experience of countries similarly situated. From these lessons, the Philippines could gain both a clearer understanding of how mistakes were earlier committed and how they could be avoided, as well as a higher proficiency in reading and anticipating the trends that shape international affairs. Indeed, in a world that is perceptively getting smaller each day, it would unquestionably profit the Philippines to be a better student of international law and world affairs. An even greater awareness of global conditions would lead to the making of more enlightened policies and better crafted strategies which would ultimately inure to the country's benefit. Just as strong cases may be lost by the prosecution's mishandling, the Philippines may have been a victim of some of its own misguided policies. Perhaps the time has come for us to stop blaming others for our country's ills and to start helping ourselves to find better solutions through our own efforts.

Ancestral Domain Rights: Issues, Responses, and Recommendations

CERILO RICO S. ABELARDO

The right of tribal Filipinos to their ancestral domains and ancestral lands has been recognized by the Supreme Court since 1909 in Insular v. Insular Government, when, speaking through Justice Holmes, it ruled that ancestral lands never formed part of the public domain.

Based on the Regalian Doctrine, however, the State considers itself the sole source of authority in the classification and disposition of public lands. Now entrenched in the Constitution, the Regalian Doctrine has been invoked by the government, time and again, to justify the taking of ancestral lands for development purposes.

The present national law on land ownership, which prohibits the alienation and occupation of forest lands, is founded on the Regalian Doctrine. Under the present law, tribal Filipinos may not acquire any rights over their ancestral lands, since these lands are mostly forest lands. The existence of tribal Filipinos, however, is profoundly integrated with the land, which constitutes their primary economic and cultural base. Thus, the loss of ancestral lands means the loss of an entire cultural heritage.

Fortunately, the present Constitution recognizes the rights of tribal Filipinos to their ancestral domains. This paper proposes that this innovation in the Constitution carved out an exception to the coverage of the Regalian Doctrine. The unequivocal recognition by the Constitution of the rights of tribal Filipinos to their ancestral domains can only have one reasonable implication: ancestral lands do not form part of the lands of the public domain.

Introduction

A. Short Profile of Tribal Filipinos

Tribal Filipinos have been known by various names by different governments in the country for over 450 years. The Spanish colonial government called them “infieles” and “heretics.” The North American colonial administration identified them as savages, illiterates, and non-Christians. The present Philippine Republic refers to them as national cultural minorities, national

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eventually driven many tribal Filipinos to work as underpaid miners, plantation workers, and logging concession laborers of giant corporations which have taken over their ancestral lands. Some of them have even taken to the urban areas to beg for a living. This marginalization of the tribal Filipinos is easily traced to the gradual loss of their economic base, their ancestral lands and domains, to those who can invoke the national laws on land ownership and utilization.

B. Purpose and Relevance of the Study

The tribal Filipinos are citizens with constitutionally-protected rights. Although they constitute the so-called cultural minorities, they have every right to ask for what is due them under the fundamental law of the nation. The only thing that they ask for is to be allowed to live their own distinct cultural heritages in accordance with their customs and traditions. It just so happens that their way of life is profoundly integrated with their ancestral lands and domains, which comprise their economic and cultural base. The loss of these ancestral lands and ancestral domains means the loss of an entire cultural heritage. For the tribal Filipinos, the land is their life.

The Philippine mainstream society, however, has failed to grasp the essence of the indigenous way of life. This is not surprising, for on one hand, the mainstream society functions under a Western-oriented culture that regards land as a mere commodity that can be traded or a natural resource that can be exploited for monetary gain. The indigenous way of life, on the other hand, is founded upon ancient customs and traditions which are intimately tied to the direct cultivation and utilization of land resources. Since it is the mainstream society which wields political power, the laws that it formulated on the use and allocation of scarce resources like land reflected its own concept of the land use and framework called the Regalian doctrine. These laws predictably worked against the way of life of the tribal Filipinos by failing to appreciate their special relationship with their ancestral lands.

This study will attempt to dissect the highly complicated issues regarding the problem on Ancestral Domain rights, with the end view of justifying the customary tenurial rights of tribal Filipinos to their ancestral lands. It is unavoidable that this legal study delve on the socio-historical dimensions of the problem to situate the issues in a fair perspective. Although the approach is to isolate key issues affecting the problem, it must be borne in mind that the issues involved are tightly intertwined such that one part cannot be properly understood without relating it to the whole.

The problem on Ancestral Domain rights is a national problem that requires national participation for its resolution. It is a problem that can no longer be ignored by the nation since conflicts, often violent, on the use of scarce natural resources have escalated due to the inequitable allocation policies of the government. If the State through the government is indeed serious about forging national unity for progress and development, then it must address all major components of the peace process that it currently negotiates with partisan sectors. The problem on ancestral domain rights is one such major component, being impressed with real and immediate consequences on the lives of at least ten percent of the country’s population.

C. Scope and Limitations of the Study

Former Congressman William Claver, a well-respected advocate of ancestral domain rights from the Province of Ifugao, has always maintained that ancestral domain rights and political autonomy or self-rule are inseparable. The reason is that all aspects in the life of tribal Communities form one integrated lifestyle founded on the breadth, height, width, and depth of the ancestral domain. Thus, it is inconceivable to recognize the right of tribal Filipinos to their ancestral domains without recognizing as well their right to self-rule or political autonomy. This paper, however, will only delve on the tenurial rights of tribal Filipinos to their ancestral lands. The author admits that he does not have the competence to integrate the issue on political autonomy into the discussion on tenurial rights. The author, however, believes that the unequivocal recognition by the government of the rights of tribal Filipinos will be the first crucial step towards the peaceful settlement of the ancestral domain problem.

Likewise, the struggle of the Muslim communities or the Bangsa Moro to gain political autonomy will not at all be discussed in this paper. The Bangsa Moro issue is another component in the national peace process which calls for a separate study. The Bangsa Moro peoples, while considered as indigenous Filipinos, are culturally, politically, and economically distinct from the tribal Filipinos due to the function of Islam, which permeates the life of every Muslim Filipino.

This paper is only about the rights of tribal Filipinos to their ancestral domains.

I. IDENTIFYING THE ISSUES

A. Development Aggression

Mt. Apo, the Philippines’ tallest mountain straddling the provinces of Davao, North Cotabato, and Davao del Sur in Mindanao, is home to about 460,000 lumad peoples. Six lumad tribes, namely, the Manobo, Ubo, Bagobo, Ata, K’lagan, and Tagakaolo, have always considered the mountain as their ancestral territory since time immemorial. These lumad peoples who are
mostly swidden farmers, hunters, and forest products gatherers depend on the resources of the mountain for subsistence. Their swidden farms,\(^\text{11}\) hunting grounds, worship, and burial sites can all be found in the mountain.

Trouble began haunting the tribes when the government through the Philippine National Oil Company (PNOC)\(^\text{12}\) started to bore geothermal wells into Mt. Apo to depths which approximate the height of the mountain itself. Fearing that the government operations may cause serious environmental problems on the Mt. Apo Sandawa, the lumad tribes opposed the government project of tapping geothermal power from the mountain. By dint of state power and executive backing, the energy project pushed through. Undaunted, the lumad elders and chieftains forged a dayandi\(^\text{13}\) and vowed to defend their sacred mountain to the last drop of their blood.

The fate of the Mt. Apo lumads in the wake of government development offensive is an experience common to many tribal Filipinos. From 1974 up to the early 1980s, the Kalingas and the Bontoks in the Cordillera region of Northern Luzon staged concerted and militantly mass actions directed against the Chico Dam project of the National Power Corporation (NPC). Around 100,000 Igorots\(^\text{14}\) were bound to be displaced by the damming project which would inundate much of their ancestral lands.\(^\text{15}\) The situation is reminiscent of the dislocation of hundreds of Ibaloi families upon the construction of the Ambuklao and Binga Dams in the 1950s.\(^\text{16}\) In 1974, at the height of the Chico Dam controversy, a team of government engineers came to a Kalinga illi\(^\text{17}\) to dialogue with the Kalinga chieftains. The visitors who were with heavy military escort taunted the Kalinga representatives and demanded from them paper titles proving ownership to the disputed lands.\(^\text{18}\) A Tinggian chieftain by the name of Machi-ing Dulaq\(^\text{19}\) stepped forward and spoke:

> You ask if we own the land. And mock us. "Where is your paper title?"
> When we query the meaning of your words you answer with taunting arrogance. "Where are the documents to prove your title?" Title. Documents. Proof of ownership. Such arrogance of owning the land. When you shall be owned by li. How can you own that which will outlive you? Only the race owns the land because only the race lives forever.\(^\text{20}\)

As for the Ibaloi families who were forced to leave their fields that formed part of the 355-hectare agricultural land in Tuba, Benguet, their woes have been immortalized by the unfinished mountain-size stone bust of former President Marcos, which now squats on Ibaloi ancestral lands.\(^\text{21}\)

The Manobos of Bukidnon down south in Mindanao also have a sad story to tell in their encounter with the Bukidnon Sugar Industries Company (BUSCO) during the infamous PANAMIN\(^\text{22}\) era. Pursuant to a national policy in mid-1974 to increase sugar production, a new sugar mill was set up in Bukidnon in 1976, by a consortium of government, private, and overseas holding entities. The dark side of the sugar mill project lay in how it was carried out. In 1975, BUSCO tractors bulldozed Manobo lands in Barrio Paitan to clear the area for the mill-site.\(^\text{23}\) Elements of the now defunct Philippine Constabulary (PC) were also there to demolish the huts of the natives. PANAMIN, the government agency then tasked to look after the welfare of the non-Muslim hilltribes did nothing to protect the rights of the displaced natives. It turned out that BUSCO and PANAMIN were all in the same bulldozer, so to speak.

Several other cases may be cited to illustrate how tribal Filipinos are dispossessed of their ancestral lands in the name of national development. There was the National Development Company (NDC), which was authorized by law in 1979 to take around 40,550 hectares of land that later became the

\(^{11}\) Swidden farming is an indigenous method of shifting cultivation locally known as kaingin farming.

\(^{12}\) In 1983, the Forestry Department denied PNOC's application for clearance to explore Mt. Apo National Park for geothermal development purposes. In 1987, the PNOC managed to secure a government clearance and began drilling the mountain. In 1988, the Department of Environment and Natural Resources (DENR) stopped PNOC's operation in the area for being illegal. In 1992, the DENR approved the construction of geothermal plants within the park. See supra note 4, at 40-44.

\(^{13}\) A dayandi is a lumad ritual similar to a blood compact. On April 13, 1989, nine lumad groups consisting of over 1,500 Mt. Apo natives converged at the site of Apo 1-D geothermal well. The leaders slaughtered chicken and wiped their hands with its blood. They then drew blood from their fingertips, mixed the blood with wine and drank from the same mixture to seal the dayandi. See supra note 4, at 46-47.

\(^{14}\) "Igorot" is a generic term referring to a member of any of the Ifugao, Bontok, Kalinga, Kankanae-y, Tayapao, Ibaloi, Tinggian, and Isneg tribes of the Cordillera Region in Northern Luzon. The term was first used by the early Spanish conquistadores to refer to the first mountain people of the north who refused to recognize Spanish sovereignty.

\(^{15}\) UGNAYANG PANG-AGHAM TAO, HUMAN RIGHTS AND ANCESTRAL LANDS: A SOURCE BOOK 42 (1983) [hereinafter cited as SOURCEBOOK,[ citing Cordillera Speech at the 3rd National ECTF Convention in Cubo City, November 1980.]


\(^{17}\) An illi is a Kalinga village.

\(^{18}\) P. Miraflor-Papak, Do Natives Need Title? Reflections on Native Title in Relation to Kalinga, SANDUGO Fourth Quarter 1983, condensed in SOURCEBOOK supra note 15, at 150.

\(^{19}\) Maci-ing Dulaq was the acknowledged leader of the Kalinga and Bontok tribal communities in opposing the Chico River Dam Project. He was murdered in April 1980 at the height of his military operations being conducted in the Cordillera region. The lone suspect for his murder was a certain Lt. Adalen.

\(^{20}\) SOURCEBOOK supra note 15.

\(^{21}\) Id. at 46.

