now Justice) Leonen, a highly esteemed scholar in constitutional law and the law on land and natural resources, **shares** this understanding about the foregoing limitations to the *sui generis* IP title. He **underscores** this **limitation** by **highlighting** the **indigenous concept of ownership** as expressed in Section 5 of *IPRA* that "ancestral domains and all resources found therein shall serve as the **material bases of [the IPs'] cultural integrity**," and **not generally for exploitative purposes**, and that ancestral domains including sustainable traditional resource rights are the IP's **private but community property** which **belongs to all generations** and therefore **cannot be sold, disposed or destroyed**.<sup>[89]</sup> He stressed that *IPRA* introduced a **new package of ownership rights distinct from those under civil law**. **Subject to this limitation**, IP title entitles the **right to choose the uses** to which the land is put **and to enjoy its economic fruits**.<sup>[90]</sup>

This **IP concept of ownership** is based on **customary law** and traced its origin to time immemorial "**native title**." Section 5 of *IPRA* strengthened these customary practices by emphasizing that ancestral lands and domains are the ICCs' and IPs' "**private but community property which belongs to all generations**." Section 56 of the *IPRA* even recognized the IPs' vested rights based on their existing property regime. With the passage of *IPRA*, formal recognition of the IPs' "**native title**" was attributed to their ancestral lands and domains. A Certificate of Ancestral Domain Title (CADT) may now be issued by the NCIP to ICCs and IPs.

***v. Reconciling IP rights to preserve  
cultural integrity and claim or title to  
ancestral domains and lands with the  
State's jura regalia and police power***

The State's ***jura regalia*** is affirmed in Article XII, Section 2, of the ***Constitution***:

“ 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.

This doctrine is a confirmation of the State's ownership of the lands of the public domain and the patrimony of the nation. By virtue of this doctrine, the State **acquired radical** or **underlying** title to all the lands in the country.<sup>[91]</sup> This title, however, is burdened by the pre-existing legal rights of IPs who had occupied and used the land prior to birth of the State. Hence, the content of the State's underlying title is what is left when IP title is subtracted from it.<sup>[92]</sup> IP title gives the right to exclusive use and occupation of the land for a variety of purposes not confined to traditional or distinctive uses.<sup>[93]</sup> It is a beneficial interest in the land - **the right to use it and profit from its economic development**. But **IP title** is subject to the **communal limitations** as discussed above.<sup>[94]</sup>

**IP rights** to preserve cultural integrity and claim or title to ancestral domains and land are **subject** to the **State's police power**. **Section 77** of PD 705, as amended is an **exercise of police power**, the validity of which is not negated by the fact that the objects thereof are **owned** by those charged with the offense. **Rather**, a police power measure is judged by the traditional **test** (1) "[t]he interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and (2) [t]he means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."<sup>[95]</sup> Police power **trumps** objections on the basis of ownership.

***vi. Iraya-Mangyans' practice of logging a dita tree and building a communal toilet as probably indicative of the IP right to preserve cultural integrity and to claim or title to ancestral domains or lands***

Iraya-Mangyans in general are **settled communities**. But their culture as IPs was **drastically affected** when they were **evicted** from their **ancestral domains** and lands. They became **nomads who had no permanent domains, until they were again re-settled** pursuant to the recognition of their ancestral domains and lands. Thus:

#### “ **Project: Communal Toilets**

The Mangyan people **used to be the dominant dwellers** of the entire island including the lowlands, but ever since **more and more foreign settlers got in and started claiming (if not grabbing)** majority of the land area, **most of the Mangyans were driven** to the remote mountains and marshlands. Aside from **losing their ancestral lands** to the foreign settlers, the **island's natural**

**resources** like the forests and rivers got abused causing the fast deterioration of vegetation and wildlife. These adverse developments throughout the history of the land **have affected the lifestyle** of the natural inhabitants - they **became scavengers** in their own land, they **became nomads** having **no permanent domain**, moving from place to place to survive the day.

Being **nomadic**, their **temporary settlements (haron)** developed in them a **culture of less desirable hygiene**. This common practice in their household have cause epidemic diseases and death. But **this hygiene problem was not limited to** those Mangyan communities who are **still nomadic** because even **those other communities who were blessed to be awarded with protected domains** under the provision of National Council for Indigenous People (NCIP) and the local government were **not able to withdraw themselves from the bad practice**.

