

i. Constitutional basis of IP rights

Ha Data Tawahig v. Lapinid^[70] explains the expansive breadth of the legal recognition of IP rights by our **Constitution**:

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In turn, the Indigenous Peoples' Rights Act's provisions on self- governance and empowerment, along with those on the right to ancestral domains, social justice and human rights, and cultural integrity, collectively reflect and bring to fruition the 1987 Constitution's aims of preservation.

The 1987 Constitution devotes six (6) provisions "which insure the right of tribal Filipinos to preserve their way of life":

ARTICLE II
Declaration of Principles and State Policies

SECTION 22. The State **recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.**

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ARTICLE VI
The Legislative Department

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SECTION 5.

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(2) The **party-list representatives** shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, **indigenous cultural communities**, women, youth, and such other sectors as may be provided by law, except the religious sector.

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ARTICLE XII
National Economy and Patrimony

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SECTION 5. The State, **subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.**

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

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ARTICLE XIII
Social Justice and Human Rights

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SECTION 6. The State **shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources**, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and **the rights of indigenous communities to their ancestral lands.**

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

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ARTICLE XIV
Education, Science and- Technology, Arts, Culture, and Sports Education

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SECTION 17. The State shall **recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation** of national plans and policies.

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ARTICLE XVI
General Provisions

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SECTION 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

The **Indigenous Peoples' Rights Act echoes the constitutional impetus for preservation.** Its declaration of state policies reads:

SECTION 2. Declaration of State Policies. — The State shall **recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:**

- a) The State shall **recognize and promote the rights of ICCs/IPs within the framework of national unity and development;**
- b) The State shall **protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being** and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall **recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;**
- d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;
- e) The State shall **take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity,** and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and

regulations grant to other members of the population; and

f) The State **recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs**, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall **institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.**

The **1987 Constitution's attitude toward indigenous peoples, with its emphasis on preservation, is a marked departure from** regimes under the 1935 and 1973 constitutions, which were typified by integration. Integration, however, was still **"like the colonial policy of assimilation understood in the context of a guardian-ward relationship."** Like **assimilation**, it was **eager to have indigenous peoples attune themselves to the mainstream. This eagerness inevitably tended to measures that eroded indigenous peoples' identities.**

Spanish and American colonial rule was characterized by the "need to impart civilization[.]" In *People v. Cayat*:

As early as 1551, the Spanish Government had assumed an unvarying solicitous attitude towards these inhabitants, and in the different laws of the Indies, their concentration in so-called "reducciones" (communities) had been persistently attempted with the end in view of according them the "spiritual and temporal benefits" of civilized life. Throughout the Spanish regime, it had been regarded by the Spanish Government as a sacred "duty to conscience and humanity" to civilize these less fortunate people living "in the obscurity of ignorance" and to accord them the "moral and material advantages" of community life and the "protection and vigilance afforded them by the same laws." (Decree of the Governor-General of the Philippines, Jan. 14, 1887.) This policy had not been deflected from during the American period. President McKinley in his instructions to the Philippine Commission of April 7, 1900, said:

In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government, and under which many of those tribes are now living in peace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal government should, however, be subjected to wise and firm regulation;

and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.

The 1935 Constitution was silent on indigenous peoples. However, it was under the 1935 Constitution that Republic Act No. 1888, creating the Commission on National Integration, was passed. Its title and declaration of policy reveal a predisposed view of "Non-Christian Filipinos" or "National Cultural Minorities" **as uncultivated, and whose advancement depended on the extent to which they were integrated to the mainstream:**

REPUBLIC ACT No. 1888

AN ACT TO EFFECTUATE IN A MORE RAPID AND COMPLETE MANNER THE ECONOMIC, SOCIAL, MORAL AND POLITICAL AND ADVANCEMENT OF THE NON-CHRISTIAN FILIPINOS OR NATIONAL CULTURAL MINORITIES AND TO RENDER REAL, COMPLETE AND PERMANENT THE INTEGRATION OF ALL SAID NATIONAL CULTURAL MINORITIES INTO THE BODY POLITIC, CREATING THE COMMISSION ON NATIONAL INTEGRATION CHARGED WITH SAID FUNCTIONS

SECTION 1. It is hereby declared to be the policy of Congress to foster, accelerate and accomplish by all adequate means and in a systematic, rapid and complete manner the moral, material, economic, social and political advancement of the Non-Christian Filipinos, hereinafter called National Cultural Minorities, and to render real, complete and permanent the integration of all the said National Cultural Minorities into the body politic.

The 1973 Constitution devoted one (1) provision to "national cultural minorities." Its Article XV, Section 11 read:

SECTION 11. The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of State policies.

Section 11 began to deviate from the rigid view that it is indigenous people who must reconcile themselves with the mainstream. It expressly recognized that national cultural minorities were typified by their "customs, traditions, beliefs, and interests[.]" More important, unlike prior legal formulations, it committed to national cultural minorities the "consideration of their] customs, traditions, beliefs, and interests ... in the formulation and implementation of State policies."

Under the 1973 Constitution, former President Ferdinand E. Marcos enacted Presidential Decree No. 1414, creating the Office of the Presidential Assistant on National Minorities. With **its policy of "integrating] into the mainstream . . . groups who seek full integration into the larger community,** and at the same time protecting] the rights of those who wish to preserve their original

lifeways beside that larger community[.]" Presidential Decree No. 1414 **maintained the drive for integration, but conceded that indigenous peoples may want preservation rather than admission.**

The 1987 Constitution reorients the State toward enabling indigenous peoples to maintain their identity. It declines articulating policies of integration and assimilation and transcends the 1973 Constitution's undertaking to "consider." Instead, it commits to not only recognize, but also promote, "the rights of indigenous cultural communities." It expressly aims to "preserve and develop their cultures, traditions, and institutions. It elevates to the level of constitutional text terms such as "ancestral lands" and "customary laws." Because the Constitution is the "fundamental and organic law of the land," these terms' inclusion in the Constitution renders them integral to the Republic's being. Through the same inclusion, the State manifestly assents to the distinctiveness of indigenous peoples, and undertakes obligations concomitant to such assent.

With the 1987 Constitution in effect, **the Indigenous Peoples' Rights Act was adopted precisely recognizing that indigenous peoples have been "resistan[t] to political, social[,] and cultural inroads of colonization, non-indigenous religions and cultures, [and] became historically differentiated from the majority of Filipinos."**

It was never **the Indigenous Peoples' Rights Act's** intent to facilitate such miscarriage of justice, Its view of self-governance and empowerment is not myopic, but is **one that balances. Preservation is pursued in the context of national unity and is impelled by harmony with the national legal system.** Customary laws cannot work to undermine penal statutes designed to address offenses that are an affront to sovereignty.