

DIOSDADO SAMA Y HINUPAS AND BANDY MASANGLAY Y ACEVEDA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 224469. January 05, 2021

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari[1] assails the following dispositions of the Court of Appeals in CA-G.R. CR No. 33906:

- a) Decision[2] dated May 29, 2015 affirming the conviction of petitioners Diosdado Sama y Hinupas and Bandy Masanglay y Aceveda and their co-accused Demetrio Masanglay y Aceveda for violation of Section 77 of Presidential Decree 705 (PD 705) or the Revised Forestry Code of the Philippines: and
- b) Resolution[3] dated April 11, 2016 denying their motion for reconsideration.

Proceedings before the Trial Court

By Information[4] dated May 27, 2005, petitioners and Demetrio were charged, as follows:[5]

INFORMATION

The undersigned Prosecutor, under oath, accuses DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, BANDY MASANGLAY y ACEVEDA, residents of Barangay Baras, Baco, Oriental Mindoro with the crime of Violation of Presidential Decree No. 705 as amended, committed as follows:

That on or about the 15[th] day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating and mutually helping one another did and then and there willfully, unlawfully, feloniously and knowingly cut with the use of unregistered power chainsaw, a Dita tree, a forest product, with an aggregate volume of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php20,000.00) PESOS, Philippine Currency.

Contrary to law.

The case was raffled to the Regional Trial Court (RTC)- Branch 39, Calapan City, Oriental Mindoro.[6]

On arraignment, all three (3) accused pleaded not guilty.[7] Thereafter, they filed a Motion to Quash Information[8] dated July 31, 2007, alleging among others, that they are members of the Iraya-Mangyan tribe, and as such, are governed by Republic Act No. 8371 (RA 8371), The Indigenous Peoples Rights Act of 1997 (IPRA). By Order[9] dated August 23, 2007, the motion was denied for being a mere scrap of paper. Trial followed.

The Prosecution's Version

PO3 Villamor D. Ranee (PO3 Ranee) testified that on March 15, 2005, his team comprised of police officers and representatives of the Department of Environment and Natural Resources (DENR) surveilled Barangay Calangatan, San Teodoro, Oriental Mindoro to address illegal logging operations in the area.[10]

While patrolling the mountainous area of Barangay Calangatan, they heard the sound of a chainsaw and saw a tree slowly falling down. They immediately crossed the river and traced the source of the sound. In the area where the sound was coming from, they caught the accused in the act of cutting a dita tree. They also saw a bolo stuck to the tree that had been cut.[11]

The team inquired from the accused if they had a license to cut down the tree. The latter replied they had none. After informing the accused of their violation, the team invited them to the police station for further investigation. The team left the illegally cut tree in the area because it was too heavy. Pictures of the accused and the cut down tree were also taken.[12]

The prosecution offered in evidence the Joint Affidavit of the apprehending officers, Apprehension Receipt dated March 5, 2005, and pictures.[13]

The Defense's Version

Barangay Captain Rolando Aceveda (Barangay Captain Aceveda) of Baras, Baco, Oriental Mindoro testified that on March 15, 2005, he was resting at home when he noticed several police officers and DENR employees passing by. He inquired where they were headed. They told him they were on their way to Barangay Laylay in San Teodoro for surveillance on illegal loggers.

After two (2) or three (3) hours, the team returned. They had arrested and brought with them the accused who are members of the Iraya-Mangyan indigenous peoples (IPs). The police officers told him they caught the accused cutting down a dita tree. He then asked the accused if the allegations against them were true. They told him they cut the tree for the construction of the Iraya-Mangyan IPs' community toilet. He was aware of this construction and confirmed that the dita tree was planted within the ancestral domain of the Iraya-Mangyan IPs.[14]

The defense did not present any documentary evidence.[15]

The Trial Court's Ruling

By Decision[16] dated August 24, 2010, the trial court convicted the accused, as charged, thus:

ACCORDINGLY, this Court finds accused DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, and BANDY MASANGLAY y ACEVEDA GUILTY beyond reasonable doubt as (principals) of the crime charged in the aforequoted Information and in default of any modifying circumstance attendant, the Court hereby sentences said accused to an indeterminate penalty ranging from four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, four (4) months and twenty-one (21) days of *prision correccional*, as maximum, and to pay the costs.

SO ORDERED.[17]

The trial court ruled that a dita tree with an aggregate volume of 500 board feet can be classified as "timber" within the purview of Section 68, now Section 77[18] of PD 705, as amended. Thus, cutting the dita tree without a corresponding permit from the DENR or any competent authority violated the law.

The trial court further held that a violation of Section 77 of PD 705 constituted *malum prohibitum*, and for this reason, the commission of the prohibited act is a crime in itself and criminal intent does not have to be

established. The trial court dismissed the defense of the accused that they had an IP right to log the dita tree which they intended to use for the construction of a communal toilet for the Iraya-Mangyan IPs.

The trial court also faulted petitioners for not testifying and opting, instead, to present as their lone witness, Barangay Captain Aceveda, who allegedly had no personal and first-hand knowledge of the events which transpired before, during, and after the prohibited act.

Under Order[19] dated October 13, 2010, the trial court denied the accused's motion for reconsideration.[20] Only petitioners Diosdado Sama y Hinupas, Bandy Masanglay y Aceveda appealed from the trial court's ruling.

Proceedings before the Court of Appeals

Petitioners asserted anew their IP right to harvest the dita tree logs as part and parcel of the Iraya-Mangyan IPs' rights to cultural integrity and ancestral domain and lands. In particular, they claimed that: (1) pursuant to their cultural practices, they followed the order of their indigenous community leaders to log the dita tree to be used for the construction of their communal toilet; and (2) the land where the dita tree was planted was part of their ancestral domain and lands under RA 8371 or the Indigenous People's Rights Act of 1997 (IPRA), and thus, the Iraya-Mangyan IPs have communal dominion over the fruits and natural resources found therein; (3) PO3 Ranee did not actually witness their act of cutting the dita tree; and (4) the prosecution failed to prove they had conspired in cutting the tree.[21]

The Office of the Solicitor General (OSG) countered that: (1) there is no justification for IPs who cut a dita tree or any other tree without a permit that is special and distinct from any justification available to our compatriots; (2) even if the logging of trees is deemed part of the IPs' rights to cultural integrity or their ancestral domain or lands, the Iraya-Mangyan IPs failed to prove that as for them, the logging of a dita tree for building a communal toilet was justified by these rights; (3) PO3 Ranee positively testified that the accused were the ones responsible in cutting down the dita tree; (4) it was not necessary for PO3 Ranee to actually witness the accused fell the tree as the chain of events before, during, and after the incident led to the conclusion beyond a shadow of doubt that they had committed the offense charged; (5) the accused already admitted they had logged the dita tree intending to use the logs for the construction of a communal toilet for the Iraya-Mangyan indigenous community; and (6) defense witness Barangay Captain Aceveda corroborated this admission.[22]

The Court of Appeals' Ruling

In its Decision[23] dated May 29, 2015, the Court of Appeals affirmed. It focused on the failure of the accused to present any license agreement, lease, or permit authorizing them to log the dita tree. It also faulted the accused for relying on IPRA as the source of their alleged rights to cultural heritage and ancestral domain and lands. For they purportedly failed to substantiate their claim that they are Iraya-Mangyan IPs and the land where the dita tree was situated is part of their ancestral domain and lands.

Under Resolution[24] dated April 11, 2016, the Court of Appeals denied the accused' motion for reconsideration.

The Present Petition

Petitioners now seek affirmative relief from the Court, reiterating their plea for acquittal.[25]

They maintain that their act of harvesting the dita tree is part and parcel of the Iraya-Mangyans' rights to cultural integrity and ancestral domain and lands. In particular, they profess that: (1) pursuant to their cultural practices, they followed the order of their indigenous community leaders to log the dita tree for the construction of their communal toilet; and (2) the land where the dita tree was planted was part of their ancestral domain and lands under the IPRA, thus, the Iraya-Mangyan IPs have communal dominion over the fruits and natural resources

found therein. Additionally, as the Court of Appeals rejected their claim of being Iraya-Mangyan IPs, petitioners devote substantial space to emphasize what had not been disputed during the trial, that they are in fact Iraya-Mangyan IPs.

In the alternative, petitioners stress that: (1) PO3 Ranee did not actually witness their supposed act of cutting the dita tree; (2) the prosecution failed to prove they conspired in cutting the tree; and (3) the Court of Appeals misappreciated PO3 Ranee's testimony identifying them as the ones who cut the dita tree.[26]

The People, through the OSG, seeks to dismiss the petition on the following grounds: (1) whether petitioners logged the dita tree is a question of fact beyond the jurisdiction of the Court Via Rule 45 of the Rules of Court; (2) the Court of Appeals did not err in upholding the trial court's finding that conspiracy attended the commission of the offense charged; (3) there is no IP justification for cutting the dita tree which is special and distinct from other Filipinos; and (4) even if the logging of a tree is part of the IPs' rights to cultural integrity and ancestral domain and lands, the Iraya-Mangyan IPs failed to prove that as for them, there is indeed that particular IP justification to log a dita tree for building a communal toilet.[27]

In their Reply,[28] petitioners continue to claim that the area where the dita tree was located is owned by the Iraya-Mangyan indigenous cultural communities (ICCs) since time immemorial by virtue of their "native title." This "native title" has been formally recognized under IPRA. As a result, the DENR issued Certificate of Ancestral Domain (CADC) No. RO4-CADC-126 covering the ancestral domain and ancestral lands where petitioners cut the dita tree. There is a pending application for conversion of the CADC to a Certificate of Ancestral Domains Title (CADT) before the National Commission on Indigenous Peoples (NCIP).

Issues

Is there evidence beyond reasonable doubt, first, of petitioners' ethnicity as Iraya-Mangyan IPs, and second, of the elements of violation of Section 77 of PD 705, as amended? As for the latter, is there evidence beyond reasonable doubt that:

- the dita tree which petitioners had cut and collected is a specie of timber?;
- the dita tree was cut and collected from a forest land, an alienable or disposable public land, or a private land, as contemplated in Section 77 of PD 705, as amended?; and,
- the cutting of the dita tree was done without any authority granted by the State?

Ruling

We acquit.

Section 2 of Rule 133 of the Rules of Court defines the standard of proof beyond reasonable doubt:

SECTION 2. Proof Beyond Reasonable Doubt. — In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

In practice, there is proof beyond a reasonable doubt where the judge can conclude: "All the above, as established during trial, lead to no other conclusion than the commission of the crime as prescribed in the law." [29] It has been explained:

With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines reasonable doubt as a doubt for which one can give a reason, so long as the reason given is logically connected to the evidence. An inability to give such a reason for the doubt one entertains is the first and most

obvious indication that the doubt held may not be reasonable. In this respect, I agree with the United States Court of Appeals, District of Columbia Circuit, in *U.S. v. Dale*, 991 F.2d 819 (1993) at p.853: "The instruction ... fairly convey[s] that the requisite doubt must be 'based on reason' as distinguished from fancy, whim or conjecture."

....

You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt", not beyond "any doubt". A reasonable doubt is exactly what it says -a doubt based on reason- on the logical processes of the mind. It is not a fanciful or speculative doubt, nor is it a doubt based upon sympathy or prejudice. It is the sort of doubt which, if you ask yourself "why do I doubt?"-you can assign a logical reason by way of an answer.

A logical reason in this context means a reason connected either to the evidence itself, including any conflict you may find exists after considering the evidence as a whole, or to an absence of evidence which in the circumstances of this case you believe is essential to a conviction.

You must not base your doubt on the proposition that nothing is certain or impossible or that anything is possible. You are not entitled to set up a standard of absolute certainty and to say that the evidence does not measure up to that standard. In many things it is impossible to prove absolute certainty.[30]

First Issue: Petitioners are Iraya-Mangyan IPs who are a publicly known ICC inhabiting areas within Oriental Mindoro.

IPs in the Philippines inhabit the interiors and mountains of Luzon, Mindoro, Negros, Samar, Leyte, Palawan, Mindanao, and Sulu group of islands.[31] In *Cruz v. Secretary of Natural Resources*,[32] the Court recognized the following ICCs residing in Region IV: Dumagats of Aurora, Rizal; Remontado of Aurora, Rizal, Quezon; Alangan or Mangyan, Batangan, Buid or Buhid, Hanunuo, and Iraya of Oriental and Occidental Mindoro; Tadyawan of Occidental Mindoro; Cuyonon, Palawanon, Tagbanua and Tao't bato of Palawan.[33]

In Oriental Mindoro, the Iraya-Mangyan IPs are publicly known to be residing and living in the mountains of the municipalities of Puerto Galera, San Teodoro, and Baco.[34]

The Information[35] stated that petitioners are residents of Barangay Baras, Baco, Oriental Mindoro. They supposedly logged a dita tree in Barangay Calangatan, San Teodoro, Oriental Mindoro. Notably, the municipalities of Baco and San Teodoro are areas where the Iraya-Mangyan IPs are publicly known to inhabit. They have continuously lived there since time immemorial.

The first evidence that petitioners are Iraya-Mangyan IPs is the testimony of Barangay Captain Aceveda of Baras, Baco, Oriental Mindoro. He testified in clear and categorical language that petitioners are Mangyans and the dita tree was grown on the land occupied by the Mangyans:

Q: Hours after the policemen and the employees of the DENR passed by what happened, Mr. Witness?

A: After more or less two to three hours later, they already returned ma'am.

Q: Did you notice anything unusual Mr. Witness?

A: Yes (,) ma'am.

Q: And what was that? ,

A: They are accompanied by three (Mangyan) persons ma'am.

Q: And could you identify before this Court who these three (Mangyans) were?

A: Yes (,) ma'am.

Q: Could you identify the three?

A: Diosdado Sama, Bandy Masanglay (,) and Demetrio Masanglay ma'am.

Q: What was the reason that they were taken under the custody by these policemen?

A: They cut down trees or lumbers ma'am.

Q: And where was the felled log cut Mr. Witness according to them?

A: In the Sand owned by the Mangyans ma'am.

Q: Where in particular, Mr. Witness?

A: Sitio Matahimik, Barangay Baras, Baco ma'am.[36]

As barangay captain of Barangay Baras, Baco, Oriental Mindoro where petitioners and the Iraya-Mangyan IPs live, Aceveda is competent to testify that petitioners are Iraya-Mangyan IPs and the dita tree was grown and found in the land where these IPs have inhabited since time immemorial. For he has personally known the people living within his barangay, including petitioners and other Iraya-Mangyan IPs. When asked about petitioners, he positively identified these persons by their names and confirmed they are Iraya-Mangyan IPs.[37] He is fully knowledgeable of the territory and the people of his barangay. He too is a member of the Iraya-Mangyan IPs. These matters were not refuted by the prosecution.

The second evidence that petitioners are indeed Iraya-Mangyan IPs is the fact that the NCIP - Legal Affairs Office has been representing them from the initiation of this case until the present.[38] Records show that the NCIP-Legal Affairs Office signed the motions and pleadings filed in petitioners' defense before the trial court, the Court of Appeals, and this Court, viz.: (1) Motion to Quash Information[39] dated July 31, 2007; (2) Motion for Reconsideration[40] of the adverse Decision dated September 08, 2010 of the RTC - Calapan City; (3) Supplement to the Motion for Reconsideration[41] dated January 17, 2009; (4) Motion for Reconsideration[42] dated July 06, 2015 of the adverse Decision of the Court of Appeals; (5) Petition for Review[43] dated May 16, 2014; and (6) Reply[44] dated March 02, 2017.

Under the IPRA, the NCIP is the lead government agency[45] for the protection, promotion, and preservation of IP/ICC identities and rights in the context of national unity.[46] As a result of its expertise, it has the primary jurisdiction to identify ICCs and IPs. Its Legal Affairs Office is mandated to represent and provide legal assistance to them:

Section 46 (g) Legal Affairs Office — There shall be a Legal Affairs Office which shall advise the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.[47]

In *Unduran v. Aberasturi*,[48] the Court held that the NCIP may acquire jurisdiction over claims and disputes involving lands of ancestral domain only when they arise between or among parties belonging to the same ICCs or IPs. If the dispute includes parties who are non-ICCs or IPs, the regular courts shall have jurisdiction.

Thus, on the basis of the evidence on record, there is no reason to doubt that petitioners are Iraya-Mangyan IPs.

Second Issue: The prosecution was not able to prove the guilt of petitioners for violation of Section 77, PD 705, as amended, beyond reasonable doubt.

Section 77 of PD 705, as amended, punishes, among others, "[a]ny person who shall cut, gather, collect, remove

timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority ... shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code...."

This provision has evolved from the following iterations:

PD 705 (1975): "SEC. 68. Cutting, gathering and/or collecting timber or other products without license. — Any person who shall cut, gather, collect or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code . . ."

PD 1559 (1978) amending PD 705: "SEC. 68. Cutting, gathering and/or collecting timber or other products without license. — Any person shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable or disposable public land or from private land whose title has no limitation on the disposition of forest products found therein, without any authority under a license agreement, lease, license or permit, shall be punished with the penalty imposed under Arts. 309 and 310 of the Revised Penal Code..."

EO 277 (1987) amending PD 705: "SEC. 68. Cutting, Gathering and/or collecting Timber or Other Forest Products Without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code...."

Section 7 of RA 7161 (1991) repealed what was then Section 77 of PD 705, as amended and renumbered Section 68 of PD 705 to Section 77 thereof and replaced the repealed Section 77. Note that the repealed Section 77 was a carry-over from Section 297 of the National Internal Revenue Code of 1977, as amended which was then incorporated into PD 705 as Section 77 by EO 273 (1987) and RA 7161. This repealed Section 77, formerly Section 297 of the National Internal Revenue Code of 1977, read:

Illegal cutting and removal of forest products. — [a] Any person who unlawfully cuts or gathers forest products in any forest lands without license or if under license, in violation of the terms hereof, shall, upon conviction for each act or omission, be fined for not less than ten thousand pesos but not more than one hundred thousand pesos or imprisoned for a term of not less than four years and one day but not more than six years, or both.