\(^{22}\) PANAMIN stands for Presidential Assistant for National Minorities. In 1967, President Marcos appointed Manuel "Manda" Elizalde, Jr. as Presidential Adviser on National Minorities. Manda was elevated to cabinet rank in 1964. In 1975, Marcos abolished the Commission on National Affairs and replaced it with PANAMIN. The agency became infamous for employing counter-insurgency methods.

\(^{23}\) ICL RESEARCH TEAM, A REPORT ON TRIBAL MINORITIES IN MINDANAO, 41-50.
infamous NDC-Guthrie plantation in Agusan del Sur. A good part of the land taken were occupied by the Aguasan natives. To quell any opposition from those who would be displaced by the project, NDC-Guthrie employed the services of a notorious paramilitary group called “The Lost Command,” which was then terrorizing the island of Mindanao.

Lately, there was also the Laiiban or Kaliwa Dam Project pursued by the administration of former President Aquino through the Metropolitan Manila and Sewerage System (MWSS). The Kaliwa River Basin Project will flood seven barrios of Tanay in the Province of Rizal, affecting some 1,600 families of Dumagats, Remontados, Cordillera indigenous peoples, and some lowlanders.

At this point, a pattern emerges. Whenever and wherever the government pursues development projects involving the so-called lands of the public domain, tribal Filipinos are dispossessed of their ancestral lands. It is not a coincidence that all those dislocated indigenous populations always stake a claim of prior possession and ownership on lands taken by the government. These tribal Filipinos have been working the land since time immemorial. The issue on ancestral domain is painfully and unnecessarily protracted primarily because the government, once it becomes the colonizer, has continually refused to acknowledge that a great portion of the public domain had always been occupied by indigenous communities.

B. Clash of Concepts on Land Ownership

The issue on ancestral domain revolves around land ownership. Land is a primary economic resource. Land is also scarce. This scarcity of land calls for systems or rules on how the resource is exploited and distributed in order to facilitate transactions, and to peacefully settle conflicting interests. These systems or rules are called laws.

Sources:
2. Id. at 13. About 3,000 people would be dispossessed of their lands within the first small area to be developed as plantation.
3. A heavily armed band of some 200 ex-soldiers loose under the command of Colonel Carlos Lademora. It was originally constituted by the government to fight insurgents.
4. TANAY, supra note 4, at 11-24. The Kaliwa Dam Project formed part of the many components of the grandiose “Langgud Slangers” project of the former First Lady Imelda Marcos.
5. Lands of the public domain are government lands which are throwen open to private appropriation and settlement by homestead and other similar general laws. See Montano v. Insular Government, 12 Phil. 235, at 285 (1909).
6. Around 7.5 million Filipinos are found within public lands. Some 4.5 million of these are members of indigenous cultural communities. They are what Lynch, Jr. calls “the invisible peoples.” See, O.J. Lynch, Jr., Native Title, Private Right and Tribal Land Law, 57 Phil. L.J. at 272; O.J. Lynch Jr., Invisible Peoples and a Hidden Agenda: the Origin of Contemporaneous Philippine Land Laws (1909-1913), 63 Phil. L.J. at 255-256.
7. To be discussed in greater detail in Chapter III of this thesis.
elders along bilateral peace pacts or pagta ti pudon. The pagta (provisions) in
the existing pudon (peace pact) define the boundaries of each Kalinga tribe.

Customary laws have governed the Hugaoys, Tirurays, Kalingas, and
other tribal Filipinos well since time immemorial. The validity, therefore,
of customary laws in regulating community life should be considered as a settled
issue. Real controversy begins when customary laws of tribal communities,
in a nation clash with the written laws of the majority population on issues
that matter to both groups, like the age-old problem on the ownership and
exploitation of land.

By historical accident, Philippine society found itself governed by two
sets of laws: the national written law and the customary unwritten tribal law.
The Western-oriented national written law was a by-product of long years
of subjugation of the archipelago by Western colonial powers, namely—Spain
and the United States of America. Majority of the people in the islands succumbed
to the systems imposed by the colonizers, hence the predominance of Western-
oriented laws in Philippine society. Those who resisted colonial influence,
and adhered to indigenous customs and traditions became what are now
called indigenous cultural communities or tribal Filipinos.

The heart of the ancestral domain problem lies in the conflict between
customary law and the national law on the ownership and use of land.

The national law governing lands of the public domain was founded
upon the Western legal fiction called “Regalian Doctrine.” This feudal
theory, also known as juris regalia, was first introduced by the Spaniards into the
country through the Laws of the Indies and the Royal Cedula. Later, it was
adopted by the North American colonizers through the Public Land Acts and the
judiciary in administering the country. Eventually, the doctrine became
entrenched in the Constitution.

An unpublished 1921 decision of the Supreme Court defined the Regalian
Doctrine in this manner:

The regalian theory may be defined as the prerogative of the king, or the
right which the king claims, in the property of private persons. The doctrine
had its origin in the autocratic government of kings, and has been per-
petuated in other kingdoms and other forms of autocratic government
through the same influence. Its origin antedates any organized system of
general taxation by which the people are required to pay all expenses
of the government. It has its origin in the fact that kings were obliged
to personally furnish the sinews of war and funds for the general admin-
istration of the government, in order that they, in times of stress, might
adequately protect their dignity and their realm. The rich minerals of the
realm, being real and tangible treasures, were at once set aside as the
patrimony of the king by virtue of this prerogative.

Spain in its conquests invoked this universal feudal theory and asserted
that all conquered lands are held from the crown. Law 14, Title 12, Book
4 of the Recopilacion del Leages de Indias opens with the following: “We having
acquired full sovereignty over the Indies, and all lands, territories, and possessions
not heretofore ceded away by our royal predecessors, or by us, or in our
name, still pertaining to the royal crown and patrimony xxx.” Thus, the
Regalian Doctrine formed the basis of major Spanish land laws in the Phil-
ippines like the Royal Cedula of October 15, 1754, the Royal Cedula of June
25, 1880, the Spanish Mortgage Law of 1893, and the Maura Law which all
provided for the adjustment, registration, and acquisition of lands by virtue
of government grants.

After Spain ceded the Philippines to the United States in the Treaty of
Paris on December 10, 1898 for a consideration of US$20 million, the North
American colonial government pursued the Spanish policy of requiring settlers
on public lands to obtain deeds from the government. At this point, it was
not clear how the Regalian Doctrine was adopted by the new colonial rulers.
It could be gleaned, however, from the laws passed during the American
colonial period like the Land Registration Act, the Cadastre Act, and the
Public Land Acts that the State, through the government, has solely assumed
the authority to classify and dispose of lands of the public domain. The
government, as authorized by the Philippine Bill of 1902, set up throughout
the islands land registration courts which would adjudicate land claims. It
was the judiciary which nurtured the regalian theory until it took roots in
the national legal system. The Supreme Court finally declared in Lee Hong
Hok v. David that the Constitution has adopted the concept of juris regalia,
the ownership, however, being vested in the State as such rather than its head.

The same court also proclaimed in Republic v. CA that “the State as persona

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39 Id.

40 See articles written by Owen J. Lynch, Jr.: Land Rights, Land Laws, and Land Usurpation: The
Spanish Era (1565-1896), 63 Phil. L.J. 82 (1988); Invisible Peoples and a Hidden Agenda: The
Origin of Contemporary Philippine Land Laws (1900-1913), 63 Phil. L.J. 248 (1988); The Philippine
Colonial Dichotomy: Attraction and Diaspora (1968).

41 Ananal-Seren, supra note 37.

42 The prevailing perspective in Europe during the age of overseas expeditions (14th century)
was the juris regalia. Under Spanish law at that time, there was no provision allowing Spanish
expeditions to claim for the Crown inhabited territories. The Patillas only gave the legal right
over any newly discovered land to whoever inhabited it first. See Owen J. Lynch, Jr., The Legal
Bases of Philippine Colonial Sovereignty, 62 Phil. L.J. 279 (1987); Antoinette G. Royo, Regalian
Doctrine: Whither the Vested Rights?, 1 Phil. Natural Resources Law Journal, December 1988 at
1-8.

43 Lawrence v. Gadon, G.R. No. 10942, cited in A Report on an Integrated Sociologica and Legal
Research, Appendix A, unpublished report by Philippine Association for Intercultural Development,
Inc. (PAFID), November 1988.

44 Valentine v. Muzoano, 3 Phil. 537, at 542 (1904). [English translation supplied by the Court.]

45 Id. at 553.

46 An Act Temporarily to Provide for the Administration of the Civil Government in the Philippine
Islands, and for Other Purposes.

47 SCRA 373, at 377 (1972).

in law is the jurisdictional entity, which is the source of any asserted right to
ownership of land. 54

Elevated into constitutional status, the Regalian Doctrine now projects
its scope in this grand manner:

All lands of the public domain, waters, mineral, 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. 55

Now that the State is constitutionally ordained as the source of all land
grants in the country, it becomes all the more obligated to guarantee the
validity and indefeasibility of the grants it issues. State power becomes illusory
when the State cannot enforce its authority. Hence, the State guaranteed the
validity of its land grants through an effective system of land registration.

During the Spanish regime, there was no effective system of land regis-
tration. Thus, the succeeding colonial rulers, through the Philippine Com-
mission, passed the Land Registration Act of 1903. 56 This land registration law or Act No. 496 brought all lands in the Philippines under the operation
of the Torrens system.

Formulated by Sir Robert Torrens of South Australia, the Torrens system
quiets all claims to a parcel of land by the issuance of the State of an indefeasible
and imprescriptible proof of title called the Torrens Title to successful claim-
ants of the land. With the advent of the age of a modern and effective system
of land registration, 57 concepts of land were radically altered. The system,
with the State guaranteeing indefeasible as stated in the Torrens Title, highly facilitates land negotiations. The effect of this is the transformation
of real estate into an industry. 58 Western-oriented laws have turned land
into a mere commodity which can be traded by the mere exchange of pape-
tities. This concept of land passing hands like goods on sale in the market is
diagonetically opposed to the customary law of tribal Filipinos regarding land.

Customary law on land is founded upon the traditional belief that no
one owns the land except the gods and the spirits, and that those who work

54 Id., citing Republic v. Marcos, 52 SCRA 238 (1973).
55 Philippine Const. art. XII, sec. 2. The 1935 Constitution and the 1973 Constitution also contained
similar provisions.
56 Act No. 496 as originally passed was almost a verbatim copy of the Land Registration Law of Massachussetts. See Hilarion U. Jarencio, Philippine Legal History 36-37.
57 The present system of land registration was embodied in P.D. No. 1529 or The Property Registration Decree of 1978. It amended Act No. 496 to further streamline the registration
proceedings. Presidential Decree No. 892 (1976) had earlier discontinued the use of Spanish
titles as evidence in land registration proceedings. cf. Director of Lands v. Rivas, 141 SCRA
329 (1986).
58 Aranal-Sereno, supra note 37, at 433.

by the Roman Catholic Church, representatives from eleven Mindanao lumad
tribes were asked the question: What is your concept of land, its ownership, and
its use? Their answers have been summarized as follows:

According to the tribal participants, land is a blessing from God and is,
therefore, sacred. It is the source of life of the people, like a mother that
nurture's her child. Consequently... land is life.

Land is also seen as a symbol of identity. It symbolizes their historical identity
because they see it as an ancestral heritage that is to be defended and preserved
for all future generations. It symbolizes their tribal identity because it stands
for their unity, and if the land is lost, the tribe too, shall be lost.

Ownership of the land is seen as vested upon the community as a whole.
The right to ownership is acquired through ancestral occupation and active
production. To them, it is not right for anybody to sell the land because
it does not belong to only one generation, but should be preserved for
all generations.