[Drops of Faith Christian Missions has] seen the **importance of attending to this perilous issue and so we came up with a project to start building communal toilets in those Mangyan communities** which have secured dwelling permanency in their ancestral land.<sup>[96]</sup>

Taking account of petitioners' distinctive culture as IPs and their displacement from the ancestral domains and land, their **efforts to build communal toilets** came about most likely as part of the practice intended as a means for them to survive as an ICC as result of their displacement and thereafter re-settlement.<sup>[97]</sup>

But this activity did **not** arise solely because of the Mangyans' dispossession of their ancestral domains and lands, though as pointed out above this may have been *probably* the immediate cause for the need to erect communal toilets. It has always been the case that **communal structures including communal toilets have characterized the pre-colonization culture** of the Mangyans.<sup>[98]</sup> The **use of communal toilets** has always been a cultural practice because the water source is communal and it has not been feasible to build a toilet for every household.<sup>[99]</sup>

While the **established cultural practice** which continued from pre-contact and post-contact as a survival means is **communal building**, including those of **communal toilets**, the **logging of the dita tree**, pursuant to the **communal** purpose and the instructions of petitioners' elders and the assurances of a **non-governmental organization** and the **NCIP**, are *more likely than not* **necessarily connected** to this **pre-and post-colonial cultural practices** and an **integral part** of its **continuity to the present**. The reason for this is that since time immemorial, *probably* this **has been how the Mangyans**, including petitioners herein, **have been able to source the materials** for their communal building activities.

To further support their claim that they were **justified** in **logging the dita tree**, petitioners contend as well that even prior to the effectivity of the IPRA on March 30, 1998, the Iraya-Mangyans had **already applied for a Certificate of Ancestral Domain Claim (CABC)**.<sup>[100]</sup> As of March 31, 2018, the NCIP data show that CADC No. R04-CADC-126 dated June 5, 1998 was

issued to the Iraya-Mangyan IP and is **pending conversion to a Certificate of Ancestral Domain Title (CADT)**.<sup>[101]</sup> Although the conversion of the CADC to a CADT is still pending, we take **judicial notice** that the **nearly perfected claim** covers the municipalities of Baco, San Teodoro, and Puerto Galera in Oriental Mindoro with a land area of 33,334 hectares.<sup>[102]</sup>

A CADC is the State's formal recognition of an IP/ICCs' claim to a particular traditional territory which the IP/ICC has **possessed and occupied, communally or individually, in accordance with its customs and traditions** since time immemorial.<sup>[103]</sup> The issuance of a CADC involves a painstaking process of submitting documents and testimonies attesting to the **possession or occupation of the area since time immemorial by such indigenous community** in the concept of owners.<sup>[104]</sup>

The fact that a certificate of title or CADT has yet to be issued to the Iraya-Mangyan IPs does not diminish, much less, negate their **communal ownership** of the land in question. After all, a paper title is just proof of communal ownership not a source of ownership.<sup>[105]</sup> **Lamsis v. Dong-E** <sup>[106]</sup> relevantly states:

“ The application for issuance of a Certificate of Ancestral Land Title pending before the NCIP is akin to a registration proceeding. It also seeks an official recognition of one's claim to a particular land and is also *in rem*. **The titling of ancestral lands is for the purpose of "officially establishing" one's land as an ancestral land. Just like a registration proceeding, the titling of ancestral lands does not vest ownership upon the applicant but only recognizes ownership that has already vested in the applicant by virtue of his and his predecessor-in-interest's possession of the property since time immemorial.**<sup>[107]</sup>

Even without yet a paper title, the State has **already formally recognized** the rights of the Iraya-Mangyan IPs **approaching title** to use and enjoy their ancestral domains through their CADC.

The State has also affirmed that **holders of a CADC have substantial rights** and obligations, to wit:

#### “ A. Rights

1. The right to occupy, cultivate and utilize the land and all natural resources found therein, as well as to reside peacefully within the domain, subject to existing laws, rules and regulations applicable thereto;

2. The right to benefit and to share the profits from the allocation and utilization of natural resources within the domain;
3. The right to regulate in coordination with the Local Government Units concerned, the entry of migrant settlers, non-government organizations and other similar entities into the domain;
4. The right to negotiate the terms and conditions for the exploitation of natural resources in the area for the purpose of ensuring the observance of ecological and environmental protection and conservation measures pursuant to national and customary laws, rules and regulations;
5. The right to actively and collectively participate in the formulation and implementation of government projects within the domain;
6. The right to lay claim on adjacent areas which may, after a more careful and thorough investigation, be proven to be in fact part of the ancestral domain;
7. The right to access and availment of technical, financial and other form of assistance provided for by the Department of Environment and Natural Resources and other government agencies;
8. The right to claim ownership of all improvements made by them at any time within the ancestral domain.