Construing the original iteration of Section 77, as then Section 68 of the original version of PD 705, *People v. CFI of Quezon (Branch VII)*[49] held that the elements of this offense are: 1) the accused cut, gathered, collected or removed timber or other forest products; 2) the timber or other forest products cut, gathered, collected or removed belongs to the government or to any private individual; and 3) the cutting, gathering, collecting or removing was without any authority granted by the State. Note that CFI of Quezon (Branch VII) included the ownership of the timber or other forest products as the second element of this offense. In the same decision, however, the Court also ruled that -

Ownership is not an essential element of the offense as defined in Section [68] of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government.

Hence, we do not consider the ownership of subject timber or other forest products as an element of the offense under Section 68 of PD 705, now Section 77 of PD 705, as amended.

We include one more element: the timber or other forest product must have been cut, gathered, collected, or removed from any forest land, or timber, from alienable or disposable public land or from private land. This is based on the language of the offense as defined in either Section 68 or Section 77 which expressly requires the source of the timber or other forest products to be from these types of land.

1. Is the dita tree cut and collected by petitioners a specie of timber?

There is no issue that petitioners did cut and collect a dita tree. As a rule, we are bound by the factual findings of the trial court and the Court of Appeals. Petitioners themselves have not seriously challenged this factual finding. In fact, their sole witness confirmed that they had cut and collected the dita tree.

As for the nature of the dita tree, we rule that it constitutes timber. *Merida v. People*[50] has explained that timber in PD 705 refers to:

... "wood used for or suitable for building or for carpentry or joinery." Indeed, tree saplings or tiny tree stems that are too small for use as posts, panelling, beams, tables, or chairs cannot be considered timber.... Undoubtedly, the narra tree petitioner felled and converted to lumber was "timber" fit "for building or for carpentry or joinery" and thus falls under the ambit of Section 68 of PD 705, as amended.

Here, the dita tree was intended for constructing a communal toilet. It therefore qualifies beyond reasonable doubt as timber pursuant to Section 77.

2. Was the dita tree a specie of timber cut and collected from a forest land, an alienable or disposable public land, or a private land, as contemplated in Section 77 of PD 705, as amended?

Section 3(d) of PD 705, as amended defines forest lands as including the public forest,[51] the permanent forest or forest reserves,[52] and forest reservationss.[53] Section 3(c) defines alienable and disposable lands as "those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes."

Section 3 (mm) defines private lands indirectly as those lands with titled rights of ownership under existing laws, and in the case of national minority, lands subject to rights of possession existing at the time a license is granted under PD 705, which possession may include places of abode and worship, burial grounds, and old clearings, but exclude productive forests inclusive of logged-over areas, commercial forests, and established plantations of the forest trees and trees of economic values.[54]

As outlined, Section 77 requires prior authority for any of the acts of cutting, gathering, collecting, removing timber or other forest products even from those lands possessed by IPs falling within the ambit of the statute's definition of private lands.

Therefore, the language of Section 77 incriminates petitioners as they cut, gathered, collected, and removed timber from a dita tree from the land which they have called their own since time immemorial, which could either be a forest land, or an alienable or disposable public land, or a private land, as defined under PD 705, as amended, without the requisite authority pursuant to PD 705 's licensing regime.

Justice Caguioa firmly opines, however, that ancestral domains and lands are outside the ambit of Section 77 as

these are neither forest land, alienable or disposable public land, nor private land.

He is correct that ancestral domains and lands are unique, different, and a class of their own. They have been referred to repeatedly as *sui generis* property, which sets into motion the construct or paradigm for determining the existence, nature, and consequences of IP rights.[55]

Nonetheless, the text of Section 77, as amended is very clear. It does not exempt from its coverage ancestral domains and lands. Too, as Chief Justice Peralta aptly points out, the term "private land," which Section 77 expressly covers, includes lands possessed by "national minorities" such as their sacred and communal grounds. This term should mean no other than what we sensitively and correctly call today as the IPs' ancestral domains and lands.

To be sure, Section 77's reference to forest lands and even alienable and disposable public lands could have also encompassed ancestral domains and lands. This is because laws were subsequently passed converting some of the lands through the open, continuous, exclusive, and notorious occupation and cultivation of IPs (then stereotypically referred to as members of the national cultural communities) by themselves or through their ancestors into alienable and disposable lands of the public domain.[56]

Three more things.

First, Section 77 of PD 705 had been amended a number of times when IP rights were burgeoning as an affirmative action component - in 1987 (EO 277) and then again in 1991 (RA 7161), but never did the authorities change the explicit coverage of the text of Section 77. There was not even an attempt to clarify that ancestral domains, and lands are beyond Section 77's contemplation, which the authorities could have easily done so.

Second, Section 77 was the product of a less-than enlightened age. The era of PD 705 even as amended did not politely call IP lands and communities the IPs' ancestral domains or ancestral lands but tribal grounds or archaeological areas of, or lands occupied and cultivated by, members of the national cultural communities, or public or communal forests. Section 77 was born and nurtured at a time when IPs were referred to as "national minorities" and the enlightened path then was to achieve their redemption through assimilation into the cultural bourgeoisie of the majority.

Justice Leonen's *Ha Datu Tawahig v. Lapinid*[57] eloquently narrates this sorry stage in our legal history. So does Justice Lopez whose citations refer to our case law when we still called IPs cultural minorities whose status as such is derisively and condescendingly seen as a mitigating circumstance, or the IPs of the Cordilleras as uncivilized Igorots whose alleged backwardness was patronizingly used to lessen the criminal punishment meted. As observed by Justice Kapunan in *Cruz v. Secretary of Natural Resources*,[58] "Philippine legal history, however, has not been kind to the indigenous peoples, characterized them as 'uncivilized,' 'backward people,' with 'barbarous practices' and 'a low order of intelligence'."

This was the construct that permeated either the original or amended iterations of Section 77, This construct rendered it unlikely, to say the least, the exclusion from criminalization of the IPs or ICCs' cultural and customary practices within their ancestral domains and lands.

This context means that Section 77 could not have intended to exclude as its language does not exclude ancestral domains and lands.

The rise of aboriginal or IP law and jurisprudence has not come about smoothly or even peacefully. This was because of the need to correspond to traditional legal conceptions of property rights to receive the law's protection.[59] Indeed, prior to the IPRA, ancestral domains and lands were conceived in this manner:

It seems to be common ground that the ownership of the lands was "tribal" or "communal," but what precisely that, means remains to be ascertained. In any case it was necessary that the argument should go the length of showing that the rights, whatever they exactly were, belonged to the category of rights of private property.[60]

This statement clearly exudes the bias of a colonialist regime. The notion that land ownership existed only where it adhered to civil or common law concepts implied their acceptance at the expense of indigenous principles of ownership. While indigenous laws were not completely rejected under this formulation, only those forms of ownership which shared sufficient similarity with the civil or common law were deemed capable of securing legal protection.

The original and amended versions of the current Section 77 were enacted under this exact legal framework. Hence, Section 77 could not have been so enlightened and progressive as to accord utmost respect to IP rights by excluding them from its criminal prohibition. It was only later that we were enlightened that the proper method of ascertaining IP rights necessitated a study of particular IP customs and laws. Under this test, IP rights and title are best understood by Iraya-Mangyan IPs considering indigenous history and patterns of cultural practices and land usage, rather than importing the preconceived notions of property rights under civil or common law. This enlightened view was not the text of, let alone, the intent behind Section 77.

Third, as held in CFI of Quezon (Branch VII), the intent behind the original iteration of Section 77 as then Section 68 rejected as an element of this offense, the ownership of the land from which the timber or other forest products were cut, removed, gathered, or collected, or the timber or other forest products themselves as accessories of the land. This means that Section 68 or even Section 77 covers any type of land so long as timber or other forest products were taken therefrom, regardless of an accused's property interests in the land, when the taking was done without any authority granted by the State. It may also be inferred that mere ownership of the land does not amount to an authority granted by the State to justify the cutting, collection, removal, or gathering of timber or other forest products. As elucidated in CFI of Quezon (Branch VII):

The failure of the information to allege that the logs taken were owned by the state is not fatal. It should be noted that the logs subject of the complaint were taken not from a public forest but from a private woodland registered in the name of complainant's deceased father, Macario Prudente. The fact that only the state can grant a license agreement, license or lease does not make the state the owner of all the logs and timber products produced in the Philippines including those produced in private woodlands. The case of *Santiago v. Basilan Company*, G.R. No. L-15532, October 31, 1963, 9 SCRA 349, clarified the matter on ownership of timber in private lands, This Court held therein:

"The defendant has appealed, claiming that it should not be held liable to the plaintiff because the timber which it cut and gathered on the land in question belongs to the government and not to the plaintiff, the latter having failed to comply with a requirement of the law with respect to his property.

"The provision of law referred to by appellant is a section of the Revised Administrative Code, as amended, which reads:

'SEC. 1829. Registration of title to private forest land. — Every private owner of land containing timber, firewood and other minor forest products shall register his title to the same with the Director of Forestry. A list of such owners, with a statement of the boundaries of their property, shall be furnished by said Director to the Collector of Internal Revenue, and the same shall be supplemented from time to time as occasion may require.'

'Upon application of the Director of Forestry the fiscal of the province in which any such land lies shall render assistance in the examination of the title thereof with a view to its registration in the Bureau of Forestry.'

"In the above provision of law, there is no statement to the effect that noncompliance with the requirement would divest the owner of the land of his rights thereof and that said rights of ownership would be transferred

to the government. Of course, the land which had been registered and titled in the name of the plaintiff under that Land Registration Act could no longer be the object of a forester license issued by the Director of Forestry because ownership of said land includes also ownership of everything found on its surface (Art. 437, New Civil Code).

"Obviously, the purpose of the registration required in section 1829 of the Administrative Code is to exempt the title owner of the land from the payment of forestry charges as provided for under Section 266 of the National Internal Revenue Code, to wit:

'Charges collective on forest products cut, gathered and removed from unregistered private lands. — The charges above prescribed shall be collected on all forest products cut, gathered and removed from any private land the title to which is not registered with the Director of Forestry as required by the Forest Law; Provided, however, that in the absence of such registration, the owner who desires to cut, gather and remove timber and other forest products from such land shall secure a license from the Director of Forestry Law and Regulations. The cutting, gathering and removing of timber and the other forest products from said private lands without license shall be considered as unlawful cutting, gathering and removing of forest products from public forests and shall be subject to the charges prescribed in such cases in this chapter.'

"xxx xxx xxx.

"On the other hand, while it is admitted that the plaintiff has failed to register the timber in his land as a private woodland in accordance with the oft-repeated provision of the Revised Administrative Code, he still retained his rights of ownership, among which are his rights to the fruits of the land and to exclude any person from the enjoyment and disposal thereof (Art. 429, New Civil Code) — the very rights violated by the defendant Basilan Lumber Company."

While it is only the state which can grant a license or authority to cut, gather, collect or remove forest products it does not follow that all forest products belong to the state. In the just cited case, private ownership of forest products grown in private lands is retained under the principle in civil law that ownership of the land includes everything found on its surface.

Ownership is not an essential element of the offense as defined in Section[68] of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government.

The concept of ownership adverted to in CFI of Quezon (Branch VII) is the civilist notion of ownership, that is, the one defined and expounded in our Civil Code.

We hold that this ruling in CFI of Quezon (Branch VII) remains true to the amended iterations of Section 68, now Section 77. Ownership of the land from which the timber or other forest products are taken is neither an element of the offense nor a defense to this offense — so long as timber or other forest products were cut, collected, gathered, or removed from a forest land, an alienable or disposable public land, or private land as defined in PD 705, as amended, without any authority granted by the State. As well, ownership per se of either the land or the timber or other forest products, as this right is understood in our Civil Code, does not amount to an authority granted by the State to justify the otherwise forbidden acts.

The reason for this ruling is the relevant part of Section 68 that has remained unchanged in its present version - the actus reus ("cut, gather, collect, remove"), the object of the actus reus (timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land), and the penalties for this offense ("shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code...."). The role of ownership in the determination of criminal liability for this offense has not evolved. In fact, if one were to examine the original Section 68, ownership ought to have been an essential element because Section 68

was then expressly treated as a specie of qualified theft, a felony where ownership is an essential element.[61] Nonetheless, despite this penal typology of Section 68 then, ownership was not considered an element of this offense. With more reason, there having been no change in the wording of the law, on one hand, and there having been a shift in its classification into an offense distinct from qualified theft, on the other, ownership must continue to be a non-essential consideration in obtaining a conviction for this offense.

Another reason lies in the purpose that Section 68 and the entirety of PD 705, as amended seek to achieve. As stated in the preamble of PD 705, as amended:

WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;

WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;

WHEREAS, it is also imperative to place emphasis not only on the utilization thereof but more so on the protection, rehabilitation and development of forest lands, in order to ensure the continuity of their productive condition;

WHEREAS, the present laws and regulations governing forest lands are not responsive enough to support re-oriented government programs, projects and efforts on the proper classification and delimitation of the lands of the public domain, and the management, utilization, protection, rehabilitation, and development of forest lands....

Verily, State regulation of the utilization of forest lands cuts above ownership rights. This is in line with the police power of the State and its obligation to the entire nation to promote, protect, and defend its right to a healthy and clean environment and ecology as a third generation collective right.[62]

Maynilad Water Services Inc. v. Secretary of the Department of Environment and Natural Resources[63] has confirmed the public trust doctrine that permeates the State's obligation vis-a-vis all natural resources such as water, and by logical extension, timber and other forest products:

The vastness of this patrimony precludes the State from managing the same entirely by itself. In the interest of quality and efficiency, it thus outsources assistance from private entities, but this must be delimited and controlled for the protection of the general welfare. Then comes into relevance police power, one of the inherent powers of the State. Police power is described in *Gerochi v. Department of Energy*.

[P]olice power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxim *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.

Hand-in-hand with police power in the promotion of general welfare is the doctrine of *parens patriae*. It focuses on the role of the state as a "sovereign" and expresses the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*. Under the doctrine, the state has the sovereign power of guardianship over persons of disability, and in the execution of the doctrine the legislature is possessed of inherent power to provide protection to persons *non sui juris* and to make and enforce rules and regulations as it deems proper for the management of their property. *Parens patriae* means "father of his

country," and refers to the State as a last-ditch provider of protection to those unable to care and fend for themselves. It can be said that Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and overwhelmed by business pursuits.

While the Regalian doctrine is state ownership over natural resources, police power is state regulation through legislation, and parens patriae is the default state responsibility to look after the defenseless, there remains a limbo on a flexible state policy bringing these doctrines into a cohesive whole, enshrining the objects of public interest, and backing the security of the people, rights, and resources from general neglect, private greed, and even from the own excesses of the State. We fill this void through the Public Trust Doctrine.

The Public Trust Doctrine, while derived from English common law and American jurisprudence, has firm Constitutional and statutory moorings in our jurisdiction. The doctrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water. Thus, "[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust." In *National Audubon Society v. Superior Court of Alpine County*, a California Supreme Court decision, it worded the doctrine as that which —

....

Academic literature further imparts that "[p]art of this consciousness involves restoring the view of public and state ownership of certain natural resources that benefit all. [. . .]" The "doctrine further holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole. A clear declaration of public ownership, the doctrine reaffirms the superiority of public rights over private rights for critical resources. It impresses upon states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability."

In this framework, a relationship is formed — "the [s]tate is the trustee, which manages specific natural resources — the trust principal — for the benefit of the current and future generations — the beneficiaries." "[T]he [S]tate has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public's interest.

These exigencies forced the public trust doctrine to evolve from a mere principle to a resource management term and tool flexible enough to adapt to changing social priorities and address the correlative and consequent dangers thereof. The public is regarded as the beneficial owner of trust resources, and courts can enforce the public trust doctrine even against the government itself.

In the exercise of its police power regulation, "the State restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owner was limited, but no aspect of the property is used by or for the public. The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein." [64]

To conclude, the dita tree, as a specie of timber, was cut and collected beyond reasonable doubt from a private land, as contemplated in Section 77 of PD 705, as amended, or at the very least, a forest land or an alienable or disposable public land converted from ancestral lands, is covered, too, by PD 705, as amended. This notwithstanding that the land is also petitioners' ancestral domain or land which they own *sui generis*.

3. Was the dita tree cut and collected without authority granted by the State?

There is, however, reasonable doubt that the dita tree was cut and collected without any authority granted by the State.

It is a general principle in law that in *malum prohibitum* case, good faith or motive is not a defense because the law punishes the prohibited act itself. The penal clause of Section 77 of PD 705, as amended punishes the cutting, collecting, or removing of timber or other forest products only when any of these acts is done without lawful authority from the State.

In *Saguin v. People*,^[65] the prohibited act of non-remittance of Pag-Ibig contributions is punishable only when this act was done "without lawful cause" or "with fraudulent intent." According to this case law, lawful cause may result from a confusing state of affairs engendered by new legal developments that re-ordered the way things had been previously done. In *Saguin*, the cause of the confusion was the devolution of some powers in the health sector to the local governments. The devolution was ruled as a "valid justification" constituting the "lawful cause" for the inability of the accused to remit the Pag-Ibig contributions. The devolution gave rise to reasonable doubt as to the existence of the offense's element of lack of lawful cause.

This doctrine in *Saguin* is reiterated in *Matalam v. People*.^[66] *Matalam* affirmed the doctrine that when an act is *malum prohibitum*, "[i]t is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated." Citing *ABS-CBN Corporation v. Gozon*^[67] *Matalam* clarified what this doctrine entails by distinguishing between the intent requirements of a *malum in se* felony and a *malum prohibitum* offense:

The general rule is that acts punished under a special law are *malum prohibitum*. "An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial."