Customary law has a strong preference for communal ownership, which
could either be ownership by a group of individuals or families who are
related by blood or by marriage, 59 or ownership by residents of the same
locality who may not be related by blood or by marriage. The term "com-

49; B.R. Rodil, Ancestral Domain: A Central Issue in the Lumad Struggle for Self-determination,
MINDANAO FOCUS No. 24.
60 Ponciano L. Benenaga, Indigenous Attitudes Toward Land and Natural Resources of Tribal Filipinos,
61 See June Prill-Brett, Bosok Land Tenure (University of the Philippines Library, mimeographed.)
62 Aranal-Sereno, supra note 37, at 440.
63 Id. at 441. "In the case of swidden farms, the rule is slightly modified. The right to use and

the land are its mere stewards. In a consultation conducted in Mindanao

municipal ownership" is distinct from the civil code concept of co-ownership

and the corporation law's notion of corporate ownership. The system of communal

ownership under customary law draws its meaning from the subsistence and

highly collectivistic mode of economic production. The Kalingas, for in-

stance, who are engaged in team occupation like hunting, foraging for forest

products, and swidden farming, found it natural that forest areas, swidden

farms, 56 orchards, pasture and barit grounds should be communally-owned. 59 For the Kalingas, everybody shares a common right to a common economic base.

Thus, as a rule, rights and obligations to the land are shared in common.

56 See Ponciano L. Benenaga, Indigenous Attitudes Toward Land and Natural Resources of Tribal Filipinos, 31 NATIONAL COUNCIL OF CHURCHES IN THE PHILIPPINES NEWSLETTER, OCT.- DEC. 1991, at
49; B.R. Rodil, Ancestral Domain: A Central Issue in the Lumad Struggle for Self-determination,
MINDANAO FOCUS No. 24.
57 Ponciano L. Benenaga, Indigenous Attitudes Toward Land and Natural Resources of Tribal Filipinos,
58 See June Prill-Brett, Bosok Land Tenure (University of the Philippines Library, mimeographed.)
59 Aranal-Sereno, supra note 37, at 440.
60 Id. at 441. "In the case of swidden farms, the rule is slightly modified. The right to use and
cultivate the land is subject to the prior right of an individual who previously exerted labor
in clearing the area. One who has invested labor has the right to exclude others from using
the swidden farm. While this right is established through prior use, it is maintained through
constant usage."
61 Id. at 440.
62 Id. at 441.
Although highly bent on communal ownership, customary law on land also sanctions individual ownership. "The residential lots and terrace Rice farms are governed by a limited system of individual ownership. It is limited because while the individual owner has the right to use and dispose of the property, he does not possess all the rights of and exclusive and full owner as defined under our Civil Code." Under Kalinga customary law, the alienation of individually-owned land is strongly discouraged except in marriage, succession, and sale, to prevent sudden financial needs due to sickness, death in the family, or loss of crops. Moreover, land to be alienated should first be offered to a clan-member before any village-member can purchase it, and in no case may the land be sold to a non-member of the ill.

In contrast, the national law favors individual ownership. The basic law governing the disposition of public lands itself speaks of individual homes and patent titles and does not mention collective grants. Even co-ownership, although a legitimate collective mode of ownership, is frowned upon by the Civil Code, as shown by its numerous provisions partial to partition of the co-ownership. Likewise, corporate ownership under the general corporation law is heavily regulated to terminate at the happening of certain conditions or after the expiration of a certain period of time. After all, individual ownership is highly compatible with the latest purpose of the national land registration law which is to facilitate the transfer of ownership of land. With these, it becomes easy to understand why the customary law system of communal ownership, while not prohibited under the national law, is not expressly recognized either. As far as the national law is concerned, perpetual tenure to the land belongs to the individual as against the enduring principle in customary law that perpetual tenure to the land usually belongs to its collective occupants.

The national land registration system has been responsible for the disintegration of some communal villages. Ancestral lands often end up being individually titled through fraud or legal circumvention by those familiar with the Torrens system. When the natives who are dispossessed of their communal lands confront the title holder, the latter calls upon the State apparatus for justification. Committed to uphold the Torrens system, the State predictably enforces the national land laws to the detriment of those who have a better right to the land by ancient occupation under customary law.

It may also happen that a member of the tribe may register for himself communal lands like what Mateo Carínho, an Igorot, did in the 1909 case of Carínho v. Insular Government, which involved 146 hectares of prime Ibaloi land. So that he could sell the land to a foreigner, Carínho sought a Torrens title to the land cultivated by his ancestors. The U.S. Supreme Court upheld Carínho's individual native title without, however, deciding on the kind of property tenure he had over the land.

As the individual registration of ancestral lands results into the loss of an entire economic and cultural base of the dispossessed natives, tribal Filipinos cannot be faulted for resisting by all means claims against their lands as if in defense of their very lives.

Unless and until the disjunction between the national law and the customary law on land is bridged, tribal Filipinos who comprise at least ten percent of the nation's population, will remain unjustly threatened with cultural and economic annihilation. Duly noted is the fact that government-sanctioned ancestral landgrabbing has been primarily responsible for ethnic wars in the country. The more alarming dimension to the problem, however, is that the magnitude and effects of ancestral land usurpation are not widely known.

A national problem like the loss of an entire heritage can only be solved

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61 Id. Also see The Civil Code of the Philippines, Republic Act 386, art. 428, par. 1 (1950). "The owner has the right to enjoy and dispose of a thing without other limitations than those established by law."

62 Aranal-Sereno, supra note 37, at 442.

63 Id.

64 Commonwealth Act No. 141 (1936), as amended.

65 E.g., The Corporation Code, art. 494. "No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at anytime the partition of the thing owned in common, so far as his share is concerned. Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid."xrn

66 E.g., The Corporation Code, B.P. Bg., sec. 11 (1980). "A Corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. xxx"

67 Aranal-Sereno, supra note 37, at 432.

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with the Torrens system. When the natives who are dispossessed of their communal lands confront the title holder, the latter calls upon the State apparatus for justification. Committed to uphold the Torrens system, the State predictably enforces the national land laws to the detriment of those who have a better right to the land by ancient occupation under customary law.

It may also happen that a member of the tribe may register for himself communal lands like what Mateo Carínho, an Igorot, did in the 1909 case of Carínho v. Insular Government, which involved 146 hectares of prime Ibaloi land. So that he could sell the land to a foreigner, Carínho sought a Torrens title to the land cultivated by his ancestors. The U.S. Supreme Court upheld Carínho's individual native title without, however, deciding on the kind of property tenure he had over the land.

As the individual registration of ancestral lands results into the loss of an entire economic and cultural base of the dispossessed natives, tribal Filipinos cannot be faulted for resisting by all means claims against their lands as if in defense of their very lives.

Unless and until the disjunction between the national law and the customary law on land is bridged, tribal Filipinos who comprise at least ten percent of the nation's population, will remain unjustly threatened with cultural and economic annihilation. Duly noted is the fact that government-sanctioned ancestral landgrabbing has been primarily responsible for ethnic wars in the country. The more alarming dimension to the problem, however, is that the magnitude and effects of ancestral land usurpation are not widely known.

A national problem like the loss of an entire heritage can only be solved

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* Civil Case No. 23-518 entitled Balaayo Infiel, et. al. v. Pedro Latasun, et. al. lies pending at the RTC of Roxas, Isabela, Branch 23. In this case, a Gu'ang tribe seeks to recover a 35-hectare communal land originally registered with the Union Kalinga de Dagat. Plaintiffs Infiel, et al. allege that the land was fraudulently partitioned and individually titled by the defendants.

* Aranal-Sereno, supra note 37, at 442.

* 41 Phil. 935 (1909).


* An American merchant residing in Manila sold Carínho 100 Mexican dollars worth of ancestral land originally registered under the Insular Act. Carínho, et al. alleged that the land was fraudulently partitioned and individually titled by the defendants.

* Aranal-Sereno, supra note 37, at 442.

* In a paper written by the Cordillera Studies Program, it is pointed out that the Ibaloi, to which ethnolinguistic group Mateo Carínho belonged, had no concept of exclusive or assignable ownership. They did not "own" the land as one owned a pair of shoes. Instead they considered ownership. During the early part of Benguet's history, however, a few balung (rich) mined golden was then exchanged for cattle. This resulted in the establishment of pasture lands. Later, to prevent the spread of rinder pest diseases, cattle owners set up fences. It was only with the erection of fences that new concept of rights to land arose. See M.V.P. Leonen, On Legal Myths and Indigenous Peoples: Reexamining Carínho v. Insular Government, 4 Phil. Natural Resources Law Journal, Aug. 1991, at 23.

nationally. But how can one involve the great majority in tackling the ancestral land problem when it remains enmeshed in the distorted belief that indigenous culture is inferior? But by far, the biggest blow to the integrity of indigenous cultural communities is the failure of the national legal system to recognize traditional tenures to ancestral lands.

C. Classification and Disposition of Public Lands

The course of the ancestral domain controversy is largely determined by the national land classification system due to the limitations imposed by the Constitution on the alienation of lands. Lands of the public domain, for instance, cannot be disposed of unless classified by the State. 74 This precondition to the valid alienation of public lands is "in consonance with the Regalian Doctrine that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the preservation of such patrimony." 75 The Constitution prohibits the alienation of lands of the public domain except those classified as public agricultural lands. 76 No one, not even Congress, can dispose of public lands classified as forest, mineral, or national park.

The power to classify public lands exclusively belongs by tradition to the Executive Department. 77 The authority to determine whether or not lands are reclaimable and disposable is delegated by the President to the Secretary of the Department of Environment and Natural Resources, which supervises and directs the Director of Lands (now the Director of Lands Management Bureau) and the Director of Forestry (now the Director of Forest Management Bureau) in classifying public agricultural lands and forest lands, respectively. 78

The Royal Decree of June 25, 1880 is the first official attempt to classify and dispose of public lands in the country. Article I of the Royal Decree states:

For the purposes of these regulations and in consonance with Law 14, title 12, book 4 of the Reorganization of Lands of the Indies, the following will be regarded as royal lands: all lands whose lawful ownership is not vested in some private person, or what is the same thing, which have never passed

74 Out of the country's total land area of 30 million hectares, 47% or 14.12 million hectares have been classified as alienable and disposible. The remaining 33% or 15.88 million hectares are forest lands. Of these forest lands, only around 5.6% or 881,000 hectares remain unclassified. See Department of Environment and Natural Resources, Forest Management Bureau, 1988, "Philippine Forestry Statistics.

75 Philippine Const. art. XII sec.3. "Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands."


78 The wording of the provision clearly recognized existing private rights to land prior to the establishment of the Spanish colonial regime. The royal decree is consistent with the instructions in the earlier laws of the Indies restoring the rights of Indians to their lands.

During the American colonial period, it was the Philippine Bill of 1902 which empowered the government to classify public lands according to agricultural character and productiveness, and to make rules and regulations for the disposition of public lands other than timber or mineral lands. 79 The said organic act classified public lands into agricultural, mineral, and timber lands. Since only agricultural lands were allowed to be alienated, the primary issue that hounded the courts was the definition of agricultural lands. The landmark case of Mapa v. Insular Government, which was decided under the first Public Land Act, 80 defined agricultural lands as lands acquired from Spain which are neither mineral nor timber lands. The idea would appear to be to determine, by exclusion, if the lands is forestal or mineral in nature and, if not so found, to consider it to be agricultural land. 81 This exclusionary method of defining agricultural land gave rise to the pro-forest presumption rule which means that public lands are presumed to be timber lands until said lands are certified by the Forest Bureau as more valuable for agriculture than for forest uses. The effect of the pro-forest presumption was to disenfranchise tribal Filipinos of their possessory rights to unclassified lands.

Then came Ramos v. Director of Lands, 82 which laid down in 1918 the pro-agricultural presumption. Plaintiff Ramos sought to register a large tract of land he purchased from the Romero spouses who had possessory information title to the land under the Maura Law. The Director of Forestry opposed the application on the ground that a part of the tract of the land in question consisted of forest lands. The trial court held for the Government and excluded the disputed area. On appeal, the Supreme Court in reversing the trial court ruled:

[The presumption should be in lieu of contrary proof that land is agricultural in nature. One very apparent reason is that it is for the good of the Philippine islands to have the large public domain come under private]

79 Velasco v. Moriones, 3 Phil. 577, at 548-549 (1904). (English translation supplied by the Court.)

80 Book 4, Title 12, Law 9, decreed by King Philip II at Del Prado, June 1, 1594: "We order that the parts of lands within Spain be without injury to the Indians and that those which have been granted to their loss and injury, be restored to the lawful owners." (Section 31, National Land Laws Affecting Ancestral Lands, Sourcedoc, supra note 15, at 156).

81 Native Title, supra note 77.

82 10 Phil. 86 (1908).

