

V

There are at least six provisions in the 1987 Constitution which protect the rights of indigenous peoples to their customs, heritage, and traditions:^[148] (1) Article 2, Section 22;^[149] (2) Article VI, Section 5(2);^[150] (3) Article XII, Section 5;^[151] (4) Article XIII, Section 6;^[152] (5) Article XIV, Section 17;^[153] and (6) Article XVI, Section 12.^[154]

The 1987 Constitution has made a noticeable shift from its predecessors. Unlike the 1935 and the 1973 Constitutions, the present Constitution recognizes and expressly guarantees the indigenous peoples' rights to their ancestral lands and ancestral domain. Through these constitutional provisions "the State has effectively upheld their right to live in a culture distinctly their own."^[155]

V(A)

Enacted in 1997, Republic Act No. 8371 or the IPRA seeks to address the "centuries-old neglect of the Philippine indigenous peoples."^[156] It is considered as "the principal piece of legislation that would govern with respect to most of the demands of indigenous peoples through their various organizations."^[157]

IPRA implements Article II, Section 22 and Article XII, Section 5 of the 1987 Constitution in four (4) ways:

“

(a) Firstly, enumerating the civil and political rights of all members of indigenous cultural communities or indigenous peoples, regardless of their relation to ancestral lands or domains;

(b) Secondly, enumerating the social and cultural rights of all members of indigenous cultural communities or indigenous peoples;

(c) Thirdly, recognizing a general concept of indigenous property right and granting title thereto; and

(d) Finally, creating a National Commission on Indigenous Peoples (NCIP) to act as a mechanism to coordinate implementation of the law as well as a final authority that has jurisdiction to issue Certificates of Ancestral Domain/LandTitles."^[158]

Section 21^[159] of IPRA provides that ICC/IPs shall be accorded rights, protections, and privileges enjoyed by the rest of the citizenry with due regard to their distinct characteristics and identity.^[160]

As a result, classification of ICC/IPs by reason of ethnicity shall be deemed impermissible, unless it is made "in due recognition of the characteristics and identity." Classification may be allowed only when its purpose is to provide affirmative action in favor of the ICC/IPs.^[161]

V(B)

Another salient principle introduced by IPRA is the ICC/IPs' right to claim ownership over their land as well as the resources found there.

To recall, the ICC/IPs' rights to their ancestral domains and ancestral lands have been recognized as early as *Cariño*. The doctrine introduced in that case, had the effect of extending to any person who has occupied a parcel of land since time immemorial—with or without documentary title, the right to enjoy the protection extended to private property rights since the land is "presumed to have been held in the same way... and never to have been public land."^[162]

Cariño's implication is to shift to the State the burden of proving that a parcel of land or territory falls within the public domain, when the same had been held since time immemorial by the undocumented possessor.^[163]

The doctrine espoused in *Cariño* has not yet been overturned and remains a valid basis of the ICC/IPs' claim of ownership.^[164]

VI

Two (2) additional modes of acquiring ownership were introduced when IPRA was enacted. ICC/IPs may now apply for a CADT or Certificate of Ancestral Land Title for their ancestral domain or ancestral land, respectively.^[165]

“

a) *Ancestral Domains*,— Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting

grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) *Ancestral Lands* — Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots[.]”^[166]

The new modes of acquiring ownership introduced by IPRA constitute different kinds of ownership which should not be confused with the concept of ownership under the New Civil Code or the official national legal system.^[167] The concept of ownership under the New Civil Code is explained as follows:

“ Ownership under the New Civil Code is defined under Articles 427 and 428. It is understood as either: "... the independent and general power of a person over a thing for purposes recognized by law and within limits established thereby," or "a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another." Moreover, ownership is said to have the attributes of *jus utendi, fruendi, abutendi, disponendi et vindicandi*. One therefore is said to own a piece of land when s/he exercises, to the exclusion of all others, the rights to use, enjoy the fruits and alienate or dispose of it in any manner not prohibited by law.^[168]

On the other hand, IPRA defines indigenous concept of ownership over ancestral domains in the following manner:

“ SECTION 5. Indigenous Concept of Ownership. - Indigenous concept of ownership sustains the view that ancestral and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.^[169]