In contrast, crimes *mala in se* concern inherently immoral acts:

"Implicit in the concept of *mala in se* is that of *mens rea*." *Mens rea* is defined as "the nonphysical element which, combined with the act of the accused, makes up the crime charged. Most frequently it is the criminal intent, or the guilty mind[.]"

Crimes *mala in se* presuppose that the person who did the felonious act had criminal intent to do so, while crimes *mala prohibita* do not require knowledge or criminal intent:

In the case of *mala in se* it is necessary, to constitute a punishable offense, for the person doing the act to have knowledge of the nature of his act and to have a criminal intent; in the case of *mala prohibita*, unless such words as "knowingly" and "willfully" are contained in the statute, neither knowledge nor criminal intent is necessary. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penalties, if he does an act prohibited by these statutes.

Hence, "[i]ntent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself [.]" When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.

Volition, or intent to commit the act, is different from criminal intent. Volition or voluntariness refers to knowledge of the act being done [in contrast to knowledge of the nature of his act]. On the other hand, criminal intent — which is different from motive, or the moving power for the commission of the crime — refers to the state of mind beyond voluntariness. It is this intent that is being punished by crimes *mala in se*.

Matalam recognized that the character or effect of the commission of the prohibited act, which is not required in proving a *malum prohibitum* case, is different from the intent and volition to commit the act which itself is prohibited if done without lawful cause. Justice Zalameda elucidates:

The *malum prohibitum* nature of an offense, however, does not automatically result in a conviction. The prosecution must still establish that the accused had intent to perpetrate the act.

Intent to perpetrate has been associated with the actor's volition, or intent to commit the act. Volition or voluntariness refers to knowledge of the act being done. In previous cases, this Court has determined the accused's volition on a case to case basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances.

....

[I]t is clear that to determine the presence of an accused's intent to perpetrate a prohibited act, courts may look into the meaning and scope of the prohibition beyond the literal wording of the law. Although in *malum prohibitum* offenses, the act itself constitutes the crime, courts must still be mindful of practical exclusions to the law's coverage, particularly when a superficial and narrow reading of the same with result to absurd consequences. Further, as in *People v. De Gracia* and *Mendoza v. People*, temporary, incidental, casual, or harmless commission of prohibited acts were considered as an indication of the absence of an intent to perpetrate the offense. (Emphasis in the original)

Here, as in *Saguin*, as reiterated in *Matalam*, there was confusion arising from the new legal developments, particularly, the recognition of the indigenous peoples' (IPs) human rights normative system, in our country. To paraphrase and import the words used in *Saguin*, while doubtless there was voluntary and knowing act of cutting, removing, collecting, or harvesting of timber, we nonetheless consider the reasonable doubt engendered by the new normative system that the act was done without State authority, as required by Section 77 of PD 705, as amended.

The confusion and the resulting reasonable doubt on whether petitioners were authorized by the State have surfaced from the following circumstances:

One. In light of the amendments to Section 77, the lawful authority seems to be probably more expansive now than it previously was. Presently, the authority could be reasonably interpreted as being inclusive of other modes of authority such as the exercise of IP rights. As observed by Senior Associate Justice Perlas-Bernabe:

Further, it must be noted that the original iteration of Section 77 (then Section 68 of Presidential Decree No. 705 [1975]) was passed under the 1973 Constitution and specifically described "authority" as being "under a license agreement, lease, license or permit." However, soon after the enactment of the 1987 Constitution or in July 1987, then President Corazon Aquino issued Executive Order No. 277 (EO 277) amending Section 77, which, among others, removed the above-mentioned descriptor, hence, leaving the phrase "without any authority," generally-worded. To my mind, the amendment of Section 77 should be read in light of the new legal regime which gives significant emphasis on the State's protection of our IP's rights, which includes the preservation of their cultural identity. Given that there was no explanation in EO 277 as to the "authority" required, it may then be reasonably argued that the amendment accommodates the legitimate exercise of IP's rights within their ancestral domains. (Emphasis in the original)

The evolution of the penal provision shows that authority has actually become more expansive and inclusive. As presently couched, it no longer qualifies the "authority" required but includes ANY authority. As sharply noted by Senior Associate Justice Perlas-Bernabe, the phrasing of the law has evolved from requiring a "permit from the Director" in 1974 under PD 389, to a mere "license agreement, lease, license or permit" under PDs 705 and 1559 from 1975 to 1987, and to "any authority" from 1987 thereafter. Without any qualifier, the word "authority" is

now inclusive of forms other than permits or licenses from the DENR. This doubt is reasonable as it arose from a principled reading of the amendments to Section 77, and this doubt ought to be construed in petitioners' favor.

Justice Caguioa vigorously posits as well that "[considering the foregoing, I have, from the very beginning, and still am, of the view that the 'authority' contemplated in PD 705, as amended, should no longer be limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA." He cogently reasons out:

To have a strict interpretation of the term "authority" under Sec. 77 of P.D. 705 despite the clear evolution of its text would amount to construing a penal law strictly against the accused, which cannot be countenanced. To stress, "[o]nly those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought."

More importantly, to construe the word "authority" in Sec. 77, P.D. 705 as excluding the rights of ICCs/IPs already recognized in the IPRA would unduly undermine both the text and the purpose of this novel piece of legislation and significantly narrow down the rights recognized therein. (Emphasis in the original)

Two. It is an admitted fact that petitioners relied upon their elders, the non-government organization that was helping them, and the NCIP, that they supposedly possessed the State authority to cut and collect the dita tree as IPs for their indigenous community's communal toilet. Thus, subjectively,[68] their intent and volition to commit the prohibited act, that is without lawful authority, was rendered reasonably doubtful by these pieces of evidence showing their reliance upon these separate assurances of a State authority. As Justice Zalameda explains:

The peculiar circumstances of this case require the same liberal approach. The Court simply cannot brush aside petitioners' cultural heritage in the determination of their criminal liability. Unlike the accused in *People v. De Gracia*, petitioners cannot be presumed to know the import and legal consequence of their act. Their circumstances, specifically their access to information, and their customs as members of a cultural minority, are substantial factors that distinguish them from the rest of the population.

....

As for the Mangyans, their challenges in availing learning facilities and accessing information are well documented. The location of their settlements in the mountainous regions of Mindoro, though relatively close to the nation's capital, is not easily reached by convenient modes of transportation and communication. Further, the lack of financial resources discourages indigenous families to avail and/or sustain their children's education. Certainly, by these circumstances alone, Mangyans cannot reasonably be compared to those in the lowlands in terms of world view and behavior.

In the Mangyans' worldview, the forest is considered as common property of all the residents of their respective settlements. This means that they can catch forest animals, gather wood, bamboo, nuts, and other wild plants in the forest without the permission of other residents. They can generally hunt and eat animals in the forest, except those they consider inedible, such as pythons, snakes and large lizards. They employ swiddens or the kaingin system to cultivate the land within their settlements.

Based on the foregoing, to hold petitioners to the same standards for adjudging a violation of PD 705 as non-indigenous peoples would be to force upon them a belief system to which they do not subscribe. The fact that petitioners finished up to Grade 4 of primary education does not negate their distinct way of life nor justifies lumping IPs with the rest of the Filipino people. Formal education and customary practices are not mutually exclusive, but is in fact, as some studies note, co-exist in Mangyan communities as they thrive in the modern society. It may be opportune to consider that in indigenous communities, customs and cultural

practices are normally transferred through oral tradition. Hence, it is inaccurate to conclude that a few years in elementary school results to IP's total acculturation.

As already discussed, Mangyans perceive all the resources found in their ancestral domain to be communal. They are accustomed to using and enjoying these resources without asking permission, even from other tribes, much less from government functionaries with whom they do not normally interact. Moreover, by the location of their settlements, links to local government units, or information sources are different from those residing in the lowlands. As such, the Court may reasonably infer that petitioners are unaware of the prohibition set forth in Sec. 77 of P.D. No. 705.

To my mind, an acknowledgment of the Mangyan's unique way of life negates any finding on the petitioners' intent to perpetrate the prohibited act. Taken with the fact that petitioners were caught cutting only one (1) dita tree at the time they were apprehended, and that it was done in obedience to the orders of their elders, it is clear that the cutting of the tree was a casual, incidental, and harmless act done within the context of their customary tradition.

....

In my opinion, P.D. 705, which took effect in 1975, should be viewed under the prism of the 1987 Constitution which recognizes the right of indigenous cultural communities. The noble objectives of P.D. 705 in protecting our forest lands should be viewed in conjunction with the Constitution's mandate of recognizing our indigenous groups as integral to our nation's existence. I submit that under our present Constitutional regime, courts cannot summarily ignore allegations or factual circumstances that pertain to indigenous rights or traditions, but must instead carefully weigh and evaluate whether these are material to the resolution of the case.

This does not mean, however, that the Court is creating a novel exempting circumstance in criminal prosecutions. It merely behooves the courts to make a case-to-case determination whether an accused's ties to an indigenous cultural community affects the prosecution's accusations or the defense of the accused. Simply put, the courts should not ignore indigeneity in favor of absolute reliance to the traditional purpose of criminal prosecution, which are deterrence and retribution.

In sum, the peculiar circumstances of this case compel me to take petitioners' side. I am convinced that petitioners' intent to perpetrate the offense has not been established by the prosecution with moral certainty. For this reason, I vote for petitioners' acquittal.

Objectively,[69] their reliance cannot be faulted because IP rights have long been recognized at different levels of our legal system - the Constitution, the statutes like IPRA and a host of others like the ones mentioned by Justice Leonen in his Opinion, the sundry administrative regulations (one of which Chief Justice Peralta and Justice Caguioa have taken pains to outline) which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' sui generis ownership of ancestral domains and lands, the international covenants like the United Nations Declaration on the Rights of Indigenous Peoples, of which our country is a signatory, and Philippine and international jurisprudence which identifies the forms and contents of IP rights.

We hasten to add though that this recognition has not transformed into a definitive and categorical rule of law on its impact as a defense in criminal cases against IPs arising from the exercise of their IP rights. The ensuing unfortunate confusion as to true and inescapable merits of these rights in criminal cases justifies the claim that petitioners' guilt for this *malum prohibitum* offense is reasonably doubtful.

As succinctly tackled by Justice Caguioa in his opinion: "In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not the petitioners were well-within their rights when they cut the dita tree, such doubt must be

resolved to stay the Court's hand from affirming their conviction." He further opines that the invocation of IP rights in the case at bar has "risen to the heights of contested constitutional interpretations...." While we do not share Justice Caguioa's opinion in full, we agree with him at least that there is reasonable doubt as regards the accused' guilt of the offense charged. Thus:

On this note, it may be well to remember that the case of Cruz which dealt with the constitutionality of the provisions of the IPRA was decided by an equally divided Court. This only goes to show that there are still nuances concerning the rights of IPs within their ancestral land and domain that are very much open to varying interpretations. Prescinding from this jurisprudential history, perhaps the instant case may not provide the most sufficient and adequate venue to resolve the issues brought about by this novel piece of legislation. It would be the height of unfairness to burden the instant case against petitioners with the need to resolve the intricate Constitutional matters brought about by their mere membership in the IP community especially since a criminal case, being personal in nature, affects their liberty as the accused.

The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, vis-a-vis forestry laws, has failed or delivered on its fundamental promise. That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether or not they are guilty of an offense, but whether or not there was even an offense to speak of. At most, this doubt only further burdens the fate of the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity.

At the very least, this doubt 'must merit their acquittal.
(Emphases in the original)

To be precise, the IP rights we are alluding to are the rights to maintain their cultural integrity and to benefit from the economic benefits of their ancestral domains and lands, provided the exercise of these rights is consistent with protecting and promoting equal rights of the future generations of IPs. To stress, it is the confusion arising from the novelty of the content, reach, and limitation of the exercise of these rights by the accused in criminal cases which justifies their acquittal for their otherwise prohibited act.

i. Constitutional basis of IP rights

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

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

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

ARTICLE II

Declaration of Principles and State Policies

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

xxx xxx xxx

ARTICLE VI

The Legislative Department

xxx xxx xxx

SECTION 5.

xxx xxx xxx

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

xxx xxx xxx

ARTICLE XII

National Economy and Patrimony

xxx xxx xxx

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

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

xxx xxx xxx

ARTICLE XIII

Social Justice and Human Rights

xxx xxx xxx

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

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

xxx xxx xxx

ARTICLE XIV

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

xxx xxx xxx

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

xxx xxx xxx

ARTICLE XVI

General Provisions

xxx xxx xxx

SECTION 12. The Congress may create a consultative body to advise the President on policies affecting

indigenous cultural communities, the majority of the members of which shall come from such communities.

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

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

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

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

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

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

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

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

In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by

Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government, and under which many of those tribes are now living in peace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal government should, however, be subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.

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

REPUBLIC ACT No. 1888

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

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

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

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

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

Under the 1973 Constitution, former President Ferdinand E. Marcos enacted Presidential Decree No. 1414, creating the Office of the Presidential Assistant on National Minorities. With its policy of "integrating] into the mainstream . . . groups who seek full integration into the larger community, and at the same time protecting] the rights of those who wish to preserve their original lifeways beside that larger community[.]" Presidential Decree No. 1414 maintained the drive for integration, but conceded that indigenous peoples may want preservation rather than admission.

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

With the 1987 Constitution in effect, the Indigenous Peoples' Rights Act was adopted precisely recognizing

that indigenous peoples have been "resistan[t] to political, social[,] and cultural inroads of colonization, non-indigenous religions and cultures, [and] became historically differentiated from the majority of Filipinos."

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

ii. Spectrum of IP rights

Conceptually, IP rights fall along a spectrum, the cornerstone of which is their degree of connection to the land.[71] Land is the central element of their existence.[72] Civil law land titles do not exist in its economic and social system. The concept of individual land ownership under our civil law is different and distinct from their rules on land ownership.[73]

Thus, normatively, under IPRA:

SECTION 4. Concept of Ancestral Lands/Domains. — Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

And:

SECTION 5. Indigenous Concept of Ownership. — Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity....

At one end, there are those IP rights which are practices, customs, and traditions integral to the distinctive IP culture of the group claiming the right.[74] The "occupation and use of the land" where the activity is taking place, however, is not "sufficient to support a claim of title to the land." [75] Nevertheless, these activities receive constitutional protection.[76]

In the middle, there are activities which, out of necessity, take place on land and indeed, might be intimately related to a particular piece of land.[77] Although a particular indigenous cultural community (ICC) may not be able to demonstrate title to the land, it may nevertheless have a site-specific right to engage in a particular activity.[78] Even where an IP right exists on a tract of land to which the ICC in question does not have title, that right may well be site specific, with the result that it can be exercised only upon that specific tract of land.[79] For example, if an ICC demonstrates that hunting on a specific tract of land was an integral part of their distinctive culture then, even if the right exists apart from title to that tract of land, the IP right to hunt is nonetheless defined as, and limited to, the right to hunt on the specific tract of land.

At the other end of the spectrum, there is the IP title itself.[80] IP title confers more than the right to engage in site-specific activities which are aspects of the practices, customs, and traditions of distinctive IP cultures.[81] IP site-specific rights can be made out even if IP title cannot; what IP title confers is the right to the land itself.[82]

iii. IP right to preserve cultural integrity as a free-standing right independent of IP claim or title to ancestral domains or lands

An IP right to preserve cultural integrity is manifested through an activity that is an element of a practice, custom, or tradition that is integral to the distinctive culture of the IPs claiming the right. This requires establishing the existence of the ancestral practice, custom, or tradition advanced as supporting the claimed right; confirming that

the ancestral practices, customs, or traditions were integral to the distinctive culture of the claimant's pre-contact in Philippine society, i.e., prior to contact with colonizers and non-IP Filipinos, or subsequent thereto, to the survival of the distinctive culture of the claimant's ICC in Philippine society; and proving that reasonable continuity exists between the pre-contact practice, or post-contact practice for the claimant's ICC's survival, and the contemporary claim.

An IP right to preserve cultural integrity entitles the right holder to perform the practice or custom or tradition in its present form. This means that the same sort of activity is carried on in the modern economy by modern means. To illustrate, the right to harvest wood for the construction of temporary shelters must be allowed to evolve into a right to harvest wood by modern means to be used in the construction of modern dwellings. Here, petitioners strongly claim that their IP right to preserve cultural integrity entitled them to log the dita tree for building the communal toilet as a lawful exercise and manifestation of this IP right. As shown, this claim did not just come from thin air but from the bundle of their real constitutional and statutory right to cultural heritage.

iv. IP right to preserve cultural integrity in relation to or as a manifestation of IP claim or title to ancestral domains and lands

An IP title encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes including non-traditional purposes.[83] IP title confers ownership rights similar to those associated with fee simple, including the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to pro-actively use and manage the land.[84]

These rights and the other rights concomitant to an IP title are specified in the IPRA:

CHAPTER III

Rights to Ancestral Domains

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

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

b) Right to Develop Lands and Natural Resources. — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of, ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

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

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

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

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

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

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

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

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

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

Traditionally, under civil law, ownership over property carries with it a bundle of rights comprised of *jus possidendi*, *jus abutendi*, *jus dispendendi*, *jus utendi*, *jus fruendi*, *jus vindicandi*, and *jus accessiones*. In contrast, IP title is *sui generis* as it carries an important restriction — it is collective and communal title held not only for the present generation but for all succeeding generations.^[85] What IPs have is the concept of mutual sharing of resources wherein no individual, regardless of status, is without sustenance. This means the land and its resources cannot be alienated or encumbered except to the State and in ways that would prevent future generations of the group from using and enjoying it.^[86] Nor can the land be developed or misused in a way that would substantially deprive future generations of the benefit of the land^[87] though some changes even permanent changes to the land may be possible. These uses must also be reconciled with the ongoing communal nature of the IPs or ICCs' attachment to the land.^[88]

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

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

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

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

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.