83 Act No. 926 (1903).

84 Ramos v. Director of Lands, 39 SCR, 175 at 181 (1918) discussing the Mapa decision.

85 39 SCR, 175 (1918).
Thus, the Court in its decisions in succeeding land classification cases would require the government, as represented by the Director of Forestry, to prove that land sought to be registered is forest land. At this point, the pro-agricultural presumption seemed to infuse hope among the Filipinos who claimed the forest land. But such hope was dashed by a gradual policy shift to the pro-forest presumption on the part of the Government. The Forest Bureau later on applied the *Ramos* doctrine in the reverse and began to presume that lands to be classified as agricultural are not forest. The ensuing practice of the Executive Department in treating public lands as forest unless classified as agricultural was believed to be spurred by the tendency within the bureaucracy to expand their scope and authority to the widest possible limits.

The Legislature was also behind the policy shift to the pro-forest presumption. A year after *Ramos* was promulgated, the first Public Land Act was amended to subsume agricultural lands under a new classification called "alienable and disposable."14 Before the new classification, agricultural lands were *ipsos jure* alienable and disposable. Now, a proclamation by the Executive Department that the agricultural land is alienable and disposable is necessary to release the land from any form of public land concession or private ownership.15 The new classification worked more hardships to applicants who were given two obstacles to overcome: first, a certification that the land is more valuable for agricultural purposes by the Bureau of Forestry and a recommendation by such administrative agency to the Chief Executive that it be classified as alienable and disposable; second, a proclamation by any official act by the executive declaring such land open to disposition of concession.16

In the wake of the policy-shift of the government to the pro-forest presumption, the Supreme Court vacillated in succeeding land classification decisions. In some cases the Court would ask the applicants to overcome

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14 Id. at 175.
15 Id. at 186.
16 See *Abras v. Government of Philippine Islands*, 40 Phil. 10 (1919).
17 *N discuss Tlote*, supra note 77, at 183.
18 Id. at 16-17.
19 Id. at 17.
20 Act No. 2874 (1919) amended Act No. 926.
22 Id. at 16-17.
23 Id. at 16.
27 *Commonwealth Act No. 141* (1936), as amended.
28 Id., sec. 6.
29 Id., sec. 7.
30 Id., sec. 48 (b) and (c).
public land laws to gain recognition of their pre-conquest vested rights to much of their lands. How can the Kalingas, for example, ever own their ancestral lands via the public land laws when almost the entire Kalinga-Apayao, their mother province, form part of the Central Cordillera Forest Reserve?\(^\text{192}\)

While it is true that the pro-forest presumption tends to undermine vested rights of tribal Filipinos to ancestral lands, such presumption is reasonably defensible on the basis of national interest on forest resources. The leading forestry case of *Director of Forestry v. Muñoz*\(^\text{193}\) convincingly explains the State's rationale in conserving forest lands:

> The view this Court takes of the cases at bar is but adherence to public policy that should be followed with respect to forest lands. Many have written much, and many more have spoken, and quite often, about the pressing need for forest preservation, conservation, protection, development, and reforestation. Not without justification. For, forests constitute a vital segment of any country's natural resources. It is of common knowledge by now that absence of the necessary green cover on our lands produces a number of adverse or ill effects of serious proportions. Without the trees, watersheds dry up, rivers and lakes which they supply are emptied of their contents. The fish disappear. Denuded areas become dust bowls. As waterfalls cease to function, so wilt hydro-electric plants. With the rains, the fertile top soil is washed away; geological erosion results. With erosion come the dreaded floods that wreak havoc and destruction to property—crops, livestock, houses, and highways—not to mention precious human lives. Indeed, the foregoing observation should be written down in a lumberman's decalogue.

Because of the importance of forests to the nation, the State's police power has been wielded to regulate the use and occupancy of forests and forest reserves.\(^\text{194}\)

> There is nothing objectionable about the pro-forest presumption as having been formulated to conserve forest lands except that such presumption has been arbitrarily applied to the prejudice of millions of tribal Filipinos whose culture and economy are so interwoven with forest lands. The present law governing forest lands\(^\text{195}\) is a showcase of the State's lack of respect for the almost sacrosanct relationship of tribal Filipinos to their ancestral lands.

It was the eighteen percent slope rule which finally sounded the death knell for vested rights to ancestral lands located within forest lands. Section 15 of The Revised Forestry Code, as amended, declares: "No lands of the public domain eighteen percent in slope or over shall be classified as alienable and disposable, nor any forest land fifty percent in slope or over, as grazing land, xxx." How the sweeping cut-off figures were arrived at has been the subject of many polemics. Actually, the eighteen percent slope rule was spawned by a mid-1970s national policy of maintaining at least forty-two percent forest cover for environmental considerations.\(^\text{196}\) The reasoning was that since approximately forty-two percent of the nation's total land mass is above eighteen percent in slope,\(^\text{197}\) then lands above the cut-off slope should be conserved. It was presumed that such lands are forest lands.\(^\text{198}\) The present rigid criteria for determining forest cover represented a dramatic departure from previous standards which properly considered the complex inter-relationship of biophysical factors like slope, soil type, susceptibility to erosion, watershed proximity, and flora and fauna.\(^\text{199}\) The eighteen percent slope rule barred ancient occupants of mountainous areas from owning their lands. Thus, in one legislative sweep, hundreds of thousands of Ifugao, Bontoks, Kankanaeys, Yapiyaos, Kalingas, Isnegs, and other highland peoples of the Gran Cordillera have become virtual squatters in their ancestral lands.

The legally sanctioned national affront to the rights of tribal Filipinos does not end with the eighteen percent slope rule. The law, by prohibiting under pain of fines and imprisonment\(^\text{200}\) swidden farming or *kaingin*, seriously undermines the economic base of tribal Filipinos. *Swidden* farming or *kaingin* is the primary source of livelihood of almost all indigenous peoples of the country. Outlawing this shifting method of cultivation is like taking food away from at least ten percent of the country's population.

> Swidden farming has always been largely misunderstood. "It is often called 'cultivation' to bellicose condemned as primitive, wasteful or illegal with little regard for such pertinent local variables as population density, available land area, climate, or native agricultural knowledge."\(^\text{201}\) But the pervasive misconception that swidden farming is ecologically disastrous has been debunked by respected anthropologists like Conklin who have done extensive studies on Philippine indigenous shifting methods of agriculture.

Conklin observed that the Hanunuo Mangyan practices a well-managed swidden farming which has sustained the tribe for centuries without damaging the ecological balance in the environment. He vividly describes a Mangyan swidden plot which is about three acres in size as a tropical garden with

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\(^{192}\) Arenal-Sereno, supra note 37, at 445.

\(^{193}\) 23 SCCA 1183 (1968).

\(^{194}\) Id. at 1214.

\(^{195}\) The Revised Forestry Code, Presidential Decree No. 705, as amended (1987).

\(^{196}\) Native Title, supra note 77, at 184.

\(^{197}\) The land rises 18 meters in height from sea level for every 100 meters run.

\(^{198}\) Native Title, supra note 77, at 184.

\(^{199}\) Id.

\(^{200}\) P.D. 705 as amended, sec. 69. "...in the case of an offender found guilty of making *kaingin*, the penalty shall be imprisonment for not less than two nor more than four years and fine equal to eight times the regular forest charges due on the forest products destroyed..."

\(^{201}\) Swidden farming is known by such designation as field forest rotation, slash and burn agriculture, shifting cultivation, or *kaingin*. The term "swidden" comes from the North England dialect word "swidden or swileven" which means burned clearing. See Harold C. Conklin, *An Ethnological Approach to Shifting Cultivation, Environment and Cultural Behavior*, *Ecological Studies in Cultural Anthropology* 222 (Andrew Vayda ed., 1969).

\(^{221}\) Id. at 221.
as many as forty diverse kinds of crops growing simultaneously. He also points out that the Mangyans who manage the system are natural botanists. Experts who could distinguish more than 1,600 different plant types including an impressive number of 430 cultivates.

Swidden farming has been found to be ecologically sound, because it is based on the principle of bio-diversity characterized by tropical forests. Experts on the field have this to say:

In sum, a description of swidden farming as a system in which "a natural forest is transformed into a harvestable" forest seems a rather apt one. With respect to degree of generalization (diversity), to proportion of total system resources stored in living forms, and to closed-cover protection of an already weakened soil against the direct impact of rain and sun, the swidden plot is not a "field" at all in the sense, but a miniaturized tropical forest, composed mainly of food-producing and other useful cultivates.

The two main objections to swidden farming or kaingin—namely: that it is a cause of forest fires and that it is a wasteful practice as the field is abandoned after some time, have likewise been struck down by credible studies. Indigenous farmers have been shown to be very cautious in preparing the swidden field. The Tinggians in the Province of Abra, for instance, construct a fireline called "gaatan" around the intended swidden or uma before burning the dried up cuttings in the clearing. This fireline is similar to the four-meter-wide safety path cleared by Mangyans around their swidden plots. In this way, fire is contained within the uma. Additional precautions are also made by conducting the burning or firing during less windy days or times when the wind blows away from the forest. With regard to the issue of abandonment of the field, such practice is not actually sheer waste of the land. The swidden field is abandoned after some time so that the soil can regenerate its spent out nutrients. The fallow period lasts anywhere from five to 15 years before the swidden is cleared and burned again for another cultivation. Swidden farming, when well-managed, has been proven to be an efficient and ecologically sound cyclical shifting method of cultivation. Thus, the law by absolutely prohibiting kaingin without distinction only shows that it has improperly ventured into a field it cannot competently regulate.

The ban on swidden farming is brought up to further illustrate that the law is consistent in depriving tribal Filipinos of their ancestral lands.

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112 Clifford Geertz, Two Types of Ecosystems, Environment and Cultural Behavior, ECOLOGICAL STUDIES IN CULTURAL ANTHROPOLOGY 8.
113 Id. at 9.
114 Id. at 14.
116 Conklin, supra note 111, at 226.
117 Id.
118 Id. at 228; supra note 113, at 13; supra note 116, at 28.
119 Id., supra note 111, at 15.
120 Id., supra note 111, at 13.
121 

II. ANALYSIS OF RESPONSES

A. Jurisprudence

Jurisprudence on the contentious public lands policy of the State has been fraught with discussions on the right to registration of public lands under claim of acquisitive prescription. On many occasions, the Court applied the Regalian Doctrine in deciding that lands cease to be public lands only upon the issuance of certificates of title. In contrast, there have been cases where the court upheld vested rights, including native title, by virtue of long-time possession of the land, and declared that lands automatically become private upon the completion of the requisite period of acquisition prescription provided for in the law. Present jurisprudence, however, has taken the turn that a certificate of title merely constitutes an evidence of...
ownership. What vests private title to public lands is not its registration but the long-time occupation thereof. It is within the context of tension between the operation of the Regalian Doctrine and the recognition of vested rights that the Court tried to address the issue on ancestral land.

At present, the courts adjudicate ancestral land claims on the basis of Section 48 (b) in relation to Section 48 (c) of Commonwealth Act No. 141 as amended, reproduced as follows:

Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance (now the Regional Trial Court) of the Province where the land is located for confirmation of their claims and issuance of a certificate of title therefor, under the Land Registration Act, to wit:

\[\text{x x x}\]

(b) Those who by themselves or through their predecessors-in-interest have been, in continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. Those shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of lands of the public domain suitable to agriculture whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in subsection (b) hereof.  

The deadline for the applicability of Section 48 for the judicial confirmation of imperfect or incomplete titles originally expired on December 31, 1938, but the last day had been repeatedly extended.  

Under Republic Act No. 6940, claimants under the Section now have until December 31, 2000 to file their petitions.

The two leading cases that laid down definite pronouncements regarding the correct interpretation of Section 48 (b) of Commonwealth Act No. 141 are Manila Electric Company v. Castro-Bartolome (1982) and Director of Lands v. Intermediate Appellate Court (1986), which overturned the former. The parties who sought registration of the land in the cases, however, were not members of the indigenous cultural communities, but corporations which trace their respective titles to their predecessors-in-interest who had possessed the lands for the statutory period of acquiescent prescription.