**B. Responsibilities** — The community claimants shall have the responsibility to:

1. Prepare a Management Plan for the domain in consonance with the provisions of Article VI hereof;
2. Establish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain;
3. Restore, preserve and maintain a balanced ecology in the ancestral domain by protecting flora, fauna, watershed areas, and other forest and mineral reserves;
4. Protect and conserve forest trees and other vegetation naturally growing on the land specially along rivers, streams and channels;
5. Preservation of natural features of the domain.<sup>[108]</sup>



A CADC **affirms practically the same rights** as those recognized in the IPRA as incidents of IP title. As **possessors of a CADC**, the Iraya- Mangyan IPs, including herein accused, have been **confirmed to have the right to the exclusive communal use and occupation of the ancestral domain** covering a designated territory within the municipality of San Teodoro for a variety of purposes, including limited non-traditional purposes and **the right to enjoy its economic fruits**.

There are however, as stated, **clear limitations** to these rights - the exclusive uses of the ancestral domain should be **consistent with the communal and ongoing nature of the IPs' attachment to the ancestral domain, the preservation of the IPs' cultural integrity**, and the ability of future generations to benefit from it. These limitations can be inferred from the IPs' responsibility above-mentioned to "**[e]stablish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain** together with IPRA' s indigenous concept of ownership that "**ancestral domains and all resources found therein shall serve as the material bases o f their cultural integrity**" and that ancestral domains are private but community property which belongs to all generations.

While **ownership** itself is **not** a defense to a prosecution for violation of Section 77, PD 705 as amended, as **police power invariably trumps ownership**, the subject **IP rights** are **not** themselves the same as the **ownership proscribed as a defense** in this type of offense. The IP rights are to preserve their cultural integrity, primordially a **social** and **cultural** and also a **collective** right.

On the other hand, the **claim** or **title** to ancestral domains and land is **sui generis ownership** that is curiously **identical** to the **purpose** for which Section 77 as a police power measure was legislated - *the protection and promotion of a healthy and clean ecology and environment through sustainable use of timber and other forest products*.

Thus, the **purpose** for requiring State authority before one may cut and collect timber **is claimed to have been satisfied** by the **sui generis ownership** which IPs possess. This **parallelism** all the more **supports** our conclusion debunking on **reasonable doubt** the claim that petitioners **intended** and **voluntarily** cut and collected the dita tree **without lawful authority**. Justice Caguioa expresses the same view which we quote:

“ .... the **self-limiting and tight window within which the indigenous peoples may cut trees** from their own ancestral domain without prior permission is" **narrow enough as to sidestep any need to reconcile rights granted by IPRA vis-a-vis forestry regulations**. This supports the **primary aspiration that animates the IPRA, that is to restore ICCs/IPs to their land and affirm their right to cultural integrity and customary ways of life, with socio-cultural and legal space** to unfold as they have done since time immemorial....



I submit that perhaps, if not with this case, a **tightrope** must eventually be walked with respect to the **issues of environmental sustainability and indigenous peoples' rights, without having to weaken one to enable the other.**

For as affirmed by the IPRA, the **cultural identity of the indigenous peoples has long been inseparable from the environment** that surrounds it. There is, therefore, **no knowable benefit in an indigenous custom or cultural belief that truthfully permits plunder of the environment** that they hold synonymous with their collective identity. **No legally sound argument may be built to support the premise that we ought not affirm the freedom of these indigenous peoples because they might exercise such freedom to bulldoze their own rights.**

That the experience on the ground shows abuses from unscrupulous non-members of ICCs/IPs of ancestral domains does not merit that the very same indigenous communities that have been taken advantage of be made to pay the highest cost of relinquishing what little control that was restored to them by law.

Indeed, there is reasonable doubt as to the existence of petitioners' IP right to log the *dita* tree for the construction of a communal toilet for the Iraya- Mangyan ICC. It is engendered by the **more expansive definition of authority under the law**, the bundle of **petitioners' IP rights both under the Constitution and IPRA**, and a host of others like the ones mentioned by Justice Leonen in his *Opinion*, the sundry **administrative regulations** which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' ***sui generis*** ownership of ancestral domains and lands, the **international covenants** like the *United Nations Declaration on the Rights of Indigenous Peoples*, of which our country is a signatory, and **Philippine and international jurisprudence** which identifies the forms and contents of IP rights. In addition, we have the **ever growing respect, recognition, protection, and preservation accorded by the State to the IPs, including their rights to cultural heritage and ancestral domains and lands.**

This finding of reasonable doubt **absolves not only petitioners but also accused Demetrio Masanglay y Aceveda** of criminal liability for the offense charged. Section 11(a), Rule 122 of the Rules of Court ordains:

“ **Section 11.** *Effect of appeal by any of several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

Considering the afore-cited rule, a favorable judgment - as here - shall benefit accused Demetrio who did not appeal. For as stated, an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties.<sup>[109]</sup> Thus, although it is only

petitioners who persisted with the present appeal, the Court may still pass upon the issue of whether their co-accused Demetrio should also be exonerated, especially since the evidence and arguments against and the conviction of petitioners, on the one hand, and accused Demetrio, on the other, are inextricably linked.<sup>[110]</sup>

So must it be.

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