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

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

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

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

Project: Communal Toilets

The Mangyan people used to be the dominant dwellers of the entire island including the lowlands, but ever since more and more foreign settlers got in and started claiming (if not grabbing) majority of the land area,

most of the Mangyans were driven to the remote mountains and marshlands. Aside from losing their ancestral lands to the foreign settlers, the island's natural resources like the forests and rivers got abused causing the fast deterioration of vegetation and wildlife. These adverse developments throughout the history of the land have affected the lifestyle of the natural inhabitants - they became scavengers in their own land, they became nomads having no permanent domain, moving from place to place to survive the day.

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

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

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

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

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

To further support their claim that they were justified in logging the dita tree, petitioners contend as well that even prior to the effectivity of the IPRA on March 30, 1998, the Iraya-Mangyans had already applied for a Certificate of Ancestral Domain Claim (CABC).[100] As of March 31, 2018, the NCIP data show that CADC No. R04-CADC-126 dated June 5, 1998 was issued to the Iraya-Mangyan IP and is pending conversion to a Certificate of Ancestral Domain Title (CADT).[101] Although the conversion of the CADC to a CADT is still pending, we take judicial notice that the nearly perfected claim covers the municipalities of Baco, San Teodoro, and Puerto Galera in Oriental Mindoro with a land area of 33,334 hectares.[102]

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

The fact that a certificate of title or CADT has yet to be issued to the Iraya-Mangyan IPs does not diminish, much less, negate their communal ownership of the land in question. After all, a paper title is just proof of communal

ownership not a source of ownership.[105] *Lamsis v. Dong-E*[106]relevantly states:

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

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

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

A. Rights

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

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

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

A CADC affirms practically the same rights as those recognized in the IPRA as incidents of IP title. As possessors of a CADC, the Iraya- Mangyan IPs, including herein accused, have been confirmed to have the right to the

exclusive communal use and occupation of the ancestral domain covering a designated territory within the municipality of San Teodoro for a variety of purposes, including limited non-traditional purposes and the right to enjoy its economic fruits.

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

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

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

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

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

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

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

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

Indeed, there is reasonable doubt as to the existence of petitioners' IP right to log the dita tree for the construction of a communal toilet for the Iraya- Mangyan ICC. It is engendered by the more expansive definition of authority under the law, the bundle of petitioners' IP rights both under the Constitution and IPRA, and a host of others like the ones mentioned by Justice Leonen in his Opinion, the sundry administrative regulations which seek to

reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' sui generis ownership of ancestral domains and lands, the international covenants like the United Nations Declaration on the Rights of Indigenous Peoples, of which our country is a signatory, and Philippine and international jurisprudence which identifies the forms and contents of IP rights. In addition, we have the ever growing respect, recognition, protection, and preservation accorded by the State to the IPs, including their rights to cultural heritage and ancestral domains and lands.

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

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

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

Considering the afore-cited rule, a favorable judgment - as here - shall benefit accused Demetrio who did not appeal. For as stated, an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties.[109] Thus, although it is only petitioners who persisted with the present appeal, the Court may still pass upon the issue of whether their co-accused Demetrio should also be exonerated, especially since the evidence and arguments against and the conviction of petitioners, on the one hand, and accused Demetrio, on the other, are inextricably linked.[110]

So must it be.

Disposition

ACCORDINGLY, the petition is GRANTED. The Decision dated May 29, 2015 and Resolution dated April 11, 2016 of the Court of Appeals in CA-G.R. CR No. 33906 are REVERSED and SET ASIDE. Petitioners DIOSDADO SAMA y HINUPAS, BANDY MASANGLAY y ACEVEDA and accused Demetrio Masanglay y Aceveda are ACQUITTED on reasonable doubt in Criminal Case No. CR-05-8066.

SO ORDERED.

Peralta, C.J., please see dissenting opinion.

Gesmundo, Carandang, Inting, De Los Santos, and Rosario, JJ., concur.

Perlas-Bernabe, J., please see separate concurring opinion.

Leonen, J., see separate concurring opinion.

Caguioa, J., please see separate opinion.

Hernando, J., I join the dissent of Chief Justice Peralta.

Zalameda, J., please see separate concurring opinion.

Lopez, M, J., please see dissenting opinion.

Gaerlan, J., I join the separate concurring opinion of J. Zalameda.

[1] Rollo, pp. 14-37.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Florito S. Macalino, all members of the Twelfth Division, id. at 79-89.

[3] CA rollo, pp. 143-144.

[4] Rollo, pp. 48-49.

[5] SECTION 77. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. — Any person who shall cut, gather, collect, removed timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

[6] Rollo. p. 57.

[7] Id.

[8] Id. at 52-55.

[9] Brief for Accused-Appellants, CA rollo, p. 33.

[10] Comment dated November 18, 2016; rollo, pp. 131-152.

[11] Id.

[12] Id.

[13] Record, pp. 5-6.

[14] Rollo, pp. 58-59.

[15] Id. at 58.

[16] Penned by Judge Manuel C. Luna, Jr.; id. at 57-62.

[17] Id. at 62.

[18] Renumbered in PD 705 as Section 77 pursuant to Section 7 of RA 7161 (1991); See supra for text of Section 77, PD 705 as amended.

[19] Record; p. 363

[20] Appellants' Brief before the Court of Appeals, CA rollo, p. 34.

[21] Rollo, pp. 79-89.

[22] Id.

[23] Id.

[24] Id. at 39-40.

[25] Supra note 1.

[26] Id.

[27] Supra note 10.

[28] Rollo, pp. 158-167.

[29] *Dinamling v. People*, 761 Phil. 356, 374 (2015).

[30] *R. v. Lifchus*, 1996 CanLII 6631 (MB CA), retrieved on 2020-08-25.< <http://canlii.ca/t/1npkc> >

[31] See J. Puno's Separate Opinion (*Cruz v. Secretary of Environment and Natural Resources*, (Resolution, Per Curiam, En Banc), 400 Phil. 904, 947 (2000).

[32] *Id.*

[33] *Id.*

[34] See <http://www.mangyan.org/content/iraya> (last accessed: January 22, 2020).

[35] Rollo, pp. 48-49.

[36] *Id.* at 69; See also *id.* at 84-85.

[37] *Id.*

[38] See Petitioners' Motion for Reconsideration to the RTC Decision dated September 08, 2010 signed by Atty. Jeanette A. Florita of the NCIP-Legal Affairs Office, *id.* at 63-71; See also Court of Appeals' Notice of Resolution dated April 11, 2016 addressed to Atty. Jeanette A. Florita of the NCIP - Legal Affairs Office as counsel for Accused-Appellants, *id.* at 38-40; See also Petition for Review dated May 16, 2014 signed by the Atty. Jeanette A. Florita of the NCIP - Legal Affairs Office, *id.* at 14-37.

[39] *Id.* at 52-55; signed by Atty. Leovigilda V. Guioquio.

[40] *Id.* at 63-71; signed by Jeanette A. Florita.

[41] *Id.* at 78-76; signed by Jeanette A. Florita.

[42] *Id.* at 90-109; signed by Atty. Jeanette A. Florita.

[43] *Id.* at 14-37; signed by Attys. Jeanette A. Florita and Rizzabel A. Madangeng.

[44] *Id.* at 158-169; signed by Atty. Jeanette A. Florita.

[45] RA 8371 (1997), The Indigenous Peoples' Rights Act of 1997. CHAPTER VII - National Commission on Indigenous Peoples (NCIP), Section 38: National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP).— To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as the rights thereto. See *infra* for a discussion of the constitutional principle of preservation within the context of national unity.

[46] See *infra* for a discussion of the constitutional principle of preservation within the context of national unity.

[47] The Indigenous Peoples' Rights Act of 1997, Republic Act No. 8371, October 29, 1997.

[48] 771 Phil. 536, 569 (2015); See also *Unduran v. Aberasturi*, 808 Phil. 795, 800 (2017).

[49] 283 Phil. 78, 84 (1992).

[50] 577 Phil. 243, 256-257 (2008).

[51] PD 705 as amended, Section 3 (a): Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.

[52] PD 705 as amended, Section 3 (b): Permanent forest or forest reserves refers to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes.

[53] PD 705 as amended, Section 3 (g): Forest reservations refer to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes.

[54] Revised Forestry Code of the Philippines, Presidential Decree No. 705, May 19, 1975.

[55] John Borrows and Leonard Rotman, The Sui Generis Nature of Aboriginal Rights: Does it Make a Difference, 1997 36-1 Alberta Law Review 9, 1997 CanLIIDocs 142, < <http://www.canlii.org/t/skv8>> retrieved on 2020-09-13.

[56] E.g. PD 410 (1974).

[57] G.R. No. 221139, March 20, 2019.

[58] Supra note 31 at 1025.

[59] John Borrows and Leonard Rotman, supra note 55.

[60] Re Southern Rhodesia, [1919] A.C. 211 (P.C.).

[61] See e.g. People v. Molde, G.R. No. 228262, January 21, 2019: "The elements of qualified theft are: "(a) taking of personal property; (b) that the said property belongs to another; (c) that the said taking be done with intent to gain; (d) that it be done without the owner's consent; (e) that it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and] (f) that it be done with grave abuse of confidence."

[62] See Sumudu Atappatu, "The Right to Healthy Life or the Right to Die Polluted: The Emergence of a Human Right to a Healthy Environment under International Law," 16 Tulane Environmental Law Journal 65 (2002) at file:///C:/Users/SUPREME%20COURT/Downloads/2083-Article%20Text-7012-1-10-20190403%20(1).pdf. last accessed November 4, 2020.

[63] G.R. No. 202897, August 6, 2019.

[64] Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun, 520 Phil. 457, 478 (2006); Philippine Ports Authority v. Cipres Stevedoring and Arrastre Services, Inc., 501 Phil. 646, 663 (2005): "As 'police power is so far-reaching in scope, that it has become almost impossible to limit its sweep,' 48 whatever proprietary right that respondent may have acquired must necessarily give way to a valid exercise of police power, thus: 4. In the interplay between such a fundamental right and police power, especially so where the assailed governmental action deals with the use of one's property, the latter is accorded much leeway. That is settled law . . ."

[65] 773 Phil. 614, 628 (2015).

[66] 783 Phil. 711, 728 (2016): "In *Saguin v. People*, we have said that non-remittance of Pag-IBIG Fund premiums without lawful cause or with fraudulent intent is" punishable under the penal clause of Section 23 of Presidential Decree No. 1752. However, the petitioners in *Saguin* were justified in not remitting the premiums on time as the hospital they were working in devolved to the provincial government and there was confusion as to

who had the duty to remit."

[67] 755 Phil. 709, 763-764 (2015).

[68] See e.g., *Nunavut Teachers' Association v. Nunavut*, 2010 NUCJ 13 (CanLII), < <http://canlii.ca/t/2c4sl> >1234, retrieved on 2020-10-3: "The subjective element concerns a party's motive and intent.... The subjective element in the context of assessing good faith concerns the motive and intent of the parties....

[69] *Nunavut Teachers' Association v. Nunavut*, 2010 NUCJ 13 (CanLII), , retrieved on 2020-10-3: "... the objective element relates to the party's bargaining with a view to concluding a collective agreement. The Board approved the words from *ROK Tree (1999) Ltd. (Re)*, [2000] N.B.L.E.B.D. No. 14, 57 C.L.R.B.R. (2d) 293, that the efforts made to conclude a collective agreement are to be "measured against an objective standard, that of a rational and informed discussion within the framework of the statutory regime.... good faith bargaining includes rational discussion, consultation and reasonable efforts. Judging the objective component of good faith bargaining requires the judge to assess how the parties carried on the rational discussion, consultation and reasonable efforts."

[70] *Supra* note 57.

[71] *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, 2009 BCSC 1494 (CanLII), < <http://canlii.ca/t/g7mt9> > , (last accessed or March 27,2020); Prof. Mario Victor "Marvic" F. Leonen, "The Indigenous Peoples' Rights Act: An Overview of its Contents," *PHILJA Judicial Journal* (2002).

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Supra* note 57.

[77] *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, *supra*.

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Tsilhqot 'in Nation v. British Columbia*, 2014 SCC 44 (CanLII), [2014] 2 SCRA 257, retrieved on 2020-03-27.< <http://canlii.ca/tg7mt9> >

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] Prof. Mario Victor "Marvic" F. Leonen, "The Indigenous Peoples' Rights Act: An Overview of its Contents," PHILJA Judicial Journal (2002).

[90] Supra note 83.

[91] Id.

[92] Id.

[93] Id.

[94] Id.

[95] Acosta v. Ochoa, G.R. No. 211559, October 15, 2019.

[96] Drops of Faith Christian Missions, at <https://dfcmtribaimissions.wordpress.com/tag/mangyan-tribes/page/3/>. (last accessed March, 29, 2020).

[97] Kristine Askeland, Torill Bull, Maurice B. Mittelmark, Understanding how the poorest can thrive: A case study of the Mangyan women on Mindoro, Philippines (Master's Thesis, May 2010), at <http://dspace.uib.no/bitstream/handle/1956/4277/69634922.pdf?sequence=1&isAllowed=v> (last accessed on September 21, 2020):

[98] The Mangyans, Our Brothers, at <http://www.newsflash.org/2004/02/tl/t1012695.htm> (last accessed on September 21, 2020); Kapit-Bisig Laban sa Kahirapan-Comprehensive and Integrated Delivery of Social Services, at <https://ncddp.dswd.gov.ph/site/feature/profile/237> (last accessed on September 21, 2020); Kristine Askeland, Torill Bull, Maurice B. Mittelmark, supra; The Iraya Mangyan Village in Puerto Galera, at <http://www.mariaronabeltran.com/2019/01/the-iraya-mangyan-village-in-puerto.html>. (last accessed on March 29, 2020).

[99] Id.

[100] Supra note 1.

[101] <https://www.doe.gov.ph/sites/default/files/pdf/eicc/cadt-region04>, (last accessed: January 22, 2020).

[102] Section 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Rule 129 of the Revised Rules of Court)

[103] DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims; DENR AO No. 29-96, Rules and Regulations for the Implementation of Executive Order 263, Otherwise Known as the Community-Based Forest Management Strategy (CBFMS); Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan; Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan; DENR AO No. 25-92, National Integrated Protected Areas System (NIPAS) Implementing Rules and Regulations; NCIP AO No. 04-12, Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands of 2012.

[104] See e.g., DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims; Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan.

[105] See *Lim v. Gamosa*, 77A Phil. 31 (2015).

[106] 648 Phil. 372, 393-394 (2010).

[107] Citations omitted.

[108] DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims.

[109] See *People v. Merced*, 827 Phil. 473, 492 (2018).

[110] See *Lim v. Court of Appeals*, 524 Phil. 692 (2006).

DISSENTING OPINION

PERALTA, C.J.:

The facts of the case are simple. Petitioners were charged with violation of Section 68,[1] now Section 77, of Presidential Decree No. 705 (P.D. No. 705),[2] as amended, for cutting a Dita tree within the lands of Baco, Oriental Mindoro, without the authority required therein. The Information reads:

That on or about the 15[th] day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating, and mutually helping one another, did then and there willfully, unlawfully, feloniously and knowingly cut with the use of an unregistered power chainsaw, a Dita tree, a forest product, with an aggregate volume of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php20,000.00), Philippine Currency.

CONTRARY TO LAW.[3]

Petitioners were caught in flagrante delicto by several police officers and representatives of the Department and Environment and Natural Resources (DENR) who were conducting surveillance operations against illegal loggers in the area. While they admitted that they had no permit to the logging activity, petitioners claim that they are Iraya-Mangyan indigenous peoples (IPs) and, as such, they had the right to cut the tree for the construction of a community toilet of the Mangyan community.

The majority opinion, however, reverses the rulings of the courts below and acquits petitioners of the crime. It is opined that the prosecution was unable to prove their guilt beyond reasonable doubt. Ultimately, the majority relies on an "ensuing unfortunate confusion" as to the rights of indigenous peoples insofar as tree-cutting under the law is concerned. While doubtless there was a voluntary and knowing act of cutting, collecting, or harvesting of timber, it is reasonably doubtful that the act was committed without the requisite State authority.[4]

The view espoused by the majority, however, is a deviation not only from the 1987 Constitution but also from pertinent legislative enactments and established principles in criminal law.

In every criminal case, the guilt of an accused must be proven beyond reasonable doubt. Section 2, Rule 133 of

the Rules of Court provides:

SECTION 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Time and again, the Court has held that "it is a reasonable doubt on the evidence presented that will result in an acquittal." [5] Guilt must be founded on the strength of the prosecution's evidence, not on the weakness of the defense. In *People v. Claro*, [6] We ruled that reasonable doubt -

x x x is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge, x x x x If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.

Likewise, *Alcantara v. Court of Appeals* [7] states:

xxx Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. Absolute certainty of guilt is not required by the law to convict of any crime charged but moral certainty is required and this certainty is required to every proposition of proof requisite to constitute the offense. The reasonable doubt should necessarily pertain to the facts constituted by the crime charged. Surmises and conjectures have no place in a judicial inquiry and thus are shunned in criminal prosecution. For the accused to be acquitted on reasonable doubt, it must arise from the evidence adduced or from lack of evidence. Reasonable doubt is not such a doubt as any man may start questioning for the sake of a doubt; nor a doubt suggested or surmised without foundation in facts, for it is always possible to question any conclusion derived from the evidence on record, xxx.

Even the majority opinion noted that:

With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines reasonable doubt as a doubt for which one can give a reason, so long as the reason given is logically connected to the evidence. An inability to give such a reason for the doubt one entertains is the first and most obvious indication that the doubt held may not be reasonable, xxx.