In 1976, Meralco filed an application for judicial confirmation of its title to two lots with a total area of 165 square meters located at Tanay, Rizal. The land used to be possessed by Ramos, who sold it in 1947 to the Fugino spouses who, in turn sold it to Meralco in 1976. The Government opposed the application on the grounds that Meralco as a private corporation was disqualified by the 1973 Constitution from acquiring public lands, and that the applicant and its predecessors-in-interest had not been in possession of the land for the period required by law to vest private ownership. The trial court assumed that the land sought to be registered was public land. It dismissed Meralco's application believing that Section 48 (b) of Commonwealth Act No. 141 covers only natural persons and not juridical persons. On appeal to the Supreme Court, Meralco contended that the land had long become private land in the hands of the predecessors-in-interest by virtue of acquiescent prescription even before the 1973 Constitution took effect. The Court through Justice Aquino ruled:

We hold that, as between the State and the Meralco, the said land is still public land. It would cease to be public land only upon the issuance of the certificate of title to any Filipino citizen claiming it under Section 48 (b). Because it is still public land and the Meralco, as a juridical person, is disqualified to apply for its registration under Section 48 (b), Meralco's application cannot be given due course or has to be dismissed.

The petitioner relied on the ruling in Susi v. Razon that an open, continuous, and adverse possession of a land of the public domain from the immemorial by a private individual personally and through his predecessors-in-interest confers private ownership on said possessor. The Court struck down Meralco's contention by citing its ruling in Oh Cho v. Director of Lands.

The benefits provided in the Public Land Act to applicant's immediate predecessor-in-interest are or constitute a grant or concession by the State; and before they could acquire any right under such benefits, the applicant's immediate predecessor-in-interest should comply with the condition precedent for the grant of such benefits.

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124 De Guzman v. CA, 156 SCRA 701 (1987); Director of Lands Management v. CA, 205 SCRA 485 (1992).
125 As amended by Republic Act No. 1942 and Republic Act No. 3872 (1964).
127 114 SCRA 799 (1982).
128 146 SCRA 589 (1986).
129 Meralco, 114 SCRA at 806.
130 48 Phil. 424 (1926).
131 75 Phil. 890 (1946).
personally or through his predecessor-in-interest, openly, continuously, and exclusively for the prescribed statutory period (30 years under the Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period. *Ipsi jure.* Following that rule and on the basis of the undisputed facts, the land subject to this appeal was already private property at the time it was acquired from the infiels by ACME. ACME thereby acquired a registrable title, there being no prohibition against said corporation’s holding or owning private land.

The *Director of Lands* ruling insofar as the interpretation of Section 48 of Commonwealth Act No. 141 is concerned has been upheld in succeeding cases up to the most recent ones. *Director of Lands* has relied on a long line of cases based on the *Carino* decision, which overturned the doctrine laid down in the 1904 case of *Valenton, et al.* v. *Murciano.* Thus, a fair assessment of *Director of Lands* can hardly be reached without looking at *Carino* in the light of *Valenton.*

First, *Valenton.* In the year when the land registration courts were first set up in the country under Act No. 496 by the North American colonial government, the Court was asked to rule in *Valenton* which basis of ownership should prevail: long-time occupation or a deed from the government. The case was decided at a time when the colonial government was empowered by the Philippine Bill of 1902 to enact rules and prescribe terms for perfecting defective titles to public lands acquired during the Spanish colonial administration.

The plaintiffs entered a tract of land in 1860. Their peaceful occupation of the land was interrupted in 1892 when defendant Murciano, acting as agent for a certain Capulong, denounced the land as public, unoccupied, unoccupied lands owned by the existing Government of the Philippine Islands, and petitioned for the sale of the land to him. Murciano, over the objections of the plaintiffs, succeeded in acquiring for Capulong the land by purchase pursuant to the Spanish Mortgage Law of 1889, which then governed the disposition of public lands. Capulong later on sold the land to Murciano. The plaintiffs contended that they had become absolute owners of the property by virtue of their adverse possession for thirty years in accordance with the *Siete Partidas,* as well as in the Civil Code. The trial court held for defendant Murciano on the ground that the plaintiffs had lost all rights to the land by not pursuing the Spanish administrative land transfer proceeding their objections to the sale. On appeal to the Supreme Court, the issue considered was whether or not during the years 1860 to 1890, private persons like the plaintiffs could have obtained as against the State the ownership of public land by means of occupation. After a lengthy discourse on the Spanish land laws in force then, the Courts through Justice Willard said:

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107 The Second Public Land Act amending Act No. 926.
108 *Director of Lands,* 146 SCRA at 314.
We hold that from 1860 to 1892 there was no law by which the plaintiff could obtain the ownership of these lands by prescription, without any action by the State, and that judgment below declaring the defendant the owner must be affirmed.\(^\text{144}\)

What proved fatal to the plaintiffs' cause was their failure to have their land adjusted, as required by Article 8 of the Royal Cedula of June 25, 1880\(^\text{145}\), which provided:

Art. 8. If the interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within the time of one year, or, the adjustment having been granted by the authorities, they shall fail to fulfill their obligation in connection with the compromise, by paying the proper sum into the treasury, the latter will, by virtue of the authority vested in 

\(\text{it,}\) reassert the ownership of the State over the lands, and will, after fixing the value thereof proceed to sell at public auction that part of the same which either because it may have been reduced to cultivation or is not located within the forest zone is not deemed advisable to preserve as the State forest reservation.\(^\text{146}\)

The plaintiffs, however, could have still gained ownership of the land had the Court interpreted in favor of the plaintiffs the doubt surrounding the meaning of the following provisions in the Royal Cedula:

- Art. 4. For all legal effects, those will be considered proprietors of the royal land herein treated who may prove that they have possessed the land without interruption during the period of ten years, by virtue of good title and good faith.

- Art. 5. In the same manner, those without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years. In state of cultivation, or for a period of thirty if uncultivated, shall be regarded as proprietors thereof.\(^\text{147}\)

The Court admitted that the wording of the provisions was not clear on three points: first, whether they automatically vested on those covered absolute ownership of the land without any action on their part or that of the State; second, whether they required those covered to seek an adjustment and obtain a deed from the State; and third, whether the failure to obtain a deed from the State within a prescribed period of time would result in the loss of all interests in the land. The Court upheld the Regalian Doctrine and resolved the doubt in favor of the State. The doctrine thus laid down was similar to the ruling in MERALCO. The Court in Valenton declared that public lands can only become private by state action.

Valenton was not an extraordinary judicial pronouncement at that time. The decision arrived at was consistent with the policy enunciated in Act No. 926 adopting the Spanish policy of requiring settlers on public land to obtain deeds from the State.\(^\text{148}\) What came as a surprise to the North American colonial government was the landmark case of Carino\(^\text{149}\) decided by Justice Holmes for the United States Supreme Court.

Prior to Carino, the Philippine Supreme Court consistently applied the ruling in Valenton. Even Carino itself would have been a clone of Valenton if the plaintiff Mateo Carino had not the plaintiff Mateo Carino appealed the case to the United States Supreme Court.

In 1903, Mateo Carino, an Ibaloi, sought to register with the land registration court a parcel of land measuring 146 hectares located in the Municipality of Baguio in the Province of Benguet. His ancestors had possessed and occupied the land since time immemorial. His grandfather had built fences around the property for the holding of cattle. His father had cultivated the land using parts of it for pasturing cattle. It was not disputed that Carino inherited the land in accordance with Igorot custom. He tried to have the land adjusted under the Spanish land laws, but no document issued from the Spanish Crown.\(^\text{150}\) In 1901, Carino obtained a possessory title to the land under the Spanish Mortgage Law.\(^\text{151}\) The North American colonial government, however, ignored his possessory title and built a public road on the land prompting him to seek a Torrens title to his property in the land registration court. While his petition was pending, a United States military reservation was proclaimed over his land, hence he and his cattle were ordered off the land.\(^\text{152}\)

In 1904, the land registration court granted Carino's application for absolute ownership to the land. Both the Government of the Philippine Islands and the United States Government appealed the case to the Court of First Instance of Benguet which dismissed Carino's application.\(^\text{153}\) Carino went up to the Supreme Court which, rebuffed him by applying the Valenton ruling. A wealthy and determined Ibaloi, Carino took the case to the United States Supreme Court under a writ of error. On one hand, the government invoked the regalian

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\(^\text{144}\) Valenton, 3 Phil at 557.

\(^\text{145}\) Justice Holmes in Carino would hold that this Royal Decree only applies to wrongful occupants of the land and not to those who have acquired vested rights to the land by long-time possession thereof.

\(^\text{146}\) Valenton, 3 Phil at 549-550. [English Translation supplied by the Court.]

\(^\text{147}\) Id. at 549.

\(^\text{148}\) See supra note 71 at 286. citing the testimony of the Governor of the Province of Benguet.

\(^\text{149}\) See supra note 71 at 286-289.

\(^\text{150}\) Within 6 months after the appeal was filed, the Philippine Commission revoked the authority of the land registration courts to entertain land registration petitions over resource-rich provinces including Benguet. Id. at 289.
theory and contended that Carino failed to comply with the provisions of the Royal Decree of June 25, 1880, which required registration of land claims within a limited period of time. Carino, on the other hand, asserted that he was the absolute owner of the land *jure gentium*, and that the land never formed part of the public domain. Justice Holmes found for Carino and ruled:

> There are indications that registration was expected from all, but none sufficient to show that, for want of it, ownership actually gained would be lost. The effect of the proof, whenever made, was not to confer title, but simply to establish it, as already conferred by the decree, if not by earlier law. The royal decree of February 13, 1894 declaring forfeited titles that were capable of adjustment under decree of 1880, for which adjustment had not been sought, should not be construed as confiscation, but as the withdrawal of a privilege.

Carino stood out in Philippine jurisprudence as the first, and probably the only case to uphold native title of tribal Filipinos. The following pronouncement became the standard by which succeeding ancestral land cases have been decided:

> It might, perhaps, be proper and sufficient to say that when, as far back as testimony 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.

Evidently, Justice Holmes believed that ancestral lands had always been private lands over which ancient possessors thereof enjoyed a vested right to ownership known as native title.

Native title is a concept derived from the United States common law concept of aboriginal title. In American jurisprudence, the aboriginal title of American Indians is based on their presence on the land before the arrival of the White settlers. The leading American case on conveyance of Indian lands decided in 1923, at least recognizes the rights of Indians to their lands, even if such rights were limited to mere occupancy. Moreover, Justice Marshall in *Johnson v. McIntosh* affirmed the government’s right to extinguish native title only by purchase or by conquest.

In the light of the then prevailing American jurisprudence on aboriginal title, it was not surprising for Justice Holmes to have justified Carino’s native title in this manner:

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112 Supra note 15 at 170. Excerpts from the “Brief on Behalf of Plaintiff in Error” filed by the Attorney for Mateo Carino.

113 *Carino*, 41 Phil at 944.

114 Id. at 941.


117 10 U.S. (8 Wheat) 543.

118 Carino, 41 Phil at 939.

119 Id. at 939-940.

120 Invisible Peoples, *supra* note 71, at 299.

121 Act No. 926 (1903) and Act No. 2874 (1919) both contained provisions similar to sec. 49(b) of Commonwealth Act No. 141. See Leonen, *supra* note 72, at 24.

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The Province of Benguet was inhabited by a tribe that the Solicitor-General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted anyone in that province the registration to which the plaintiff was entitled by the Spanish laws, and which would have made his title was entitled by the Spanish laws, and which would have made his title was entitled by the Spanish laws, and which would have made his title was entitled by the Spanish laws, which was good. Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, it had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the Island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.

Simply put, Spain was not able to effectively extinguish Carino’s native title. To make any argument by the Government that native title had been extinguished by cession via the Treaty of Paris, Justice Holmes subtly distinguished between native title and aboriginal title:

The acquisition of the Philippines was not like the settlement of the White race in the United States. Whatever consideration may have been shown to the North American Indians, the dominant purpose of the Whites in the acquisition of the Philippines was different. No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. For the United States Supreme Court, the United States colonial government was not primarily to occupy the Philippine Islands, but to administer them. Consistent with the due process clause in the Philippine Bill of 1902, *Carino* in effect declared that the arbitrary extinguishment of native title cannot be tolerated. In this backdrop, it can be fairly concluded that ancestral lands are not covered by the regalian theory adopted by the United States in administering the colony.