The concept of ownership introduced by IPRA is distinct in the sense that, unlike the Civil Code which puts emphasis on individual and corporate holders, IPRA stresses the private but communal nature of ancestral domains. Furthermore, IPRA recognizes that ICC/IPs have a claim of ownership, not only upon the ancestral domain, but also on the resources found in them. It acknowledges that the ancestral domain and the resources located therein constitute as the ICC/IPs basis for their cultural integrity.^[170]

The indigenous peoples' struggle for their rights have long been enduring. Their struggle for the recognition of their rights to land and self-determination is rooted in their effort for cultural and human survival.^[171]

We should honor the struggle of our people. This decision is the least we can do to correct a historical injustice.

ACCORDINGLY, I emphatically join the *ponente* and vote that the Petition be **GRANTED**.

^[1] See Bantayog ng mga Bayani, DULAG, Macli-ing, October 15, 2015, < <http://www.bantayog.org/dulag-macli-ing/>> (last accessed on January 5, 2021). See also *Martial Law Museum, The Heroes Who Fought Martial Law: Macli-ing Dulag*, < <https://martiallawmuseum.ph/magaral/martial-law-heroes-macli-ing-dulag/>> (last accessed on January 5, 2021).

^[2] *Ponencia*, p. 9.

^[3] *Id.* at 3-4.

^[4] *Id.* at 9.

^[5] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

^[6] *Id.*

^[7] *People v. Quintos*, 746 Phil. 809, 820 (2014) [Per J. Leonen, Second Division]

^[8] 269 Phil. 225 (1990) [Per J. Bidin, Third Division]

^[9] *Id.* at 232.

^[10] *Pit-og v. People*, 268 Phil. 413, 420 (1990) [Per C.J. Fernan, Third Division].

^[11] 807 Phil. 102 (2017) [Per J. Leonen, Second Division].

[12] *Id.* at 117-118.

[13] 268 Phil. 413 (1990) [Per C.J. Fernan, Third Division].

[14] *Id.* at 422.

[15] *Id.* at 422-423.

[16] *Ponencia*, p. 3.

[17] *Rollo*, p. 18, Petition citing TSN dated May 4, 2020.

[18] *Id.* at 18-19.

[19] *Id.* at 18.

[20] *Id.* at 85-86.

[21] *Rollo*, pp. 162-163. Reply.

[22] *Ponencia*, p. 40 citing < <https://www.doe.gov.ph/sites/default/files/pdf/eicc/cadt-region04.pdf> >.

[23] 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].

[24] *Id.* at 325.

[25] See J. Perlas-Bernabe Separate Concurring Opinion, pp. 4-7.

[26] Pres. Decree No. 705 (1975), sec. 2(d).

[27] See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> > [Per J. Leonen, Third Division].

[28] *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> > [Per J. Leonen, Third Division].

[29] CONST, art. XII, sec. 5.

[30] See Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 phil. peace & hum. rts. rev. 159, 161 (1998).

[31] See C.J. Peralta Separate Opinion, pp. 16-23.

[32] DENR-NCIP JAO NO. 2008-01, sec. 10 (10.1).

[33] *People v. Asis*, 439 Phil. 707, 728 (2002) [Per J. Panganiban, En Banc].

[34] *People v. Velasco*, G.R. No. 231787, August 19, 2019, <
<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65645>> [Per J. Caguioa, Second Division].

[35] *Ponencia*, p. 38.

[36] *Id.* at 41.

[37] Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains*, 47 ATENEO L. J. 624, 626 (2002).

[38] *Ponencia*, p. 9.

[39] Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains*, 47 ATENEO L. J. 624, 627 (2002).

[40] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose land, Which Lands*, 42 ATENEO L. J. 159, 203 (1997). Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains* 41 ATENEO L. J. 624, 632-633 (2002).

[41] Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains* 47 ATENEO L. J. 624, 632—633 (2002).

[42] *Id.* at 633-634.

[43] *Id.* at 634.

[44] *Id.* at 629.

[45] *Id.* at 635.

[46] *Id.*

[47] Republic Act No. 8371 (1997), sec. 2 provides:

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.

[48] Republic Act No. 8371 (1997), sec. 29.