You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt", not beyond "any doubt." A reasonable doubt is exactly what it says - a doubt based on reason - on the logical processes of the mind. It is not a fanciful or speculative doubt, nor is it a doubt based upon sympathy or prejudice. It is the sort of doubt which, if you ask yourself "why do I doubt?" - you can assign a logical reason by way of an answer.

A logical reason in this context means a reason connected either to the evidence itself, including any conflict you may find exists after considering the evidence as a whole, or to an absence of evidence which in the circumstances of this case you believe is essential to a conviction, x x x. [8]

Accordingly, courts must evaluate the evidence in relation to the elements of the crime charged and, as such, the

finding of guilt is always a question of fact.[9] Acquittals based on reasonable doubt, being a question of fact, therefore, has nothing to do with the interpretation of pertinent law, but has everything to do with the appreciation of evidence. It has been established that:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[10]

This notwithstanding, the majority acquits petitioners for failure by the prosecution to prove their guilt not based on an insufficiency of evidence but a question of law brought about by an alleged confusion as to the applicability of the law. In support thereof, the majority opinion likened the present case with *Saguin, et al. v. People*[11] where We acquitted accused therein who failed to comply with Section 23 of P.D. No. 1752,[12] as amended, by R.A. No. 7742[13] for failing to remit Pag-ibig contributions of the employees at the hospital they were working at. The facts of said case, however, are not on all fours with the case before Us. In *Saguin*, the accused were charged for violating the following penal provision:

Section 23. Penal Provisions. — Refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of this Decree, as well as the implementing rules and regulations adopted by the Board of Trustees, particularly with respect to registration of employees, collection and remittance of employee savings as well as employer counterparts, or the correct amount due x x x.

Under the provision cited above, the failure to effect the remittances is punishable when the refusal or failure is: (1) without lawful cause or (2) with fraudulent intent. We ruled in *Saguin* that accused persons therein could not be convicted for failing to make remittances of the hospital employees because neither of the two (2) requirements were proven. First, We explained that the devolution of the hospital where the accused were working to the provincial government was a lawful cause for their inability to make the remittances. This was due to the fact that said duty to remit was already turned over to said provincial government by virtue of R.A. No. 7160 or the Local Government Code 1993. Thus:

By April 1, 1993, however, the RMDH had been devolved to the Provincial or Local Government of Zamboanga del Norte. Thus, all financial transactions of the hospital were carried out through the Office of the Provincial Governor. The petitioners, therefore, had legal basis to believe that the duty to set aside funds and to effect the HDMF remittances was transferred from the hospital to the provincial government. Hence, the petitioners should not be penalized for their failure to perform a duty which were no longer theirs and over which they were no longer in control.

x x x x

The devolution of the hospital to the provincial government, therefore, was a valid justification which constituted a lawful cause for the inability of the petitioners to make the HDMF remittances for March 1993.[14]

Second, We found that accused persons therein cannot be guilty of having fraudulent intent due to an apparent confusion brought about by the devolution. The Court pertinently provided as follows:

There was no showing either of fraudulent intent or deliberate refusal on the part of the petitioners to make the March 1993 remittance. Whatever lapses attended such non-remittance may be attributed to the confusion of

the concerned personnel as to their functions and responsibilities brought about by the advent of the devolution. More important was the honest belief of the petitioners that the remittance function was transferred to, and assumed by, the provincial government. In fact, the petitioners duly informed the Hospital Chief of the need to make representations to the Governor to make such payment.

For said reason, they cannot and should not be faulted for the non- remittance. Further, as aptly averred by petitioners, there was no reason for them to delay or realign the funds intended for remittances because they themselves were prejudiced and affected parties.

It is a general principle in law that in *malum prohibitum* case, good faith or motive is not a defense because the law punishes the prohibited act itself. The penal clause of Section 23 of P.D. No. 1752, as amended, however, punishes the failure to make remittance only when such failure is without lawful cause or with fraudulent intent.

As earlier stated, evidence for fraudulent intent was wanting in this case. In March 1993, the payroll was prepared showing all the amounts deductible from the salaries of the employees including Medicare, loan repayment, withholding taxes, retirement insurance premium, and Pag-IBIG contributions. In the said payroll, a total amount of P15,818.81 was deducted for the Pag-IBIG loan repayments and a total amount of P7,965.58 was deducted for the Pag-IBIG contributions of all the hospital and rural health employees. The deductions, however, were comingled with the funds of RMDH. The prosecution could not even argue and prove that the petitioners pocketed or misappropriated the deductions.[15]

Thus, We acquitted the accused in *Saguin* for the following reasons: (1) there exists a lawful cause for the failure to remit, specifically, the devolution or transfer of the remittance functions from the hospital to the local government as a result of the passage of the Local Government Code; and (2) there is no showing of fraudulent intent because failure was actually brought about by a confusion caused by the devolution. Clearly, the Court took the resulting confusion into account in order to show an absence of fraudulent intent. But it was never ruled that this confusion was a lawful cause for the failure to remit.

The majority cannot, therefore, correctly rely on *Saguin* to conclude that due to an apparent confusion arising from the recognition of IP rights in the IPRA, there is reasonable doubt as to whether petitioners' act of cutting was done without the requisite authority. To repeat, the offense in this case is the cutting of any forest product without any governmental authority. Unlike the offense in *Saguin* where an absence of fraudulent intent acquits, intent of an accused herein is wholly immaterial.

It is an established fact that P.D. No. 705 is a special penal statute that punishes acts essentially *malum prohibitum*. As such, mere commission of the prohibited acts consummates the offense even in the absence of malice or criminal intent.[16] This is the reason why the Court, in *Idanan, et al. v. People*, [17] rejected the defense that the accused were merely following orders to load lumber in their truck. Indeed, it suffices to prove the act of cutting or possessing trees or any forest product from any forest land, alienable and disposable public lands, or even private lands, and without any authority from the DENR. Owing to the very *mala prohibita* nature of an offense when the doing of an act is prohibited by a special law, the commission of the prohibited act is the crime itself.[18] Accordingly, in prosecutions thereunder, claims of good faith are by no means reliable as defenses because the offense is complete and criminal liability attaches once the prohibited acts are committed.[19]

This notwithstanding, the majority insists on a confusion that springs from the amendments undergone by the subject Section 77 of P.D. No. 705. Specifically, it adopts the arguments of Senior Associate Justice Estela M. Perlas-Bernabe and Associate Justice Alfredo Benjamin S. Caguioa asserting that in light of the evolution and history thereof as well as the changes and amendments it underwent, it can be assumed that the "authority" required by the law has been expanded and is no longer confined to those granted by the DENR. The use of the

phrase "any authority" in the law's present wording - without any qualification - ought to be construed plainly and liberally in favor of petitioners.

To illustrate, they narrated that in 1974, P.D. No. 389, or the Forestry Reform Code, was enacted and it pertinently penalized the cutting of timber "without permit from the Director."^[20] Then, in 1975, P.D. No. 705 revised the provision to state that any person who shall cut timber from any forest land "without any authority under a license agreement, lease, license or permit," shall be guilty of qualified theft.^[21] Subsequently, in 1987, this provision was further amended through Executive Order (E.O.) No. 277, which merely penalized the cutting of timber "without any authority."^[22] Pursuant to the foregoing, it is maintained that since the phrase "under a license agreement, lease, license or permit" was removed by E.O. No. 277, the "authority" contemplated in P.D. No. 705, as amended, should no longer be limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA.

The argument, however, tends to mislead. A full and careful examination of E.O. No. 277^[23] reveals no showing of any intention, express or implied, to forego the requirements of authority under a license agreement, lease, license or permit. For one, a proper reading of its title clearly reveals that E.O. No. 277's purposes are limited only to: (1) penalize possession of timber or other forest products without the legal documents required by existing forest laws; (2) authorize the confiscation of illegally cut, gathered, removed and possessed forest products; and (3) grant rewards to informers of violations of forestry laws, "rules and regulations. For another, the title of subject Section 68 (now Section 77) explicitly states: "Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License." Thus, the view that E.O. No. 277 removed from Section 77 of P.D. No. 705 the requirements of licenses and permits so as to allow other forms of "authority" and sources other than the DENR cannot be permitted. The law could not be any clearer. As such, it may not be construed any way other than its plain and simple wording.

Contrary to such assertion, moreover, and even assuming that confusion in the law can result in acquittal, there simply is no such confusion in this particular case. Both the Legislature and the Executive have consistently applied a strict approach towards environmental regulation as clearly evident from a historical account of their enactments.

Even before the passage of P.D. No. 705, Congress, in 1963, had already imposed the penalty of imprisonment by virtue of R.A. No. 3571^[24] on any person who cuts trees in plazas, parks, school premises or in any other public ground without government approval.

In 1974 and 1975, then President Ferdinand E. Marcos issued P.D. No. 389 and the subject P.D. No. 705, respectively, similarly penalizing the cutting of timber without permit.

In 1976, President Marcos again promulgated P.D. No. 953,^[25] which amended R.A. No. 3571, prohibiting the unauthorized cutting of trees along public roads, in plazas, parks other than national parks, school premises or in any other public ground or place, or on banks of rivers or creeks, or along roads in land subdivisions or areas therein. The decree also imposed on concerned persons the duty of planting trees in specified places.

In 1981, President Marcos next signed Presidential Proclamation No. 2146^[26] declaring certain areas as environmentally critical within the scope of the Environmental Impact System under P.D. No. 1586.^[27] Said issuances provide that no person may conduct any environmentally critical project (such as logging)^[28] in any environmentally critical area (such as those traditionally occupied by cultural communities or tribes)^[29] without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.^[30]

In 1987, then President Corazon C. Aquino, circulated E.O. No. 277, which amended P.D. No. 705 and penalized the mere possession of timber without the requisite legal documents. As discussed above, moreover, E.O. No. 277 retained the permit requirement under P.D. No. 705.

In 1990, the DENR, in Administrative Order (AO) No. 79, Series of 1990, similarly maintained the authorization requirement on the harvesting, transporting, and sale of firewood, pulpwood or timber planted in private lands in the form of a certificate from the Community Environment and Natural Resources Office (CENRO).[31]

In 1992, Congress enacted R.A. No. 7586,[32] otherwise known as the "National Integrated Protected Areas System (NIPAS) Act of 1992," which prohibited the hunting, destroying, disturbing, or mere possession of any plants or animals or products derived from protected areas without a permit from the Management Board.

In 1995, then President Fidel V. Ramos executed E.O. No. 263[33] adopting a Community-Based Forest Management to ensure the sustainable development of the country's forestland resources. It stated that participating communities, including IPs, may be granted access to forestland resources provided they employ sustainable harvesting methods duly approved by the DENR.

In 2000, the DENR issued AO No. 2000-21[34] which provided that "no person, association or corporation shall cut, gather, transport, dispose and/or utilize naturally grown trees or parts thereof or planted premium tree species, inside titled private lands unless authorized to do so under a Private Land Timber Permit/Special Private Land Timber Permit issued by the Secretary, DENR or his/her authorized representative."

In 2004, the DENR issued AO No. 2004-52 maintaining the permit requirement for the cutting, gathering, and utilization of naturally grown trees in private lands, regardless of species.

In 2008, the DENR issued AO No. 2008-26, or the Revised Implementing Rules and Regulations (IRR) of the NIPAS Act of 1992. It allows the issuance of cutting permits in favor of IPs provided certain requirements are first complied with.[35]

Also in 2008, the DENR, together with the National Commission on Indigenous Peoples (NCIP), issued DENR-NCIP Joint AO No. 2008-01 which recognized the traditional forest practices of IPs and allowed them to implement the same within their ancestral domains. The joint order nevertheless upheld the permit requirement in providing that "only those ICCs/IPs with registered Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) shall be issued with forest resource utilization permit."

In 2011, then President Benigno Simeon C. Aquino III signed E.O. No. 23 into law declaring a moratorium on the cutting and harvesting of timber in the natural and residual forests in recognition of the destructive effects of the La Niña phenomenon. As such, the DENR was prohibited from issuing/renewing tree cutting permits in all natural and residual forests nationwide, save for certain exceptions. The order, likewise, stated that "tree cutting associated with cultural practices pursuant to the IPRA may be allowed only subject to strict compliance with existing guidelines of the DENR.

In 2013, the DENR issued Memorandum 2013-74 clarifying the suspension on the processing of all request for cutting permits. It essentially permitted tree-cutting activities within private lands and public forests/timberlands, including those IP practices allowed by E.O. No. 23 under the IPRA, subject to strict clearance and permit requirements to be issued by appropriate officials from the Office of the President and the DENR.

In 2018, Congress passed R.A. No. 110038, otherwise known as the Expanded National Integrated Protected Areas System (ENIPAS) Act of 2018, which amended the NIPAS Act of 1992. Just like the NIPAS Act of 1992 and its IRR, the IRR of the ENIPAS Act of 2018 allows the issuance of cutting permits in favor of IPs provided

certain requirements are complied with.[36]

Clearly, there is nothing in the law, old or new, that would suggest any government intent to relinquish regulatory rights in favor of IPs, or anyone for that matter. At no point in time was the authorization requirement ever dispensed with. Whether it be in the form of permits, licenses, or such other joint agreements, the Executive and the Legislature had every intention to maintain its unwavering regulation of the country's forests and natural resources thereon.

As a matter of fact, the DENR, together with the NCIP, had already effectively harmonized these interests found in the provisions of P.D. No. 705 and the IPRA when it issued DENR-NCIP Joint AO No. 2008-01.[37] By virtue of the joint order, the State duly recognized the inherent right of IPs to self-governance as well as their contribution to the conservation of the country's environment and natural resources, ensuring equitable sharing benefits thereof.

Evidently, a reasonable balance between IP rights under the IPRA and protection of forest resources under P.D. No. 705 is already in place. Pursuant to the joint order above, the State expressly recognizes and adheres to the Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) of IPs as well as their Indigenous Knowledge Systems and Practices (IKSP) under their customary laws. Said order mandates all concerned stakeholders consisting of the IPs, the DENR, NCIP, Local Government Units (LGU) to come into an agreement which shall explicitly employ these customary IP practices consistent with their own traditions and cultures to govern their resource utilization within subject forest areas. It is after a rigorous and comprehensive process of consultation and dialogue between and among the parties that the DENR shall issue a forest resource utilization permit upon registration of their STIFRMSP as well as the Joint Implementing Rules and Regulations aimed not only at institutionalizing indigenous and traditionally managed forest practices but, at the same time, utilizing said practices for the protection of the natural resources found in managed forest lands.

Under the present legal framework, then, IPs are actually not prevented from implementing their customary practices, as the majority opinion suggests. Quite the contrary, and by express provision of the joint order, resource management within registered traditionally-managed forests are strictly in adherence to established traditional leadership structure and practices. Unlike the majority's assertions, therefore, the case before Us does not have to be one where a statute such as the IPRA is given preferred application at the expense of P.D. No. 705 especially since reconciliation is achievable to give force and effect to both. The DENR-NCIP Joint AO No. 2008-01 duly accomplishes, this end.

It bears stressing that nowhere in P.D. No. 705 was it provided that IPs are absolutely prohibited from cutting any and all trees found within ancestral domains. The law merely requires them to obtain the necessary permit prior to the cutting. In turn, nowhere in the IPRA was it declared that IPs shall enjoy an unbridled right to log subject to no limitation under existing laws. It can hardly be said, therefore, that the requirements imposed by P.D. No. 705 are contrary to the objectives of the IPRA in the recognition of IPs rights. On the contrary, the two are actually complementary of each other.

In *Lim v. Gamosa*,[38] for instance, We refrained from declaring that the IPRA must prevail over Batas Pambansa Bilang (B.P.) 129 in the absence of an unequivocal expression of the will of the Congress. There, We held that there is no clear, irreconcilable conflict between the IPRA, which merely granted the NCIP jurisdiction over all claims of IPs without restricting words such as "primary" or "exclusive," and B.P. 129 which granted RTCs exclusive, original jurisdiction over similar IP claims. Well settled is the rule that implied repeals are often disfavoured. As much as possible, effect must be given to all enactments of the legislature for otherwise, laws will always remain doubtful.[39]

It must be noted, too, that interpreting the meaning of "authority" in such a way that excludes IPs from the coverage of Section 77 is tantamount to judicial legislation. This is because there simply is no legislative intent to that effect. In *Corpuz v. People*,^[40] the Court was similarly faced with a question of the continued validity of the penalties imposed by the RPC on crimes against property pegged at values during the time of its enactment in 1930. We, however, refrained from modifying this range, for to do so would be to commit judicial legislation. Thus, apart from the recognition that the Court is ill-equipped and lacks the resources to arrive at a more accurate assessment of the IP rights vis-a-vis natural resources, We should not usurp Congress' inherent powers of enacting laws.^[41]

This, however, does not leave the Court without a remedy. On the basis of Article 5^[42] of the RFC, We held in *Corpuz* that the proper course of action is not to suspend the execution of the sentence but to submit, instead, to the Chief Executive the reasons why the Court considers the said penalty to be non-commensurate with the act committed. In the past, We even went as far as imposing the death penalty without impeding its imposition on the ground of "cruelty."

In the same vein, should the Court, in this case, unanimously find that the penalty of imprisonment imposed upon an IP for cutting a tree be excessive or harsh, the Court may very well recommend the matter to the Chief Executive or even Congress for amendment or modification. Suffice it to say, though, that the prohibition of cruel and unusual punishments applies not so much to fine and imprisonment, but to punishments which public sentiment has regarded as cruel or obsolete, for instance, those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like.^[43] But even if We consider such penalty as cruel punishment, imposing a different one on the ground of invalidity amounts to a collateral attack on the subject law that must be thwarted for being violative of due process.

This notwithstanding, Justice Caguioa presumes that the lands enumerated in Section 77 of P.D. No. 705 do not include ancestral domains and, as such, petitioners may not be found guilty of violating the same. According to him, ancestral domains are distinct from public or private lands, and any cutting of timber or forest product therein was not contemplated by Section 77.