For the tribal Filipinos, Carino was their struggle’s one shining moment which died out too soon. The *Carino* decision was ignored by the executive department which continued to expropriate ancestral lands by classifying them as salubrious forests lands. The legislature, with all the good intentions, tried to entrench in the Public Land Acts the *Carino* doctrine which ended now became Sec. 48 (b) and (c) of Commonwealth Act No. 141, and ended in a 1935 decision.
which probably had twice the legislature's goodwill, applied *Carito* in construing Section 48 (b) of Commonwealth Acts No. 141 and came up with doctrines that missed Justice Holmes' more essential points.  

Going back to *Director of Lands*, the ruling in that case, as mentioned, traces its roots to a long line of cases from *Heraco v. Suay* which were all precipitated by *Carito*. While both *Carito* and the *Director of Lands* cluster of cases arrived at the same conclusion that the native occupants of the land are entitled to a certificate of title by virtue of long-time possession of the land, it must be stressed that unlike the *Director of Lands* cluster, *Carito* was not decided under the Public Land Acts, but rather under the common law concept of native title and due process. The divergence in the bases used makes a big difference when the decisions are viewed in the light of the Regalian Doctrine. *Carito*, by upholding native title and by saying that ancestral lands never formed part of the public domain, carved out an exception to the prevailing theory that all lands of the public domain are owned by the State. Hence, *Carito* allows the alienation of ancestral lands regardless of whether such lands are classified by law as inalienable forest lands. In contrast, the *Director of Lands* cluster, by bringing ancestral lands under the operation of the Public Land Act, assumes that such lands have once formed part of the public domain, and are therefore subject to the statutory and constitutional prohibition on the alienation of forest lands. The fine distinctions made may seem like splitting hairs over a legal issue overrun by the entrenchment of the Regalian Doctrine in the Constitution. But how else can one explain the incontrovertible fact that the *Carito* decision has never been overturned by the Supreme Court in all the occasions that exposed the said ruling to a possible rejection? 

With *Carito* in place, all is not lost for the cause of tribal Filipinos to recover their ancestral lands, especially in the wake of new developments in the nation's recent attempts to address the ancestral domain problem.

B. Innovations: From Integration to Preservation

From the time the Philippines became a Republic in 1946 up to the present, three fundamental laws have successively governed it, namely: the 1955, 1975, and the 1987 Constitutions. In all three fundamental laws, the State has always asserted ownership over the lands of the public domain and all the minerals and other natural resources found therein. Thus, it can be said that the Constitution has been the traditional domain of the Regalian

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**Ancestral Domain Rights**

Doctrine. But with the effectivity of the present Constitution, the supremacy of the Regalian Doctrine over certain portions of the public domain has been seriously challenged by constitutional innovations geared for the recognition of the rights of indigenous cultural communities to their ancestral domain. To put these innovations in the proper perspective, a little backtracking to the previous constitutions is in order.

The 1935 Constitution did not carry any state policy on tribal Filipinos, who were then officially known as non-Christian Filipinos or national cultural minorities. The raging issue then was the conservation of the national patrimony for the Filipinos. It was this kind of nationalism that impelled the framers of the fundamental law to entrench the Regalian Doctrine in the 1935 Constitution. The national fervor to conserve lands of the public domain and the natural resources therein did not contemplate conserving as well the culture of tribal Filipinos, who virtually depend on forest resources for subsistence. This is not surprising, for the mainstream society then looked down upon the indigenous way of life as backward. Confirming the State's condescending attitude on the culture of tribal Filipinos is the passage of the law creating the Commission on National Integration (CNI) in 1957 pursuant to the following policy:

> It is hereby declared to be the policy of Congress to foster, accelerate, and accomplish by all adequate means and in a systematic 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.

The law called for a policy of integration of tribal Filipinos into the Philippine mainstream. This policy harked back to the North American colonial government policy of assimilation which led to the establishment of the Bureau of Non-Christian Tribes (BNCT) in 1903. It will be remembered that the BNCT was responsible for shipping to the United States a whole village of Igorots to be ogled at by the white race at the Philippine exhibit during the seven month-long 1904 Louisiana Purchase Centennial Exposition in Missouri. The BNCT treated the tribal Filipinos as immature wards who should be guided, educated, and eventually assimilated into the "civilized" world. The CNI was given, more or less, the same task. Thus, the post-independence policy of integration, like the colonial policy of assimilation, was founded

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upon a highly questionable premise: that the tribal Filipinos are culturally inferior to the mainstream society. After all, assimilation or integration of tribal peoples had always been understood in the context of a guardian-ward relationship.\(^{71}\)

The downtrodden tribal Filipinos gained self-respect when the 1973 Constitution was adopted providing for the following:

The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of State policies.\(^{72}\)

For the first time in Philippine history, the tribal Filipinos who were previously called as dociles, inferiors or infelites by the Spaniards\(^{23}\) and as non-Christian tribes by the North Americans, were officially addressed as “communities” by the highest law of the Republic. To top it all, their way of life was also recognized. For the tribal Filipinos, this innovation in the constitution was a big leap forward which, however, ended in a petticoat. Destined to implement the Constitution was President Marcos, who had gained via martial rule executive and legislative power in a turbulent political era. Marcos abolished the CNI and transferred its functions to the PANAMIN.\(^{24}\) In 1978, he elevated the PANAMIN to cabinet rank through Presidential Decree No. 1414 which provided:

It is hereby declared to be the policy of the State to integrate into the mainstream of Philippine society certain ethnic groups who seek full integration into the larger community, and at the same time protect the rights of those who wish to preserve their original lifeways beside that larger community.\(^{75}\)

While still adopting the integration policy, the decree at least recognized the right of tribal Filipinos to preserve their way of life. The ensuing notoriety of the PANAMIN in exploiting the tribal Filipinos, however, belied the administration’s sincerity in implementing section 11 of the 1973 Constitution.

In 1974, Marcos determined to address the ancestral domain issue when he promulgated Presidential Decree No. 410, otherwise known as the Ancestral Lands Decree. The decree provided for the issuance of land occupancy certificates to members of the national cultural communities, who were given up to 1984 to register their claims. But doubts on the political will of the Executive heightened when he failed to release the implementing rules and regulations of the Ancestral Lands Decree. Up to the time Marcos was deposed in 1986, no land occupancy certificate was ever issued. The Marcos regime was thus an era of false hopes for the tribal Filipinos.\(^{77}\)

After the historic February Revolution, a strong commitment for human rights and social justice emerged in the political arena as a reaction to the human rights abuses perpetrated by the Marcos regime. The 1987 Constitution stood as a monument to the nation’s determination to balance the inequities in Philippine society. With the spirit of the EDSA revolution sweeping the nation, it was inevitable that the policy on tribal Filipinos would shift from that of integration to preservation.\(^{78}\)

The present Constitution carries at least six provisions which insure the right of tribal Filipinos to preserve their way of life.\(^{19}\) This Constitution is also the first fundamental law in the nation to expressly guarantee the rights of tribal Filipinos to their ancestral domains. The primary effect of these innovations in the Constitution is to bolster the claims of tribal Filipinos to their ancestral lands.

Now referred to as indigenous cultural communities, tribal Filipinos have been placed on firmer ground to counteract the yoke of the Regalian Doctrine. Section 5 of the article on National Economy and Patrimony is very explicit in declaring:

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.\(^{80}\)

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\(^{71}\) See Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919).

\(^{72}\) PHILIPPINE CONST., art. XV, sec. 11 (1979).

\(^{73}\) Sourcebook, supra note 15, at 56.

\(^{74}\) supra note 22.

\(^{75}\) Presidential Decree No. 1414, sec. 1 (1978).

\(^{76}\) supra note 22.

\(^{77}\) To the credit of Mr. Marcos, however, he issued E.O. No. 561 in 1979 creating the Commission on the Settlement of Land Problems (COSLAP). Cf. Administrative Code of 1987 (E.O. No. 292) title III, sec. 32 E.O. No. 561 provided a mechanism for the expeditious resolution of land problems involving small settlers, landowners, and tribal Filipinos. However, what COSLAP resolves are land disputes among private claimants. It is the Department of Environment and Natural Resources (DENR) which is exclusively authorized to settle public land claims against the government. Cf. Administrative Code of 1987, title XIV, sec. 4.

\(^{78}\) President Aquino, invoking her mandate under the Freedom Constitution, issued E.O. Nos. 122-A, 122-B, and 122-C in 1987 creating the Office on Muslim Affairs (OMA), Office for Northern Cultural Communities (ONCC), and Office for Southern Cultural Communities (OSCC), respectively, which were all under the Office of the President. The preamble of E.O. No. 122-B states: "Believing that the new government is committed to formulate more vigorous policies, plans, programs, and projects for tribal Filipinos, otherwise known as Indigenous Cultural Communities, taking into consideration their communal aspirations, customs, traditions, beliefs, and interests in order to promote and preserve their rich cultural heritage and insure their participation in the country’s development for national unity..."

\(^{79}\) PHILIPPINE CONST. art. II, sec. 22; art. VI, sec. 5, cl. 2; art. XII, sec. 5; art. XIII, sec. 6; art. XIV, sec. 17; and art. XVII, sec. 12.

\(^{80}\) PHILIPPINE CONST. art. XII, sec. 5.
Times have changed. The policy of integration, under which the State looks down upon the culture of tribal Filipinos, has now given way to a policy of preservation which guarantees basic human rights. The State, by recognizing the rights of tribal Filipinos to their ancestral lands and ancestral domains, has effectively upheld their right to live in a culture distinctly their own. Finally, the State has understood what the tribal Filipinos have been trying to say all these years: *land is life.*

Section 5 of Article XII of the Constitution [hereinafter referred to as SECTION 5] alone already fairly addresses the three issues on ancestral domain raised earlier in this paper, namely: development aggression, conflict between the national law and customary law, and land classification. The deliberations of the 1986 Constitutional Commission [hereinafter referred to as CONCOM] regarding SECTION 5 best explains how these three issues are confronted by the State after the EDSA Revolution.

On the issue that development policies work injustices to the tribal Filipinos, the following exchange during the CONCOM deliberations is in point:

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 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, what 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 cultural communities 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.

Times have really changed. The State usually never bothers to acknowledge the legitimate presence of tribal communities to lands of the public domain, which are officially targeted for expropriation. Now, the framers of the Constitution speak of balancing of interests. This puts the rights of tribal Filipinos to their ancestral lands and domains officially on equal plane with the right of the State to pursue development goals. A State with a more human face has emerged.

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On the conflict between the national law and customary law on land ownership and use, the deliberations of the CONCOM, likewise, provide some answers:

MR. CALDERON. I would like to ask some questions of Commissioner Bennagen in line with the questions asked by Commissioner Bancai concerning ancestral lands and codification of laws. Shall they prevail over the rights granted under the regalian doctrine?

MR. BENNAGEN. The idea is for this matter to be incorporated as part of the national law and, therefore, they should be taken in those terms. Again, when there is a conflict between this and the national law, the general principle is that the national law shall prevail, but there should always be the effort to balance the interest as provided for in the national law and the interest as provided for in the customary law.

MR. CALDERON. To be specific, shall mining rights granted by the government under the regalian doctrine be recognized by the tribal communities?

MR. BENNAGEN. Yes, as long as there is a just share and it is subject to due process, because what has happened in the past is that the rights of the indigenous communities are not respected in terms of their share of the benefits derived from extraction of resources including minerals. It is as if we are dealing with them as private persons and that, therefore, they should benefit from this.

It can be gleaned from the above exchange that the Regalian Doctrine will still be in place, but the harsh and confiscatory effects of this constitutionally-adopted feudal theory is now counteracted by SECTION 5 in conjunction with the other constitutional doctrines like balancing of interests, due process, compensation, and social justice.

The second paragraph of SECTION 5 allows Congress to apply customary laws in addressing the ancestral domain issue. Throwing light on the proper construction of SECTION 5 is the following excerpt:

MR. SUAREZ. In terms of codifying the customary laws on the part of Congress, is my understanding correct in that regard? Is Congress under obligation to codify the customary laws?

MR. BENNAGEN. That is my understanding.

MR. SUAREZ. Therefore, before the codification of these customary laws by Congress, the State may not apply these customary laws to property relations or rights?