SECTION 29. Protection of Indigenous Culture, Traditions and Institutions. — The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

[49] See June Prill-Brett, *Indigenous Land Rights and Legal Pluralism among Philippine Highlanders*, 28 Law and Society in Southeast Asia 687, 691-692 (1994).

[50] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272(1982).

[51] *Id.*

[52] Marvic M.V.F Leonen, *Law at Its Margins: Questions of Identity, Rights of Indigenous Peoples, Ancestral Domains and the Diffusion of Law*, 83 PHIL. L. J. 787, 807 (2009).

[53] *Id.*

[54] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose land, Which Lands*, 42 ATENEO L. J. 159, 202 (1997).

[55] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

[56] Owen James Lynch, Jr., *The Philippine Indigenous Law Collection: An Introduction and*

Preliminary Bibliography, 58 PHIL. L. J. 457, 459 (1983).

[57] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

[58] Owen James Lynch, Jr., *The Philippine Indigenous Law Collection: An Introduction and Preliminary Bibliography*, 58 Phil. L.J. 457, 459 (1983).

[59] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 Phil. L.J. 268, 272-273 (1982).

[60] *Id.*

[61] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 953-954 (2000) [Per Curiam, En Banc].

[62] *Id.* at 954.

[63] *Id.*

[64] *Id.*

[65] Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 286 (1987).

[66] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 934 (2000) [Per Curiam, En Banc].

[67] Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 phil. L. J. 279, 286 (1987).

[68] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 932, 934-935 (2000) [Per Curiam, En Banc].

[69] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 274 (1982).

[70] *Id.* at 274—275.

[71] *Id.* at 275.

[72] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

[73] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982). See also John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

[74] *Id.*

[75] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L. J. 82, 107 (1988).

[76] *Id.* at 108.

[77] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982).

[78] As cited in John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

[79] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L.J. 82, 108 (1988).

[80] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

[81] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L.J. 82, 109 (1988).

[82] *Id.*

[83] Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 294 (1987) citing g. dewey, autobiography of george dewey, admiral of the navy, 222 (1913).

[84] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982). See also Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws (1900-1913)*, 63 PHIL. L. J. 249 (1988).

[85] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 250 (1988).

[86] *Id.*

[87] *Id.* at 250-251.

[88] *Id.* at 251.

[89] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 250 (1988).

[90] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 276 (1982).

[91] Philippine Bill of July 1, 1902, sec. 13 provides:

SECTION 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.

[92] Philippine Bill of July 1, 1902, sec. 14 provides:

SECTION 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.

[93] Philippine Bill of July 1, 1902, sec. 16 provides:

SECTION 16. That in granting or selling any part of the public domain under the provisions of the last preceding section, preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said Government to any other person without the consent thereto of said prior occupant or settler first had and obtained: Provided, That the prior right hereby secured to an occupant of land, who can show no other proof of title than possession, shall not apply to more than sixteen hectares in any one tract.

[94] Owen James Jr. Lynch, *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 276 (1982).

[95] Act No. 496, sec. 2 provides:

SECTION 2. A court is hereby established to be called the "Court of Land Registration," which shall have the exclusive jurisdiction of all applications for the registration under this Act of title to land or buildings or an interest therein within the Philippine Islands, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this Act, subject, however, to the right of appeal, as hereinafter provided. The proceedings upon such applications shall be proceedings in rem against the land and the buildings and improvements thereon, and the decrees shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto.

[96] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268,281 (1982).

[97] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 281 (1988).

[98] *Id.* at 282.

[99] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 941 (2000) [Per Curiam, En Banc].

[100] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 282 (1988).

[101] Republic Act No. 2874, sec. 128 provides:

Section 128. Act Numbered Nine hundred and twenty-six known as the "Public Land Act," and all acts and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed.

[102] See J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 940 (2000) [Per Curiam, En Banc],

[103] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 272 (1988).

[104] *Id.*

[105] *Id.* at 273.

[106] *Id.* at 274.

[107] *Id.* at 276.

[108] *Id.* at 277.

[109] *Id.* at 278.

[110] *Id.*

[111] *Id.*

[112] Com. Act No. 141, sec. 11.

[113] 400 Phil. 904, 941 (2000) [Per Curiam, En Banc].

[114] *Id.*

[115] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 290 (1982).