I, however, respectfully disagree. On the contrary, lands possessed by IPs undoubtedly fall within the statute's definition of private lands. Section 77 penalizes the unauthorized removal of timber or other forest products from any forest land,^[44] or timber from alienable and disposable public lands,^[45] or from private lands.^[46] But as can be drawn from the definition of private lands under Section 3(mm) of P.D. No. 705, ancestral domains and lands clearly fall under the category of private land.

Nevertheless, Justice Caguioa insists that ancestral domains of IPs are a unique kind of property that are neither public nor private, ownership of which springs not from the State but by virtue of "native title." In support of his contention, he cites several legal bases. First, he alludes to the concept of "native title" that can be traced back to the 1909 case of *Cariño v. Insular Government*^[47] where the United States Supreme Court upheld the IP claim of private ownership that "will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land." Then, he identifies Our ruling in *Republic v. Cosalan*^[48] where We basically upheld the doctrine enunciated in *Cariño*. Finally, Justice Caguioa ends his conclusion by citing the Separate Opinion of former Chief Justice Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*^[49] which discussed the view that ancestral domains are IPs' private but community property and that "it is private merely because it is not part of the public domain." Thus, on the basis thereof, Justice Caguioa concludes that since ancestral domains are neither public nor private, the cutting of timber and forest products thereon cannot be penalized under Section 77 of P.D. No. 705.

Such interpretation, however, runs contrary to the very sources it aims to elucidate. A more circumspect reading of these sources indicates, simply, that ancestral domains and lands are not public lands. This must be the true and actual import of said authorities for they do not go on to deduce that said domains are not private lands. On the contrary, a more prudent analysis of the same strengthens the finding that ancestral domains are, in fact, private in character.

In Cruz, former Chief Justice Puno expressly opined that ancestral domains and ancestral lands are the private property of indigenous peoples and do not constitute part of the land of the public domain.[50] Even Justice Santiago M. Kapunan's Separate Opinion supports the conclusion that ancestral lands and domains are considered private lands which are not part of the public domain.[51] In fact, Justice Kapunan further found it readily apparent from the constitutional records that "the framers of the Constitution did not intend Congress to decide whether ancestral domains shall be public or private property." Rather, they acknowledged that "ancestral domains shall be treated as private property, and that customary laws shall merely determine whether such private ownership is by the entire indigenous cultural community, or by individuals, families, or clans within community." [52]

But even granting that the ancestral domains are neither public nor private, the same still cannot be interpreted to mean that these domains consequently outside the coverage of P.D. No. 705. Again, nowhere in authorities cited by Justice Caguioa was it suggested that due to "unique" character of ancestral domains, the prohibited acts committed exempt from prosecution under the decree.

One cannot mistake the discussion in Cruz to be more than a mere characterization of ancestral domains vis-a-vis the traditional concepts of public and private lands, with the objective of tracing the source of IPs' ancestral ownership. It only distinguished such ancestral lands from lands of public domain and in fact, likened the same to lands held in private ownership. Nothing more. Thus, in the absence of any indication that these jurisprudential teachings meant to exempt such domains from the penal provisions of P.D. No. 705, We must refrain from making interpretations that are unintended by the proponents thereof. For purposes of the classification under P.D. No. 705, therefore, ancestral lands and domains undoubtedly fall within the ambit of "private lands."

At this juncture, it must nevertheless be stressed that however way we characterize ancestral domains, the trees, timber, forest products, and all other natural resources found thereon are still, and have always been, owned by the People, as represented by the State. Recently, the Court, in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources (DENR)*, [53] expressly acknowledged the following Section 2, Article XII, of the 1987 Constitution as the embodiment of jura regalia, or the Regalian doctrine, which reserves to the State the authority over all natural resources:

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. [54]

Maynilad bore emphasis on the State's role over the nation's natural resources as having a duty to regulate the same in the context of, and with due regard for, public interest. For the People, the State shall protect, foster,

promote, preserve, and control the natural resources of the People.[55]

In fact, it is clear from the deliberations of the bicameral conference committee that the IPRA is not intended to bestow ownership over natural resources to the IPs:

CHAIRMAN FLAVIER. Accepted. Section 8 126 rights to ancestral domain, this is where we transferred the other provision but here itself—

HON. DOMINGUEZ. Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, we have decided to remove the provisions on natural resources because we all agree that belongs to the State. Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras. So, if there could be, if our lawyers or the secretariat could just propose a provision for incorporation here so that maybe the right to consultation and the right to be compensated when there are damages within their ancestral lands.[56]

Hence, even when former Chief Justice Puno found basis to believe that ancestral domains do not belong to the public domain, he nevertheless categorically declared that the IP right does not extend to the natural resources thereon.[57] In line with this, Justice Kapunan similarly declared that neither Section 3(a)[58] nor Section 7 (a)[59] and (b)[60] of the IPRA make mention of any right of ownership of IPs over natural resources. On the one hand, the former merely defines the coverage, extent, and limit of ancestral domains. On the other hand, the latter merely recognizes the "right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." But these provisions do not confer or recognize any right of ownership over the natural resources. Their purpose is definitional and not declarative of a right or title.[61]

In view of the foregoing, the Court, speaking through Justice Kapunan, held in Cruz that certain areas claimed as ancestral domains may still be under the administration of other agencies of the government such as the DENR with respect to timber, forest, and mineral lands. While these areas may be certified as ancestral domains under the IPRA, the jurisdiction of government agencies over the natural resources thereon does not terminate for the government is mandated by law to administer the natural resources for the State. To construe the IPRA as divesting the State of jurisdiction over the natural resources within the ancestral domains would be inconsistent with the established doctrine that all natural resources are owned by the State, for the People.[62]

As a matter of fact, the Court, in Philippine Economic Zone Authority (PEZA) v. Carantes,[63] had occasion to uphold this concept of State administration over ancestral lands. There, the Caranteses obtained a Certificate of Ancestral Land Claim (CALC) over their 30,368-square meter parcel of land located in Baguio City and, subsequently, fenced the premises and began constructing a residential building thereon. The PEZA sought recourse from the courts on the issue of whether the Caranteses may build structures within the Baguio City Economic Zone on the basis of their CALC and without the necessary permits issued by the PEZA. The Court held that as mere holders of a CALC, as opposed to a Certificate of Ancestral Land Title (CALT), the Caranteses' right to possess is limited to occupation in relation to cultivation. We held further, however, that even if they were able to establish ownership of said ancestral land, acts of ownership such as fencing and building permanent structures thereon cannot summarily be done without complying with applicable laws requiring building permits issued by the PEZA. We elucidated as follows:

Respondents being holders of a mere CALC, their right to possess the subject land is limited to occupation in relation to cultivation. Unlike No. 1, 26 Par. 1, Section 1, Article VII of the same DENR DAO, which

expressly allows ancestral domain claimants to reside peacefully within the domain, nothing in Section 2 grants ancestral land claimants a similar right, much less the right to build permanent structures on ancestral lands — an act of ownership that pertains to one (1) who has a recognized right by virtue of a Certificate of Ancestral Land Title. On this score alone, respondents' action for injunction must fail.

Yet, even if respondents had established ownership of the land, they cannot simply put up fences or build structures thereon without complying with applicable laws, rules and regulations. In particular, Section 301 of P.D. No. 1096, otherwise known as the National Building Code of the Philippines mandates:

SEC. 301. Building Permits. —

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done, xxx

This function, which has not been repealed and does not appear to be inconsistent with any of the powers and functions of PEZA under R. A. No. 7916, subsists. Complimentary thereto, Section 14 (i) of R.A. No. 7916 states:

SEC. 14. Powers and Functions of the Director General. — The director general shall be the overall [coordinator] of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

In addition, he shall have the following specific powers and responsibilities:

xxx xxx xxx

(i) To require owners of houses, buildings or other structures constructed without the necessary permit whether constructed on public or private lands, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding;

By specific provision of law, it is PEZA, through its building officials, which has Authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands.[64]

In the end, We held that PEZA acted well within its functions when it demanded the demolition of the structures which respondents had put up without first securing building and fencing permits therefrom. Like petitioners in this case, the respondents in PEZA failed to procure the permits that were required of them by law to obtain prior to their acts committed on their ancestral lands. But unlike the majority opinion in this case, We upheld in PEZA the enactments requiring prior authority and ruled that respondents should have first obtained the necessary permits. To me, PEZA is a proper application and harmonization of existing laws. It notably stands as a testament to the possibility of a healthy balance between the rights of IPs to their ancestral lands, on one end, and the duty of the State to protect said lands, on the other end.

It cannot be denied, therefore, that Philippine law and jurisprudence alike merely grant indigenous cultural communities a general right to preserve their cultural integrity, ancestral domains, and ancestral lands which is neither absolute nor limitless. Applicable constitutional provisions are ordinarily read in light of, and subject to,

the broader framework of the national development. In particular, Section 22, Article II of the 1987 Constitution provides that "the State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development. " Similarly, Section 5, Article XII provides that "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 same holds true for the IPRA. Section 7 (b)[65] thereof states that IPs shall have the right to use and explore the natural resources within their lands for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws. Moreover, Section 2(e) thereof provides that the State shall ensure that IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population,[66] In fact, Section 9 holds IPs responsible to preserve and maintain a balanced ecology by protecting flora and fauna and participating in the reforestation of denuded areas.[67]

This parallel IP responsibility is a shared obligation between and among the State and its citizens to maintain a balanced ecology enshrined in Article II of the 1987 Constitution which provides that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.[68] Accordingly, *Oposa v. Factoran*[69] emphasizes the fundamental concept of intergenerational responsibility towards the right to a balanced and healthful ecology which implies, among many other things, the judicious management and conservation of the country's forests. Verily, without such forests, the ecological or environmental balance would be irreversibly disrupted.

This is the reason why I cannot succumb to the notion of entitlement of the State vis-a-vis the IP's cultural and environmental heritage, so as to make it appear as if the State, through the reckless use of its police power under P.D. No. 705, summarily dismisses IP rights as no longer a point of concern for it is "only police power," and police power alone, that matters.

Before Us is not merely an issue of "State versus IPs" where the rights of the IPs are unduly sacrificed in favor of the all-mighty State. On the contrary, one would not have to go so far as the confines of P.D. No. 705 itself to realize that the issue at hand most especially involves every citizen's right to a healthy ecology. In its "Whereas clauses," P.D. No. 705 explicitly declares the need to place emphasis not only on the utilization of forest lands and lands of the public domain but more so on their protection, rehabilitation, and development in order to ensure the continuity of their production condition.[70] Clearly, then, the main objective of P.D. No. 705 is not to empower the State to the detriment of IPs, but rather, to rectify the existing policies that remain unresponsive to the pressing issue of the depletion of our country's natural resources. Indeed, there exists legitimate objectives by which this police power is exercised through the employment of reasonable means within the confines of the law.

Make no mistake, though, I am by no means insensitive to the challenges IPs face. All this signifies, simply, is that before We ultimately decide on what would be the fate of our generation's ecology, and every generation after ours, it is imperative to put things in its proper perspective. In *Cruz*, it was pointed out that as early as 1997, around 12 million Filipinos are members of the 110 or so indigenous cultural communities (ICC), accounting for more than 17% of the estimated 70 million Filipinos in the country. Moreover, as of June 1998, over 2.5 million hectares have been claimed by various IPs as ancestral domains; and over 10 thousand hectares, as ancestral lands. In addition, ancestral domains cover 80 percent of our mineral resources and between 8 and 10 million of the 30 million hectares of land in the country. This means that 4/5 of its natural resources and 1/3 of the country's land will be concentrated among 12 million Filipinos constituting 110 ICCs, while over 60 million other Filipinos constituting the overwhelming majority will have to share the remaining.[71]

At present, it is estimated that there are now 14-17 million IPs belonging to 110 communities and more than 5.7 million hectares, about 1/6 of the country have been duly titled in the name of indigenous peoples.[72] Placed under this context, one can only imagine what our forests would be like should 14 million IPs engage in a mere "small-scale" logging within more than 5.7 million hectares of their ancestral domains under the defense that it will "ultimately redound to the benefit of the community" by virtue of their "customary traditions."

In response to this, the majority, together with Justice Caguioa, maintains not only that these fears of ecological degradation are more apparent than real but also that they are, nonetheless, addressed by the safeguards found in the IPRA itself. They assure us of limitations on the IP rights that can be inferred from the provisions of the IPRA on the IP's correlative responsibility "to establish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain," the concept that "ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity," and that "ancestral domains are private but community property which belongs to all generations." [73] In fact, Justice Caguioa adds that the IPRA only recognizes sustainable traditional resource rights that allows the IPs to "sustainably use... in accordance with their indigenous knowledge, beliefs, systems and practices" the resources which may be found in the ancestral domains which, in turn, are "private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed."

I, however, beg to disagree. The preservation of our environment, more specifically the trees in our forests, cannot, and should not, merely be inferred from the rather general statements found in the provisions of the IPRA. Can it be said for certain that the imposition on IPs a general responsibility to conserve natural resources is enough to safeguard the forest reserves that the P.D. No. 705 seeks to protect? On the contrary, moreover, to leave to the IPs, or any person or community of persons for that matter, the sole prerogative to determine for themselves, in accordance with their indigenous knowledge, beliefs, systems and practices, is not only dangerous but reckless. That one cannot sell or dispose the resources found in one's land is hardly any protection against any potential abuse that the forest may endure.

Take this case, for instance. Petitioners herein would like to impress upon the Court their unfortunate predicament of being incarcerated for the mere act of cutting one tree, which they did only in their humble exercise of cultural integrity as indigenous peoples for the construction of a communal toilet. We must direct our attention, however, to some points to consider.

First, the Information states that petitioners knowingly cut the tree with the use of an unregistered power chainsaw.[74] This was admitted by petitioners in their Salaysay ng Pagtatanggol in saying that "ginamit ang chainsaw sa pagputol upang hindi ma-aksaya ang kahoy para ito ay mapakinabangan sang-ayon sa nabanggit sa itaas." [75] Realistically speaking, the fact that an IP was able to get a hold of, more so learn how to operate, such a sophisticated tool cannot be harmonized with their supposed nature as a people known to survive in isolated locations, with very little to no access to even the most basic social, commercial, and economical goods and services. On a related note, what then would the implication of the present majority opinion be to petitioners' violation of R.A. No. 9175 entitled "An Act Regulating the Ownership, Possession, Sale, Importation and Use of Chainsaws, Penalizing Violations thereof and for other Purposes" or the Chainsaw Act of 2002, which penalizes the mere possession of a chainsaw without first securing the necessary permit from the DENR?[76]

Second, the records of the case are bereft of evidence sufficient to prove that the cutting was, indeed, for the purpose of building a communal toilet. As borne by the records, the defense merely offered the lone testimony of Brgy. Captain Aceveda without any documentary exhibits. In his testimony, he revealed that the cutting of the tree was upon the initiative of "a certain Non-Governmental Organization (NGO)."[77]

The testimony, however, is insufficient to prove that the cutting of the tree was for the construction of a communal toilet. If petitioners indeed cut the tree for the toilet at the instance of the NGO, the defense should have presented petitioners instead of the barangay captain who has no personal knowledge of the circumstances leading to the arrest of the accused and any representative from the NGO to testify at the stand. It should have submitted such other supporting documentation such as plans and illustrations of the supposed communal toilet which are readily available to the NGO. The State, therefore, was deprived of its right to cross-examine the petitioners and test the credibility of their defense. Indeed, the admission of the solitary witness' testimony without personal knowledge violates the fundamental principles of justice and rules of fair play.[78]

To me, presentation of such evidence is vital in order to ensure that the dangers posed by the loopholes existing in the law are prevented. Highly probable, if not already rampant, is the scenario where actual, illegal loggers course their criminal activities through IPs who, through the present majority opinion, will now be free from any liability whatsoever under the law. Surely, the majority could not have intended on exempting from the provisions of P.D. No. 705 persons other than members of indigenous communities who may very well convince these IPs to do the cutting for them. Neither could the IPRA have intended on authorizing non-IPs to exercise much less benefit from the rights granted therein. As a consequence, therefore, doubts arise as to the applicability of the provisions of the IPRA to the present case and whether the same can even be invoked at all. This notwithstanding, while it may be argued that such dangers can be addressed during trial, assuming the true perpetrators are apprehended, the damage which P.D. No. 705 seeks to prevent would have already been done, for one cannot re-plant the felled trees that took decades to mature.

Third, in their Supplement to the Motion for Reconsideration filed before the trial court, petitioners sought the court's consideration arguing that Iraya-Mangyans of the area did not altogether disregard the regulatory measures imposed by the State.[79] They averred that even before the passage of the IPRA, resource use permits were applied for and extended to IPs of the area by the DENR. As proof, petitioners presented a copy of the endorsement of the list of CSC holders issued by the DENR-CENRO of Calapan City. In fact, petitioners even stated in their Motion to Quash that the jurisdiction of the DENR over forest products is recognized and respected by the IPs.[80] Since petitioners had already established the practice of coordinating with the government, through the DENR, and complying with permit requirements thereof, I do not see any valid reason why they omitted to do so now.

Fourth, in the same Motion to Quash, petitioners cited an incident where the Tagbanua tribe logged numerous trees without a permit in Coron, Palawan, for the repair of handrails at the Kayangan Lake.[81] When the DENR tried to confiscate the logs, the tribe claimed they do not need a permit since the cutting was for the benefit of the community. By the simple allegation of community benefit, the Tagbanuas and all other IPs who log trees without permit can now be exonerated regardless of the number of trees they cut. I do not think this to have been the intention of the IPRA.

It would be well to realize, therefore, that the present case is not a simple, black-and-white quandary of an indigene vis-a-vis his IPRA rights under P.D. No. 705. As can be seen above, the case before Us presents far more interrelated issues for whether We would like to admit it or not, the seemingly innocuous acquittal of petitioners herein would ultimately result in considerable implications the Court may not have intended.