MR. BENNAGEN. My understanding is that, even without the action of Congress, the State shall already protect. But the first definition of the ancestral domain shall wait for the action of Congress in respect to codification. So once it is codified, it will be included as part of national law.
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 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.\(^{103}\)

The issue on the present land classification scheme as a system incapable of properly appreciating the peculiar circumstances of ancestral lands was tangentially discussed in the CONCOM deliberations. The Commissioners were more interested in defining the extent of the ancestral land and ancestral domain than in the impact of SECTION 5 on the land classification system. The following discussion pointed out some important distinctions:

MR. NATIVIDAD. xxx 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. BENNAGEN. Yes, in the sense that it belongs to Cordillera and 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 it is clear that the prior rights will be respected.

MR. BENNAGEN. Definitely. xxx

MR. SUAREZ. xxx Is there any substantial difference between “lands” and “domain”?

MR. BENNAGEN. I tried to go into the deliberations on the 1973 Constitution, following the proposal of Atty. William Claver and I did notice that in the deliberations, distinctions were made between ancestral land and ancestral domain, as well as in the existing literature even outside of the Philippines. Ancestral lands would be more specific in relation to how people use, exploit, and sell whereas, ancestral domain would include a broader area, including those that are not yet actually being occupied by which generally belong to what we call a cultural region. So, deep forests that are not yet in effective use are part of the ancestral domain, but not yet a part of the ancestral land.\(^{104}\)

While the deliberations in the CONCOM tend to favor the immediate protection of the ancestral domain pending the enactment of a law implementing SECTION 5 of Article XII, the statements of the constitutional commissioners do not bind the government. The fact remains that SECTION 3 is qualified by the phrase “subject to the provisions of this Constitution and national development policies and programs.” Since the Constitution prohibits, under the respect for the doctrine of specific application, the alienation of lands of the public domain other than public agricultural lands, inevitably two views have emerged as to the proper interpretation of the sections.\(^{105}\) The first view claims that SECTION 5 automatically modified the Regalian Doctrine provisions in the Constitution. Thus, ancestral lands are deemed segregated from the public domain even without an implementing legislation. By extension, SECTION 5 also modifies all public lands and forestry statutes so as to take out ancestral lands from the operation of these statutes. The second view maintains that until a law is passed defining the coverage of ancestral lands, all public lands claimed or possessed by indigenous cultural communities shall be subject to the Regalian Doctrine provisions in the Constitution. This means that pending the enactment of the implementing law, tribal Filipinos cannot yet invoke SECTION 5 to claim lands classified by law as inalienable like forest lands. Of the two views, the first one seems more persuasive when tested by the principles of statutory construction. It is well-settled that the construction which will give effect to the whole law is to be adopted. If the second view, which upholds the supremacy of the Regalian Doctrine were to be adopted, then SECTION 5 would be rendered useless because ancestral lands primarily consist of forest lands. The continued application of the Regalian Doctrine to ancestral lands is tantamount to a denial of the rights of tribal Filipinos protected under SECTION 5. Surely, the framers of the Constitution could not have introduced a constitutional innovation that is rendered ineffectual by other constitutional provisions. It is just fair to assume that when the framers of the Constitution formulated SECTION 5, they knew that ancestral lands are primarily forest lands. As Commissioner Bennagen stated during the deliberations, ancestral lands must be protected even before the implementing law is enacted. Ancestral lands are unnecessarily lost daily not only by reason of fraudulent titling schemes of individuals and juridical entities, but also by the demise of aging tribal elders who know the exact boundaries of the ancestral domain. Consistent with the spirit of SECTION 5, the first view, which calls for the automatic exclusion of ancestral lands and ancestral domains from the operation of the Regalian Doctrine must be upheld.

\(^{103}\) Id. at 37.

\(^{104}\) Id. at 36.

\(^{105}\) Ma, Vicenta P. De Guzman, LAND/RESOURCE TENURE LEGAL AND POLICY FRAMEWORK (Remex), at A-3 (1992).
The Executive Department through the Department of Environment and Natural Resources (DENR) has tackled the two divergent views by meeting them halfway. Pending the enactment of the law on ancestral domain, the DENR has adopted the Integrated Social Forestry Program (ISFP) under which upland communities, especially the tribal communities, can possess, but not own, forest lands. "Under the ISFP, qualified individuals or communities are allowed by the government to continue occupying and cultivating upland ISFP participants, through Individual or Community Stewardship Agreements are given a tenure over the land for a period of 25 years, renewable for an additional 25 years." As a legal tenure for upland Filipinos, the ISFP does not, however, amount to a waiver by tribal Filipinos of their claims to their ancestral lands. This upland program is merely a stop-gap measure designed by the DENR to stem the gradual loss of ancestral lands and to make up for the inadequacy of public lands and forestry laws in treating upland tenurial rights. As early as 1990, the DENR has also started issuing Certificates of Ancestral Land Claims (CALC) to tribal Communities in Palawan and in the Cordillera Region in Northern Luzon. The then Secretary of the DENR, Pulgencio Factoran, however, made it clear that these CALCs are mere evidentiary proofs to an ancestral land claim. Although the DENR has chosen to be cautious by waiting for the enactment of the ancestral domain law before implementing SECTION 5, it seems to subscribe to the view that the rights of tribal Filipinos to their ancestral lands/domains should be protected immediately. The adoption of the ISFP and the issuance of CALCs by the DENR indicate that the Executive Department is willing to implement as soon as possible the spirit of SECTION 5.

The legislature during the administration of President Aquino tried to settle the divergent views on Ancestral Domain rights by proposing quite a number of bills treating the contentious subject. The House of Representatives came up with a consolidated proposal, House Bill No. 33881, which called for the creation of a Commission on Indigenous Cultural Communities and Ancestral Domain. The Senate drew up a counterpart proposal, Senate Bill No. 909, which provided for the creation of an Ancestral Domain Commission. Both bills empowered the proposed commission to protect the rights of tribal Filipinos not only to their ancestral lands, but also to their ancestral domains. Both bills, however, were archived when the term of the proposed legislators expired in 1992. Only House Bill No. 3881 was refiled as House Bill No. 595 in the present Congress.

Pending the enactment of a law on Ancestral Domain rights, the Legislative Department has also acknowledged the self-executory nature of SECTION 5 by drawing up special provisions on ancestral land in two statutes, namely, Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (CARL) and Republic Act No. 7586 or the National Integrated Protected Areas System (NIPAS) Law. The CARL authorizes the government to suspend the implementation of the Comprehensive Agrarian Reform over ancestral lands for the purpose of identifying and delineating such lands. The NIPAS law empowers the DENR to prescribe rules and regulations to govern ancestral lands within protected areas.

Section 13 of the NIPAS law provides:

Ancestral lands and customary rights and interest arising shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern ancestral lands within protected areas: provided, that the DENR shall have no power to evict indigenous communities from their present occupancy nor resettle them to another area without their consent: Provided, however, that all rules and regulations, whether adversely affecting said communities or not, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community.

This provision serves as the basis for the issuance on January 15, 1993 of DENR Department Administrative Order (DAO) No. 02 implementing SECTION 5 of the Constitution. The intent of DAO No. 02 is embodied in its declaration of basic policy which states:

166 The ISFP has been in existence since 1982 pursuant to President Marcos’ Letter of Instruction No. 1260.


168 The DENR issued DENR Special Order No. 31 dated January 17, 1990 (amended by DENR Special Order No. 31-A) providing for the creation of Special Task Forces on ancestral land identification, evaluation, and delineation of ancestral land claims in the Cordillera Administrative Region. See also, DENR Circular No. 3, series of 1990 which provides for the implementing rules for DENR Special Order No. 31.

169 10 TRIBAL FORUM May-June 1992, at 8.


171 In June 25, 1992, the Department of Agrarian Reform Cordillera Administrative Region (DAR-CAR) and the Department of Environment and Natural Resources-Cordillera Administrative Region (DENR-CAR) entered into a Memorandum of Agreement (MOA) clarifying the jurisdiction of each Department on the disposition of public lands. Under the MOA, DAR-CAR may issue certificates of land occupancy awarded (CLOA) to individually or collectively-owned alienable and disposable public agricultural lands to ancestral land claimants in the Cordilleras (except in Baguio City) who were previously issued certificates of ancestral land claim (CALC) by the DENR, and who further qualify as farmer beneficiaries under the Comprehensive Agrarian Reform Law (CARL). See also, DAR-DENR Joint Circular No.01 (1992) implementing the DAR-CAR and DENR-CAR Memorandum of Agreement.

172 The NIPAS law does not list the making of kaingin or swidden farming as a prohibited act under Section 20. This can be interpreted as the legislature’s implied recognition of the tribal Filipinos indigenous farming methods.
It is the policy of the DENR to preserve and maintain the integrity of ancestral domains and ensure recognition of the customs and traditions of the indigenous cultural communities therein pursuant to the Constitutional mandate for the recognition and protection of the rights of indigenous cultural communities.

Further, the government recognizes the importance of promoting indigenous ways for the sustainable management of the natural resources such as the ecologically sound traditional practices of the indigenous cultural communities.

Pursuant thereto, there is an urgent need to identify and delineate ancestral domain and land claims, certify them as such, and formulate strategies for their effective management.294

The DENR now issues Certificate of Ancestral Domain Claims (CADC) to replace the Certificate of Ancestral Land Claims (CALC). The change in the designation is not merely semantic. Under DAO No. 02, an Ancestral Domain can cover a much larger area than an Ancestral Land as enunciated in the following:

Composition of Ancestral Lands – Unless Congress otherwise provides, ancestral lands shall consist of lands occupied, possessed, or utilized by individuals, families or clans who are members of the indigenous cultural communities since time immemorial by themselves or through their predecessors-in-interest, continuously to the present except when interrupted by war, force majeur or displacement by force, deceit or stealth, and located in territories and domains.

Composition of Ancestral Domains – Unless Congress otherwise provides, ancestral domains shall consist of all territories possessed or utilized by indigenous cultural communities, by themselves or through their ancestors or predecessors-in-interest since time immemorial in accordance with their customary laws, traditions and practices, irrespective of their present land classification and utilization, including but not limited to such lands used for residences, farms, burial grounds, communal and/or private forests, pasture and hunting grounds, worship areas, individually owned lands whether alienable/disposable or otherwise and other natural resources.295

By completely ignoring the Regalian Doctrine limitations in defining the extent of Ancestral Lands and Ancestral Domains, the Executive Department through the DENR has demonstrated again its willingness to take out ancestral lands and ancestral domains from the operation of the Regalian Doctrine.

Whether or not the Legislative Department will pick up from the initiative of the Executive Department depends on how the legislators will act on House Bill No. 595, which carries the following definitions:

Ancestral Domain – refers to all lands and natural resources owned, occupied or possessed by indigenous cultural communities, by themselves or through their ancestors, communally or individually, in accordance with their customs and traditions since time immemorial, continuously to the present except when interrupted by war, force majeur, or displacement by force, deceit, or stealth. It shall include ancestral lands, titled properties, forest, pasture, residential, agricultural, and other lands individually owned whether alienable/disposable or otherwise, hunting grounds, worship areas, burial grounds, bodies of water, air space, mineral and other natural resources.

Ancestral lands – refers to those real properties within the ancestral domain which are communally owned, either by the whole community or by a clan/group thereof.

If the bill is enacted into law with these definitions intact, ancestral domains and ancestral lands will be effectively taken out of the operation of the Regalian Doctrine. The bill, however, is not clear on the extent of regulations the State will impose on the possession and utilization of ancestral domains and ancestral lands by tribal Filipinos. The bill merely tasked the proposed Commission on Indigenous Cultural Communities and Ancestral Domain to consult the customary laws of tribal Filipinos and formulate the necessary rules and regulations that will carry out the policy of protecting the rights of indigenous cultural communities to their ancestral lands and domains. It is highly improbable, however, that the legislators will consider ancestral lands/domains as privately owned by the tribal Filipinos in the sense that such lands become alienable as any other private lands. As mentioned in this paper, ancestral lands or domains are primarily made up of inalienable forest and mineral lands over which the State possesses legitimate interests for the common good. The State, for instance, has the inherent right and duty to maintain a substantial forest cover for the entire land mass of the country for ecological purposes, so that the environment may be able to support the growing population.