[116] *Republic v. Court of Appeals*, 278 Phil. 1, 15 (1991) [Per J. Feliciano, Third Division],

[117] *Id.*

[118] Pres. Decree No. 1073, sec. 4 provides:

SECTION 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.

[119] official Gazette, *The Commonwealth of the Philippines*, available at < <https://www.officialgazette.gov.ph/the-commonwealth-of-the-philippines/> > (last accessed on January 5, 2020).

[120] See J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 942 (2000)[Per Curiam, En Banc].

[121] *Id.*

[122] J. Caguioa, Separate Opinion, pp. 5-6.

[123] *Id.* at 6-8.

[124] *Id.* at 8-9.

[125] *Id.* at 13-14.

[126] See J. Caguioa, Separate Opinion, p. 16 *citing* J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904 (2000) [Per Curiam, En Banc].

[127] J. Perlas-Bernabe, Separate Opinion, pp. 3-1.

[128] J. Brion, Separate Opinion in *La Tondena, Inc. v. Republic*, 765 Phil. 795, 823 (2015) [Per J. Leonen, Second Division].

[129] J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 111 Phil. 141, 203-209 (2013) [Per J. Bersamin, En Banc].

[130] J. Leonen, Separate Opinion in *Republic v. Tan*, 780 Phil. 764, 776-778 (2016) [Per J. Brion, Second Division].

[131] J. Leonen, Separate Opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of*

Environment and Natural Resources, G.R. Nos. 202897, 206823 & 207969, August 6, 2019 < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65416>> [Per J. Hernando, En Banc].

[132] J. Leonen, Separate Opinion in *Republic v. Tan*, 780 Phil. 764, 776 (2016) [Per J. Brion, Second Division].

[133] *Cariño v. Insular Government*, 212 U.S. 449, 456 (1909).

[134] J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 208-209 (2013) [Per J. Bersamin, En Banc].

[135] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 276 (1982).

[136] *Cariño v. Insular Government*, 212 U.S. 449, 456 (1909).

[137] *Cariño v. Insular Government*, 7 Phil. 132 (1906) [Per J. Willard, En Banc].

[138] *Cariño v. Insular Government*, 212 U.S. 449, 458 (1909).

[139] *Id.* at 458-460.

[140] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 278 (1982).

[141] *Id.* at 279.

[142] 215 U.S. 16 (1909). See also Dominique Gallego, *Indigenous Peoples: Their Right to Compensation Sui Generis for Ancestral Territories Taken*, 43 ATENEO L. J. 43, 55 (1998).

[143] *Fianza v. Reavis*, 7 Phil. 610, 613-614 (1907) [Per J. Willard, En Banc].

[144] *Id.* at 614.

[145] *Id.* at 615.

[146] 215 U.S. 16 (1909).

[147] Dominique Gallego, *Indigenous Peoples: Their Right to Compensation Sui Generis for Ancestral Territories Taken*, 43 ATENEO L. J. 43, 55 (1998).

[148] See J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 932-1016 (2000) [Per Curiam, En Banc].

[149] CONST., art. II, sec. 22 provides:

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

[150] CONST., art. VI, sec. 5(2) provides:

(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.

[151] CONST., article XII, sec. 5 provides:

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.

[152] CONST., art. XIII, sec. 6 provides:

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.

[153] CONST., art. XIV, sec. 17 provides:

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.

[154] CONST., art. XVI, sec. 12 provides:

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.

[155] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 960 (2000) [Per Curiam, En Banc].

[156] *Id.* at 963.

[157] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 160 (1998).

[158] Republic Act No. 8371 (1997), sec. 21.

SECTION 21. Equal Protection and Non-discrimination of ICCs/IPs. — Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

[160] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 161 (1998).

[161] *Id.* at 162.

[162] *Id.* at 170.

[163] *Id.*

[164] *Id.* at 171.

[165] *Id.* at 176-177.

[166] REP. ACT No. 8371, sec. 3 (a) and (b).

[167] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 178 (1998).

[168] *Id.* at 178.

[169] Republic Act. 8371 (1997), sec. 5.

[170] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 179 (1998).

[¹⁷¹] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition whose; land, which lands*, 42 ATENEO L. J. 159, 166 (1997).

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