The majority acquits petitioners based on their unique characteristics as IPs that set them apart from the rest of the Filipinos. Justice Zalameda adds that due to IPs' limited access to information, challenges in availing learning facilities, and lack of financial resources, they must be treated differently from the Filipino mainstream. But how, then, do We reconcile this with the fact that petitioners actually went to school, even reaching the level of Grade IV primary education?[82] Or in the case of the Tagbanuas of Coron, how do We harmonize their supposed

aboriginal characteristics to the fact that they are an IP group formally registered as a legal entity who, since receiving their ancestral domain title in 2001, have been requiring tourists to Coron Island to pay a fee prior to their entrance therein? How different, then, are petitioners from a typical, non-IP Filipino? Are we really prepared to cede all regulatory measures of the government to the IPs?

As cited in the Dissenting Opinion of Justice Mario V. Lopez, Our ruling in *People v. Macatanda*[83] is instructive. There, accused, who was charged of cattle rustling under P.D. No. 533, sought the Court's lenient approach in view of his lack of instruction and education as well as his membership in a cultural minority, the two separate circumstances to be joined together to constitute the alternative circumstance of lack of instruction to mitigate his liability.[84] We, however, rejected the appeal in the following wise:

Some later cases which categorically held that the mitigating circumstance of lack of instruction does not apply to crimes of theft and robbery leave us with no choice but to reject the plea of appellant. Membership in a cultural minority does not per se imply being an uncivilized or semi- uncivilized state of the offender, which is the circumstance that induced the Supreme Court in the *Maqui* case, to apply lack of instruction to the appellant therein who was charged also with theft of large cattle. Incidentally, the *Maqui* case is the only case where lack of instruction was considered to mitigate liability for theft, for even long before it, in *U.S. vs. Pascual*, a 1908 case, lack of instruction was already held not applicable to crimes of theft or robbery. The *Maqui* case was decided in 1914, when the state of civilization of the Igorots has not advanced as it had in reaching its present state since recent years, when it certainly can no longer be said of any member of a cultural minority in the country that he is uncivilized or semi-uncivilized.[85]

As early as 1981, *Macatanda* had already recognized the undeniable advancement of IPs insofar as civilization is concerned. A prime example of this is petitioners themselves: indigenes who are Grade IV graduates. It should no longer be reasoned that the unique character of IPs must operate to create a lenient exemption in their favor. As *Macatanda* instructs, mere membership in a cultural minority and the supposed lack of instruction it entails, does not completely exonerate an accused from criminal liability under penal laws.

Be that as it may, Justice Perlas-Bernabe asserts Section 20(c)[86] of the ENIPAS Act of 2018,[87] which amended the NIP AS Act of 1992, to be another statute apart from the IPRA where the State permits IPs to utilize natural resources within their ancestral domains. She then concludes that this provision accurately demonstrates the constitutional and statutory protection of legitimate exercises of IPs' rights in an environmental legislation. The argument, however, fails to take certain circumstances into account.

In the first place, the land where the dita tree was cut herein is not covered by the provisions of the ENIPAS Act. The said law provides that a National Integrated Protected Areas System which aims to ensure sustainable use of resources shall apply to all designated protected areas,[88] one of which Mounts Iglit-Baco Natural Park in Occidental and Oriental Mindoro.[89] But while the land subject of the present case is also in the province of Oriental Mindoro, it is not located in any of the municipalities where Mounts Iglit-Baco Natural Park is located.[90] To recall, the dita tree was cut in the Barangay Calangatan, Municipality of San Teodoro. It must also be mentioned that both Pres. Proc. No. 557 and R.A. No. 6148 expressly identified only the Batangan tribe, one of the eight ethno-linguistic groups of the Mangyans, as the IP group which shall be allocated a 1,000- hectare area within the protected area for their settlement and development. But petitioners herein are Iraya-Mangyans and are not part of the Batangan tribe.[91] Evidently, the land subject of the present case is not part of the protected area that is Mounts Iglit-Baco Natural Park and is, therefore, not subject to the provisions of the ENIPAS Act.

In the second place, even if We assume that the subject land is covered by the ENIPAS Act, petitioners are nonetheless liable for violating the provisions thereof. Contrary to Justice Perlas-Bernabe's postulation, IPs still do not possess an unbridled right to log trees within a protected area. A cursory perusal of the ENIPAS Act and its

IRR reveals that these protected areas are, in fact, strictly regulated, perhaps even stricter than unprotected ones. Pursuant to the provisions of the ENIPAS Act and its IRR, any tree cutting activity to be conducted by IPs within protected areas must first satisfy the following requirements: (1) a cutting permit from the Protected Area Superintendent (PASu) which is primarily accountable to the Protected Area Management Board (PAMB) and the DENR for the management and operations of the protected area;^[92] (2) the tree shall be solely for traditional and subsistence uses; (3) only five cubic meters per applicant per year is allowed;^[93] (4) no permit shall be required of Protected Area Community Based Resource Management Agreement (PACBRMA) holders; (5) the total volume cut shall not exceed limits set by the PAMB; and (6) the cutting must be within the Multiple Use Zone.^[94] The records of the present case, however, do not contain any proof whatsoever of compliance with these requirements.

It would not take more than a plain and simple reading of the ENIPAS Act and its IRR for one to realize that protected areas, as the name suggests, are subject to the strictest regulations and under the closest surveillance of the government.^[95] With good reason, too, for these areas are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, that require nothing but the State's utmost care and supervision.^[96]

Indeed, the intent of the law to clothe the State, through the DENR, with the duty of regulating natural resources found on lands, whether protected or not, can no longer be denied. In both protected and unprotected areas, it is the DENR, through various offices under its authority, that is tasked with the issuance of cutting permits as well as with the responsibility to execute agreements with all interested stakeholders, IPs included, to enforce plans in the sustainable management of natural resources, taking into account the existing cultural traditions of the IPs.

This does not mean, however, that it is only the State and its interests which shall be the sole consideration in the management of natural resources found in the ancestral domains. Emerging in our current legal framework is a trend towards a pro-active and collaborative effort to achieve a reasonable balance between the recognition of IPs' rights to their lands, on the one hand, and the protection of scarce resources found within these lands, on the other. This is the clear import of DENR-NCIP Joint AO No. 2008-01 as well as the ENIPAS Act and its IRR in mandating the State to consult with all interested IPs towards a holistic agreement that will institutionalize the traditional and culture-driven forest resources practices of the IPs. To me, both the State and the IPs can benefit from the present shift to a more decentralized form of management where participation and dialogue between and among all stakeholders is encouraged.

We must never lose sight of the fact that regulation by the State of our natural resources, most especially trees which take years to grow, is not a pointless exercise that is meant to thwart the rights of IPs. On the contrary, it is specifically crafted to preserve such resources so that generations of Filipinos, whether indigenous or not, will have the chance to enjoy the same many, many years from now. While We acknowledged, in *Maynilad*, the State's rights over natural resources, We simultaneously introduced the Public Trust Doctrine which impresses upon States the correlative, affirmative duties of a trustee to manage natural resources for the benefit of the beneficiaries, the present and future generations.^[97] Clearly, the passage of P.D. No. 705 serves as an actual, legitimate application by the State of the Public Trust Doctrine which not only asserts its rights over forest resources but also aims to preserve the same for the benefit of the People.

For this reason, I do not share the view that the acquittal handed to the petitioners in this case is not a blanket exemption. No matter how one looks at it, the implication of the present majority opinion would be just that: a blanket exemption. For how, then, can the Court prevent all other IPs from invoking the doctrine of this case under the principle of *stare decisis*? In *Cruz*, Justice Kapunan, who seems to have foreseen the present scenario, explicitly emphasized that "the grant of said priority rights to indigenous peoples is not a blanket authority to

disregard pertinent laws and regulations. The utilization of said natural resources is always subject to compliance by the indigenous peoples with existing laws, ... since it is not they but the State, which owns these resources." [98]

Neither can it be accurately concluded that an outright logging ban puts the lives of IPs at risk for their everyday lives are so intimately intertwined with the land and resources. The present case merely involves trees or timber that are cut without the requisite license under P.D. No. 705. It does not, however, cover those natural resources that are truly essential to the daily sustenance of these IPs. Even with the operation of P.D. No. 705, IPs are very much free to hunt forest animals, gather plants, and cultivate their lands within their domains with little to no governmental interference. But even if we assume that the cutting of timber is so indispensable to the everyday lives of IPs such that one cannot survive a day without cutting a tree, then government regulation is all the more necessary to prevent the depletion of these trees that take decades and decades to grow.

Regrettably, then, I cannot join the majority's invocation of a "confusing state of affairs" to justify petitioners' acquittal from their otherwise prohibited act. For how can there be any confusion when there was never a time after the passage of P.D. No. 705 where IPs, or anyone for that matter, were exempted from the permit requirement. As chronologically detailed above, both the Legislature and Executive have, time and time again, reiterated this need for DENR authority prior to any tree-cutting activity.

Besides, it cannot truthfully be declared that petitioners were, indeed, confused. As previously noted, petitioners already had a practice of applying for resource use permits from the DENR, through its local office, CENRO, in Calapan City. In fact, they even presented a copy of the endorsement of the list of CSC holders issued by the DENR-CENRO of Calapan City. [99]

In the end, it must be remembered that our Constitution vests the ownership of natural resources, not in a select few, but in all the Filipino people. [100] The inherent importance of these natural resources to society as a whole is beyond cavil, the same being inseparable to our very existence. To me, exempting petitioners from liability under P.D. No. 705 is virtually tantamount to the surrender of any remaining rights of the People to a chosen sector of society. Certainly, this could not have been the intention of the IPRA, let alone our Constitution. No right must be so great so as to create an unrestricted license to act according to one's will.

It cannot be stressed enough, however, that the provisions of P.D. No. 705 do not, in any way, strip IPs of their rights duly enshrined in the law. The end, simply, is to shed light on other equally pressing rights, such as the rights to a balanced and healthful ecology and to health. Now more than ever, at a time when clear-cut lines between seemingly competing rights can no longer be drawn, of utmost importance is the availability of dialogue and representation - dialogue among all concerned sectors of society. For as warned by Oposa, unless the environment is given continued significance, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life. [101]

In view of the foregoing, I vote to DENY the petition. Petitioners Diosdado Sama y Hinupas and Bandy Masanglay y Aceveda should be convicted of violation of Section 68, now Section 77, of Presidential Decree No. 705.

[1] Section 68 of P.D. No. 705 provides:a

SECTION 68. Cutting, Gathering and/or Collecting Timber or Other Products without License. — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable

and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; Provided, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

[2] Revised Forestry Code of the Philippines, May 19, 1975.

[3] Rollo, p. 57.

[4] See majority opinion, p. 33.

[5] Atty. Bernardo T. Constantino v. People of the Philippines, G.R. No. 225696, April 8, 2019.

[6] 808 Phil. 455,464-465 (2017). (Emphasis ours)

[7] 462 Phil. 72, 89-90 (2003).

[8] See majority opinion p. 8.

[9] Atty. Bernado T. Contantino v. People of the Philippines, supra note 5.

[10] Far Eastern Surety and Insurance Co. Inc. v. People, 721 Phil. 760, 767 (2013).

[11] 773 Phil. 614 (2015).

[12] Entitled "Amending the Act Creating the Home Development Mutual Fund " December 14, 1980.

[13] Entitled "An Act Amending Presidential Decree No. 1752, As Amended" June 17, 1994. .

[14] Saguin, et al. v. People, supra note 11.

[15] Id. at 628. (Emphasis ours)

[16] Monge, et. al. v. People, 571 Phil. 472, 481 (2008).

[17] 783 Phil. 429 (2016); cited also in the Dissenting Opinion of Justice Mario V. Lopez.

[18] Tigoy v. Court of Appeals, 525 Phil. 613, 624 (2006).

[19] Monge v. People, supra note 16, at 479.

[20] Section 69 of P.D. No. 389 provides:

SECTION 69. Cutting, Gathering, and/or Collection of Timber or Other Products. - The penalty of prison correccional in its medium period and a fine of five (5) times the minimum single forest charge on such timber and other forest products in addition to the confiscation of the same products, machineries, equipments, implements and tools used in the commission of such offense; and the forfeiture of improvements introduced thereon, in favor of the Government, shall be imposed upon any individual, corporation, partnership, or association who shall, without permit from the Director, occupy or use or cut, gather, collect, or remove timber or other forest products from any public forest, proclaimed timberland, municipal or city forest, grazing land, reforestation project, forest reserve of whatever character; alienable or disposable land: Provided, That if the offender is a corporation, partnership or association, the officers thereof shall be liable.

[21] Section 68 of P.D. No. 705 provides:

SECTION 68. Cutting, Gathering and/or Collecting Timber or Other Products without License. — Any person who

shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; Provided, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

[22] Executive Order No. 277 provides:

Section 68. Cutting, Gathering and/or collecting Timber or Other Forest Products Without License. - Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private lands, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

[23] EXECUTIVE ORDER NO. 277 is reproduced below:

AMENDING SECTION 68 OF PRESIDENTIAL DECREE (P.P.-) NO. 705. AS AMENDED, OTHERWISE KNOWN AS THE REVISED FORESTRY CODE OF THE PHILIPPINES, FOR THE PURPOSE OF PENALIZING POSSESSION OF TIMBER OR OTHER FOREST PRODUCTS WITHOUT THE LEGAL DOCUMENTS REQUIRED BY EXISTING FOREST LAWS, AUTHORIZING THE CONFISCATION OF ILLEGALLY CUT, GATHERED, REMOVED AND POSSESSED FOREST PRODUCTS, AND GRANTING REWARDS TO INFORMERS OF VIOLATIONS OF FORESTRY LAWS, RULES AND REGULATIONS WHEREAS, there is an urgency to conserve the remaining forest resources of the country for the benefit and welfare of the present and future generations of Filipinos;

WHEREAS, our forest resources may be effectively conserved and protected through the vigilant enforcement and implementation of our forestry laws, rules and regulations;

WHEREAS, the implementation of our forest laws suffers from technical difficulties, due to certain inadequacies in the penal provisions of the Revised Forestry Code of the Philippines; and

WHEREAS, to overcome these difficulties, there is, a need to penalize certain acts to make our forestry laws more responsive to present situations and realities;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

SECTION 1. Section 68 of Presidential Decree (P.D.) No. 705, as amended, is hereby amended to read as follows:

"SEC. 68. Cutting, Gathering and/or collecting Timber or Other Forest Products Without License.— Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without

further proceedings on the part of the Commission on Immigration and Deportation.

"The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found."

SECTION 2. Presidential Decree No. 705, as amended, is hereby further amended by adding Sections 68-A and 68-B which shall read as follows:

"SEC. 68-A. Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation.— In all cases of violations of this Code or other forest laws, rules and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.

"SEC. 68-B. Rewards to Informants.— Any person who shall provide any information leading to the apprehension and conviction of any offender for any violation of this Code or other forest laws, rules and regulations, or confiscation of forest products shall be given a reward in the amount of twenty per centum (20%) of the proceeds of the confiscated forest products."

SECTION 3. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

SECTION 4. This Executive Order shall take effect after fifteen days following its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

DONE in the City of Manila, this 25th day of July, in the year of Our Lord, Nineteen Hundred and Eighty-Seven.

Published in the Official Gazette, Vol. 83 No. 31, 3528-112 Supp., on August 3, 1987.

[24] An Act to Prohibit the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value Along Public Roads, in Plazas, Parks, School Premises or in Any Other Public Pleasure Ground.

[25] Requiring the Planting of Trees in Certain Places and Penalizing Unauthorized Cutting, Destruction, Damaging and Injuring of Certain Trees, Plants and Vegetation.

[26] Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established Under Presidential Decree No. 1586.

[27] Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes (1978).

[28] Presidential Proclamation No. 2146 provides:

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, hereby proclaim the following areas and types of projects as environmentally critical and within the scope of the Environmental Impact Statement System;

A. Environmentally Critical Projects

x x x x

II. Resource Extractive Industries

x x x x

a. Major mining and quarrying projects

b. Forestry projects

1. Logging

x x x x (Emphasis ours)

[29] Presidential Proclamation No. 2146 provides:

B. Environmentally Critical Areas

x x x x (Emphasis ours)

5. Areas which are traditionally occupied by cultural communities or tribes;

[30] Section 4 of P.D. No. 1586 provides:

Section 4. Presidential Proclamation of Environmentally Critical Areas and Projects. The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President* may "by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

[31] In *People v. Dator*, 398 Phil. 109, 121-122 (2000), the Court held that:

"The appellant cannot validly take refuge under the pertinent provision of DENR Administrative Order No. 79, Series of 199025 which prescribes rules on the deregulation of the harvesting, transporting and sale of firewood, pulpwood or timber planted in private lands. Appellant submits that under the said DENR Administrative Order No. 79, no permit is required in the cutting of planted trees within titled lands except Benguet pine and premium species listed under DENR Administrative Order No. 78, Series of 1987, namely: narra, molave, dao, kamagong, ipil, acacia, akle, apanit, banuyo, batikuling, betis, bolong-eta, kalantas, lanete, lumbayao, sangilo, supa, teak, tindalo and manggis.

Concededly, the varieties of lumber for which the appellant is being held liable for illegal possession do not belong to the premium species enumerated under DENR Administrative Order No. 78, Series of 1987. However, under the same DENR administrative order, a certification from the CENRO concerned to the effect that the forest products came from a titled land or tax declared alienable and disposable land must still be secured to accompany the shipment. This the appellant failed to do, thus, he is criminally liable under Section 68 of Presidential Decree No. 705 necessitating prior acquisition of permit and "legal documents as required under existing forest laws and regulations." (Emphasis ours)

[32] An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for Other Purposes.