House Bill No. 595 itself conspicuously provides for the general concept of "rights to ancestral lands/domains" instead of the more specific "ownership of ancestral lands/domains". What prevented Congress from providing for the ownership of ancestral lands/domains are environmental considerations, as implied in Section 16 of the bill which states:

Ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, forest cover, or reforestation, as determined by appropriate agencies with the full participation of the indigenous cultural community concerned shall be maintained, managed, and developed for such purposes. The indigenous cultural community within the ancestral domain shall be given the responsibility to maintain, develop, protect, and conserve said areas with the assistance of the government agencies.

The tribal Filipinos may have no other choice but to concede to the State its right to conserve critical areas for the common good. Everyone depends on a stable environment for health. But the tribal Filipinos, according to the bill, are given priority rights in the harvesting, extraction, development, or exploitation of any natural resources within ancestral domain perimeters.296
Furthermore, a non-member of the tribe who plans to make use of the natural resources within the ancestral domain must first seek the consent of the whole tribal community occupying it and must give the tribe an equitable share of the revenues generated.\(^{15}\)

So long as the tribal Filipinos are assured of living their distinct kind of life in peace, in stability, and in perpetuity, then the protracted problem on ancestral domain rights is adequately addressed. Section 5 of Article XII of the Constitution and the other constitutional innovations designed to uphold ancestral domain rights holds much promise for the vindication of the rights of tribal Filipinos. But such promise is so fragile that to prevent from breaking all three Departments of the Government have to deliver in utmost sincerity and in sophisticated coordination.

**CONCLUSION**

**A. Summary**

1. Tribal Filipinos are dispossessed of their ancestral lands every time the government pursues a development policy involving lands of the public domain. There is nothing phenomenal about this. Tribal Filipinos have been occupying many parts of the public domain since time immemorial. Still, in the name of progress, the government has relied time and again on a legal fiction which presumed that lands of the public domain are unoccupied territories. The truth is that around six million tribal Filipinos live in many portions of the public domain. To hasten the completion of development targets, the government found it more convenient to ignore these tribal Filipinos than to address their legitimate and inherent tenurial rights to ancestral lands.

2. The ancestral domain problem revolves around the disposition and utilization of public lands. At the core of the problem is the conflict between customary law and the national law on land. On one hand, the national land law is founded upon a Western feudal theory called the Regalian Doctrine, which vested by legal fiction ownership of all public lands on the State. The Regalian Doctrine has enabled the State, acting through the government, to assume the sole authority to grant ownership of public lands. Grants from the State are evidenced by a paper title called the Torrens Title, which is guaranteed by the State as indefeasible and imprescriptible as against any other claimant. On the other hand, customary law generally treats land as a common economic and cultural base which cannot be owned and alienated like an ordinary chattel. Unwritten customary law does not rely on documents to prove ownership, but rather on oral traditions drawn from the actual and long occupation by the indigenous cultural community. Since the national law does not usually recognize customary law, the government, for some time, has viewed the tribal Filipinos as squatters on public lands. The tribal Filipinos, however, have always asserted that tradition has vested in them legitimate tenurial rights to their ancestral lands. Unless this disjunction between customary law and the national law is bridged, the ancestral domain problem cannot be fully and fairly settled.

3. The operation of the Regalian Doctrine in the national legal system gave the State the authority to classify public lands. To conserve the national patrimony, the State absolutely prohibited the alienation and disposition of forest lands or lands above eighteen percent in slope. Since most ancestral lands are highlands above eighteen percent in slope, this blanket prohibition disenfranchised in one sweep millions of tribal Filipinos of their tenurial rights to their ancestral lands. While the public land laws recognize the vested rights of tribal Filipinos to their lands by virtue of continuous occupation for at least 30 years, these laws applied only to alienable lands of the public domain. What the government has given in one law is taken away in another law. This absurdity in land classification has precipitated a large-scale, government-backed encroachment upon ancestral lands.

4. Jurisprudence on the contentious public lands policy was marked with judicial vacillations. The Court in the 1904 case of Valentin declared that State recognition is necessary before ownership to the land is vested by virtue of acquisitive prescription. However, the 1909 case of Carino introduced into the Philippine jurisprudence the American concept of native title. Penned by Justice Holmes, the Court in Carino ruled that lands occupied since time immemorial shall be deemed as never to have formed part of the public domain. The Carino doctrine gave rise to the amendment of the first public land act in order to accommodate the land claims of tribal communities. The ensuing public land law, however, failed to consider that most of the lands of tribal Filipinos are inalienable forest lands. Thus, in applying the Carino doctrine and the public land law together to adjudicate ancestral land disputes, the court was ridiculously trying to uphold at the same time two diametrically opposed concepts, namely, the Regalian Doctrine and Ancestral Domain rights. The Carino decision was based on native title and not on the public land laws. The Carino doctrine could only be applied as an exception to the operation of the Regalian Doctrine in the national legal system. Justice Holmes was merely being prudent when he decided Carino under the concept of native title, rather than under the Regalian theory. The rights of tribal Filipinos to their ancestral lands could never be vindicated under a legal theory which has no room for the application of customary law.

5. The Constitution now recognizes under Section 5 of Article XII the rights of tribal Filipinos to their ancestral domains and ancestral lands. While the Executive Department, acting through the Department of Environment and Natural Resources (DENR), has manifested its willingness to immediately implement the provision on ancestral domain rights, it is hampered by two opposing views on the proper interpretation of such
provision. One view holds that the provision automatically segregated ancestral lands from the public domain without need of an implementing law. The other view maintains that pending the enactment of an implementing law, the provision did not exempt ancestral lands from the operation of the Regalian Doctrine and the public land laws. Present developments, however, in the Executive and Legislative Departments tend to favor the first view. The DENR, for instance, has adopted the Integrated Social Forestry Program (ISFP) to legalize the continued occupation of tribal Filipinos to their ancestral lands pending the enactment of an ancestral domain law. The DENR has also started issuing Certificates of Ancestral Land Claims (CALCs), now known as Certificates of Ancestral Domain Claims (CADCs), which will serve as evidentiary proofs to future adjudications on ancestral domain claims. On the legislative front, House Bill No. 595, which is the sole ancestral domain bill pending in Congress, has ignored the Regalian theory in defining ancestral domains and ancestral lands. Even the framers of the Constitution have revealed during the 1986 Constitutional Commission deliberations that the provision on ancestral domain rights was intended to be self-executory. Based on the foregoing observations, it could be concluded that the principles of statutory construction overwhelmingly favor the adoption of the view, which holds that Section 5 of Article XII of the Constitution automatically segregated ancestral lands from the public domain. This interpretation, however, does not prevent the government from regulating the rights of tribal Filipinos to their ancestral lands which happen to be forest lands. After all, every citizen has a legitimate interest in the preservation of the forests for environmental considerations. But in any case, the rights of tribal Filipinos to their ancestral domains are always given paramount consideration and protection.

B. Recommendations

1. On the Constitution. An amendment is suggested making ancestral land as a new classification of land. Ancestral land should not be subsumed under the classification of lands of the public domain under Section 3 of Article XII. The purpose of the amendment is to take out ancestral lands from the operation of Section 2 of Article XII or the Regalian Doctrine Provision. If such amendment is made, lands in the archipelago would be classified under three major groups, namely: public lands, private lands, and ancestral lands. In this case, ancestral lands are neither public nor private lands. Ancestral Lands are lands possessed by the indigenous cultural communities under their own respective customary laws. They are not private lands in the sense that they do not become as alienable as any other privately titled lands under the Torrens System. Ancestral lands are also not public lands in the sense that State does not own them in the concept of dominium under the Regalian theory. But just like in privately-titled lands, rights to ancestral lands can be regulated by the State under its police power and power of eminent domain subject to the constitutional principles of due process and just compensation. The State, for instance, can prohibit ancestral land occupants from alienating critical areas for watershed, forest cover, mangrove culture, and the like, and even charge them the responsibility of preserving these areas for environmental purposes.

2. On the Judiciary. In deciding ancestral lands cases, the courts should apply the Carinosa Doctrine based on the Constitutional provisions upholding the rights of Indigenous Cultural Communities, especially Section 5 of Article XII. In case the proper occasion arises, the Supreme Court should categorically declare that Section 5 of Article XII of the Constitution had automatically taken out ancestral lands from the operation of the public land laws and the Regalian Doctrine. This will have the effect of clearing up the massive confusion that has long plagued the contentious public lands policy of the State regarding ancestral lands. Pending the enactment of an ancestral domain law, the void as to what law shall govern ancestral lands can be temporarily filled in by the common law jurisprudence on native title and by the administrative orders of the Department of Environment and Natural Resources (DENR).

3. On the Executive Department. The DENR should embark on a massive and systematic campaign to delineate ancestral domain boundaries. As far as practicable, the oral traditions of each tribe should be given paramount consideration in determining the extent of the ancestral domain. Pending the enactment of an ancestral domain law, the DENR should exhaust all administrative means within its jurisdiction to protect ancestral lands from encroachment by non-members of the tribal community concerned. Initiatives on the codification of customary laws should also be undertaken by the DENR by working closely with the University of the Philippines Institute of Human Rights whose ongoing study on customary laws of indigenous Filipinos has already yielded a voluminous collection of verified and documented oral traditions of indigenous Filipinos.

4. On the Legislative Department. Congress should hasten the passage of a law which will comprehensively govern ancestral domain rights. But Congress must consult with all major indigenous cultural communities before passing the law. A permanent body clothed with quasi-judicial powers must be created by law to take charge of all matters regarding the resolution of the ancestral domain problem. House Bill No. 595 which calls for the creation of a Commission on Indigenous Cultural Communities and Ancestral Domain (CICCAD) holds promise as a reasonable proposal. The bill, however, should categorically declare the segregation of ancestral lands from the public domain. Aside from enacting an ancestral domain law, Congress should also review and accordingly modify all existing public land laws, including the Revised Forestry Code and the Property Registration Decree, to reflect the intent of the Constitution in protecting ancestral domain rights. The following suggestions are
workable: a) Commonwealth Act No. 141, as amended, should be amended again to eliminate ancestral lands from its coverage; b) the Revised Forestry Code, as amended, should be amended again to eliminate all its provisions (e.g. ban on kaingin farming, the 18% slope rule) which work against the tenurial rights of indigenous cultural communities; and c) the Property Registration Decree or the Torrens System should be amended to accommodate communal titling of ancestral lands consistent with the ancestral domain law that may be enacted in the future.

Resolving the ancestral domain problem is an intimidating task. The fronts to be attended to are so many like human rights, social justice, economic development, reformation of laws, political autonomy, ethnography, ecology education, health, law enforcement, and special adjudication, to name some, which all cry out for simultaneous government action. Thus, one cannot help but say that only a highly competent, intensely determined, and fully humane government can peacefully settle this complex, age-old, and all-encompassing problem on ancestral domain rights. Perhaps it is more appropriate to say that a people that can humanely solve a problem of such magnitude is truly worthy of being called a nation.

The Right to Cleaner Air: Strategies for the Control of Air Pollution from Stationary Sources in the Light of Existing Laws

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One of the problems brought about by the industrialization of the country is the increasing pollution of the air, which threatens human health and survival.

This thesis makes a survey of existing laws that deal with pollution from stationary sources, as well as other related laws, rules and regulations, and the cases that interpret these, with the end in view of evaluating the efficacy of these laws and mapping out a legal strategy which may be used by persons, especially community members, who may be aggrieved by problems of pollution. In the process, the author discusses the main governmental agencies involved in pollution control, and the role and enhanced powers of the local governments in the task of pollution control, as provided in the Local Government Code of 1991.

After mapping out such strategy, the author goes on to conclude that the basic framework for air pollution control has been set in place, and makes recommendations for the more effective use of the law in air pollution control.

Introduction

A. Background of the Study

Petitioner takes note of x x x [its] plea [.] focusing on its huge investment in this dollar-earning industry. It must be stressed, however, that concomitant with the need to protect investments and contribute to the growth of the economy is the equally essential importance of protecting the health, nay the very lives of the people, from the deleterious effects of the pollution of the environment.¹

We live in an era which demands a delicate balance of important forces and interests. While on one hand there is a growing concern for the envi-