[33] Adopting Community-Based Forest Management as the National Strategy to Ensure the Sustainable Development of the Country's Forestlands Resources and Providing Mechanisms for its, Implementation.

[34] Revised Guidelines in the Issuance of Private Land Timber Permit/Special Private Land Timber Permit (PLTP/SPLTP).

[35] Rules 11.7. and 11.7.4 of DENR AO No. 2008-26 provide:

Rule 11.7. The PASu shall be primarily accountable to the PAMB and the DENR for the implementation of the Management Plan and operations of the protected area. He/she shall have the following specific duties and responsibilities:

x x x x

11.7.4 Issue cutting permit for planted trees for a volume of up to five (5) cubic meters per applicant per year for traditional and subsistence uses by ICCs/IPs and tenured migrants only. Provided, that PACBRMA holders with affirmed Community Resource Management Plan (CRMP) shall no longer be issued cutting permits. Provided further, that the total volume of extraction does not exceed the limit set by the PAMB and the location of extraction is within the appropriate site within the multiple use zone.

[36] DENR AO No. 2019-05 provides:

Rule 11-B.3 In addition to the functions enumerated in Section 11-B, the PASU shall perform the following duties and responsibilities:

x x x x

d. Recommend actions for cutting permit for planted trees solely for the traditional and subsistence uses by ICCs/IPs and tenured migrants, of up to five (5) cubic meters per applicant per year. Provided, that, PACBRMA holders with affirmed Community-based Resource Management Plan shall no longer be issued cutting permits. Provided, further, that the total volume cut shall not exceed the limits set by the PAMB, and that the location of the cutting is within the appropriate site within the Multiple Use Zone; (Emphases ours)

[37] The pertinent provisions of DENR-NCIP Joint AO No. 2008-01 state:

Pursuant to the provisions of the 1987 Constitution, Presidential Decree (PD) No. 705, as amended, Executive Order (EO) No. 192, Series of 1987, Republic Act (RA) No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997 and its Implementing Rules and Regulations NCIP Administrative Order No. 1, Series of 1998, DENR-NCIP Memorandum Circular No. 2003-01, EO No. 318, Series of 2004, in deference to the forest resources management systems and practices of the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) that should be recognized, promoted and protected, the guidelines and procedures as provided for in this Order shall be strictly observed.

Section 2. - Objectives. - For the effective implementation of this Order, the following objectives shall serve as guides:

2.1. General Objectives: The DENR and NCIP shall:

a. Jointly undertake the recognition, documentation, registration and confirmation of the Sustainable Traditional and Indigenous Forest Resources Management Systems and Practice (STIFRMSP) of ICCs/IPs found to be sustainable, which have either been established and/or effectively managed by families, clans and communities as part of their cultural practices and traditions as well as the role of indigenous socio-cultural and socio political institutions in this endeavour;

b. Adhere to the customary laws and recognize the Indigenous Knowledge Systems and Practices (IKSP) of the ICCs/IPs together with the intellectual property rights thereon, if any, in accordance with the applicable provisions of the IPRA;

c. Recognize the ICCs/IPs' preferential rights to benefit from the natural resources found within their ancestral

lands/domains jointly documented and confirmed pursuant to this Order;

d. Institutionalize the traditional and culture-driven sustainable forest resources management systems and practices, policies and customary laws of the ICCs/IPs; and

x x x x

2.2. Specific Objectives:

a. To institutionalize the consultative, collaborative effort and consensus building processes between and among indigenous socio-political institutions including its leadership system, local government units (LGUs), the DENR, the NCIP and other concerned agencies

x x x x

Sec. 3. - Coverage. This Order shall cover and apply to all ICCs/IPs with traditional indigenous forest resources management systems and practices within their ancestral domains/lands, whether it be individual, family, clan and communal.

x x x x

Sec. 6. - Recognition of Indigenous and Traditionally Managed Forests Systems and Practices. All existing indigenous and traditionally managed forest systems and practices that were initially and jointly documented and verified by Regional Offices of the DENR and the NCIP to be promoting and practicing forest and biodiversity conservation, forest protection and sensible utilization of the resources found therein based on existing customary laws and duly endorsed by the LGUs concerned through Resolution or Ordinance shall be issued a Joint Confirmation and Recognition Order (JCRO) by the respective DENR-Regional Executive Director (RED) and the NCIP Regional Director (RD).

However, issuance of any utilization permit by the DENR for the resources found therein shall be held in abeyance pending the signing of a Memorandum of Agreement (MOA) between and among the DENR, the NCIP, the ICCs/IPs, socio-political structures and LGUs- Barangay, Municipal and Provincial level xxxx

Finally, validly existing resources utilization permits duly issued by the DENR to the ICCs/IPs prior to this Order shall continue to be respected until its expiration or until the allowable volume has been fully consumed or the harvesting in the allowable area has been finished, whichever comes first.

Sec. 7. - Formulation of a MOA and the JIRR. The Memorandum of Agreement (MOA) shall contain, among others, the commitment of all concerned signatories to the sustainable management of the subject forest area and its forest resources, the procedures to be followed in the operationalization of the traditional and indigenous forest management systems and practices consistent with the traditions and culture therein including the corresponding penalties and sanctions to be imposed for each and every violation to be committed. Said MOA shall also include provisions on the roles and responsibilities of all parties in the documentation of information and/or in the gathering of primary data for the recognition and confirmation of the traditional and indigenous forest management systems and practices.

x x x x

Sec. 9. Registration. - Registration of the indigenous and traditionally managed forest as a result of the comprehensive evaluation, documentation and consultation activities found to be practicing a sustainable forest resources management system and practice shall be issued with a Joint Implementing Rules and Regulations (JIRR) jointly approved by the DENR, the NCIP and all parties mentioned in Section 6 hereof. The presence of the following factors/ conditions which in all cases shall be considered in the registration:

9.1 The existing Indigenous Forest Resources Management Systems/Practices is promoting forest conservation, protection, utilization and biodiversity conservation;

x x x x

9.3 The presence of customary laws, if verified to be within the framework of sustainable forest resources management, xxxx

9.4 The watershed forest management shall be the ecosystem management units and being managed in a holistic, scientific rights-based, technology-based and community-based manner and observing the principles of multiple use, decentralization and devolution actively participated by the Local Government Units (LGUs) and other concerned agencies with synergism of the economic, ecological, social and cultural objectives, and the rational utilization of all forest resources found therein;

9.5 The security of land tenure and land use rights as provided for under the IPRA and other applicable ENR laws, rules and regulations shall be a requirement for sustainable use; and

9.6 The current indigenous forest resources management systems/practices can be harmonized with current ENR laws, rules and regulations.

x x x x

Sec. 10. Resources Management and Sustainability. - Resource management within registered traditionally-managed forests shall be strictly in adherence to the established traditional leadership structure and practices. A resource management plan shall be prepared and institutionalized relative to the identified ancestral management units/blocks by the community underscoring collective agreements and commitments on natural resource protection, conservation and utilization. However, for purposes of ensuring sustainability and control, any resource utilization set by the communities shall be documented. All concerned entities (DENR, NCIP, and LGU) shall be informed accordingly for purposes of monitoring and transparency. The following principles shall be observed in resources utilization:

10.1. Only those ICCs/IPs with registered STIFRMSP shall be issued with forest resource utilization permit.

10.2. That any resource utilization in the form of timber or non-timber shall be replaced by the user with an equivalent number of tree seedlings or similar customary arrangement, and as imposed by the community in accordance with its policies and sustainable customs and practices;

10.3. That the existing land use as a traditionally managed forest especially for watershed protection shall be regulated and extraction of resources shall be allowed only in areas identified by the community as production site. However, utilization within the areas shall be allowed subject to the provisions of the approved Ancestral Domain Sustainable Development and Protection Plan (ADSDPP);

10.4. The resource extraction shall be in accordance with existing traditional resource rights defined by the community in its indigenous system and practice. All DENR laws, rules and guidelines on resource utilization shall be applicable in a supplementary manner;

10.5. The resources extracted for utilization or to be traded outside the domain/locality by the concerned ICC/IP shall be regulated. The disposition of timber and non-timber products shall be governed by the applicable DENR laws, rules and regulations relative to the requisite shipping/transport documents;

10.6. Resources utilization from naturally grown forests for livelihood projects as carving, handicrafts, manufacturing, etc., shall be regulated and only the allowable volume/number of species needed as raw materials

for livelihood projects could be disposed of outside the domain/locality in accordance with existing traditional resource rights and DENR laws, rules and regulations; and

10. 7. Resources harvested from the established indigenous forest/ forest plantation to be further processed into finished products (i.e. carving, ornamental, handicrafts, novelty items, etc.), shall be allowed to be transported outside the point of origin to any market outlets subject to DENR laws, rules and regulations. (Emphases ours)

[38] 774 Phil. 31 (2015).

[39] *Penera v. Commission on Elections*, 615 Phil. 616, 1211 (2017).

[40] 734 Phil. 353 (2014).

[41] *Id.* at 425.

[42] ART. 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense. (Emphasis ours)

[43] *Corpuz v. People*, *supra* note 40, at 419.

[44] Section 3(d) of P.D. No. 705 states that forest lands include the public forest, the permanent forest or forest reserves, and forest reservations.

[45] Section 3 (c) of P.D. No. 705 provides that alienable and disposable lands refer to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes.

[46] Section 3(mm) of P.D. No. 705 indirectly pertains to private land in stating that private right means or refers to titled rights of ownership under existing laws, and in the case of primitive tribes, to rights of possession existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds, and old clearings, but excludes production forest inclusive of logged-over areas, commercial forests and established plantations of forest trees and trees of economic value.

[47] 41 Phil. 935, 944 (1907).

[48] G.R. No. 216999, July 4, 2018. Third Division, penned by Associate Justice Alexander G. Gesmundo, with Associate Justice Marvic Mario Victor F. Leonen, and then Associate Justices Presbitero J. Velasco, Lucas P. Bersamin, Samuel R. Martires concurring.

[49] 400 Phil. 904, 995 (2000).

[50] Former Chief Justice Puno stated in *Cruz*:

Native title refers to ICCs/IPs' preconquest rights to lands and domains held under a claim of private ownership as far back as memory reaches. These lands are deemed never to have been public lands and are indisputably presumed to have been held that way since before the Spanish Conquest,

xxx

Like a torrens title, a CADT is evidence of private ownership of land by native title. Native title, however, is a right of private ownership peculiarly granted to ICCs/IPs over their ancestral lands and domains. The IPRA categorically declares ancestral lands and domains held by native title as never to have been public land. Domains and lands held under native title are, therefore, indisputably presumed to have never been public lands and are private.

x x x x

In the Philippines, the concept of native title first upheld in *Carino* and enshrined in the IPRA grants ownership, albeit in limited form, of the land to the ICCs/IPs. Native title presumes that the land is private and was never public. *Carino* is the only case that specifically and categorically recognizes native title. The long line of cases citing *Carino* did not touch on native title and the private character of ancestral domains and lands.

x x x x

The private character of ancestral lands and domains as laid down in the IPRA is further strengthened by the option given to individual ICCs/IPs over their individually-owned ancestral lands.

For purposes of registration under the Public Land Act and the Land Registration Act, the IPRA expressly converts ancestral land into public agricultural land which may be disposed of by the State. The necessary implication is that ancestral land is private. It, however, has to be first converted to public agricultural land simply for registration purposes.

x x x x

Thus, ancestral lands and ancestral domains are not part of the lands of the public domain. They are private and belong to the ICCs/IPs. (*Cruz v. Secretary of Environment and Natural Resources*, supra note 49, at 460-472. (Emphasis ours; citations and italics omitted))

[51] Justice Kapunan stated in *Cruz*:

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

public domain does not cover ancestral lands and ancestral domains. (Id. at 1044-1046; Emphases ours)

[52] Cruz v. Secretary of Environment and Natural Resources, supra note 49, at 1054-1955.

[53] G.R. Nos. 202897, 206823 & 207969, August 6, 2019.

[54] Id. (Emphasis ours)

[55] Id.

[56] See Separate Opinion of Justice Kapunan in Cruz v. Secretary of Environment and Natural Resources, supra note 49, at 1064.

[57] Former Chief Justice Puno stated:

Sections 7 (a), 7 (b) and 57 of the IPRA do not violate the regalian doctrine enshrined in Section 2, Article XII of the 1987 Constitution. Examining the IPRA, there is nothing in the law that grants to the ICCs/IPs ownership over the natural resources within their ancestral domains. The right of ICCs/IPs in their ancestral domains includes ownership, but this "ownership" is expressly defined and limited in Section 7 (a). The ICCs/IPs are given the right to claim ownership over "lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." It will be noted that this enumeration does not mention bodies of water not occupied by the ICCs/IPs, minerals, coal, wildlife, flora and fauna in the traditional hunting grounds, fish in the traditional fishing grounds, forests or timber in the sacred places, etc. and all other natural resources found within the ancestral domains. Indeed, the right of ownership under Section 7 (a) does not cover "waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna and all other natural resources" enumerated in Section 2, Article XII of the 1987 Constitution-as belonging to the State. The non-inclusion of ownership by the ICCs/IPs over the natural resources in Section 7(a) complies with the Regalian doctrine. The large-scale utilization of natural resources in Section 57 of the IPRA is allowed under paragraphs 1 and 4, Section 2, Article XII of the 1987 Constitution. Section 57 of the IPRA does not give the ICCs/IPs the right to "manage and conserve" the natural resources. Instead, the law only grants the ICCs/IPs "priority rights" in the development or exploitation thereof. Priority means giving preference. Having priority rights over the natural resources does not necessarily mean ownership rights. The grant of priority rights implies that there is a superior entity that owns these resources and this entity has the power to grant preferential rights over the resources to whosoever itself chooses. Section 57 is not a repudiation of the Regalian doctrine. Rather, it is an affirmation of the said doctrine that all natural resources found within the ancestral domains belong to the State. It incorporates by implication the Regalian doctrine, hence, requires that the provision be read in the light of Section 2, Article XII of the 1987 Constitution. (Cruz v. Secretary of Environment and Natural Resources, supra note 49, at 933-1010.

[58] SECTION 3. Definition of Terms. — For purposes of this Act, the following terms shall mean:

a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively

occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

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

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

[60] b) Right to Develop Lands and Natural Resources. — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

[61] Cruz v. Secretary of Environment and Natural Resources, supra note 49, at 1062.

[62] Id. at 1071.

[63] 635 Phil. 541, 554 (2010).

[64] Id. at 550-554. (Emphases ours)

[65] Section 7(b) of the IPRA provides:

b. Right to Develop Lands and Natural Resources. - Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interfere with, alienation and encroachment upon these rights;

[66] Section 2(e) of the IPRA provides:

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.

[67] Section 9 of the IPRA provides:

Section 9. Responsibilities of ICCs/IPs to their Ancestral Domains. - ICCs/IPs occupying a duly certified

ancestral domain shall have the following responsibilities:

- a. Maintain Ecological Balance- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;
- b. Restore Denuded Areas- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and
- c. Observe Laws- To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

[68] Section 16, Article II of the 1987 Constitution provides:

Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

[69] 296 Phil. 694 (1193).

[70] P.D. No. 705 provides:

WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;

WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;

WHEREAS, it is also imperative to place emphasis not only on the utilization thereof but more so on the protection, rehabilitation and development of forest lands, in order to ensure the continuity of their productive condition;

WHEREAS, the present laws and regulations governing forest lands are not responsive enough to support re-oriented government programs, projects and efforts on the proper classification and delimitation of the lands of the public domain, and the management, utilization, protection, rehabilitation, and development of forest lands;

[71] Cruz v. Secretary of Environment and Natural Resources, supra note 49.

[72] Taken from website of the United Nations Development Program, (<https://www.undp.org/content/dam/philippines/docs/Governance/fastFacts6%20%20Indigenous%20Peoples%20in%20the%20Philippines%20rev%201.5.pdf>), and from the National Commission on Indigenous Peoples Official Facebook Portal (<https://www.facebook.com/NCIPportal/photos/a.2073888702837501/3114873668738994>).

[73] See majority opinion, p. 52-53.

[74] Id. at 49.

[75] Records, p. 18.

[76] Section 7 of R.A. No. 9175 provides:

SEC. 7. Penal Provisions.

1. Selling, Purchasing, Re-selling, Transferring, Distributing or Possessing a Chainsaw Without a Proper Permit. - Any person who sells, purchases, transfers the ownership, distributes, or otherwise disposes or possesses a chainsaw without first securing the necessary permit from the Department shall be punished with imprisonment of four (4) years, two (2) months and one (1) day to six years or a fine of not less than Fifteen thousand pesos (PhP

15,000.00) but not more than Thirty thousand pesos (PhP 30,000.00) or both at the discretion of the court, and the chainsaw/s confiscated in favor of the government, x x x x

4. Actual Unlawful Use of Chainsaw. - Any person who is found to be in possession of a chainsaw and uses the same to cut trees and timber in forest land or elsewhere except as authorized by the Department shall be penalized with imprisonment of six (6) years and one (1) day to eight (8) years or a fine of not less than Thirty thousand pesos (PhP 30,000.00) but not more than Fifty thousand pesos (PhP 50,000.00) or both at the discretion of the court without prejudice to being prosecuted for a separate offense that may have been simultaneously committed. The chainsaw unlawfully used shall be likewise confiscated in favor of the government.

[77] Rollo, pp. 59 and 142. Brgy. Captain Aceveda testified as follows:

Atty. Florita: Your Honor, we are presenting Rolando Aceveda as witness to prove that there was a project by a NGO for the construction of the community comfort room at Baco and to prove that the place where the tree allegedly cut were located at the portion of the land owned by the Mangyans of Oriental Mindoro. With the kind permission of the Honorable Court?

x x x x

Q: On that day Mr. Witness when you were resting along the load did you witness anything unusual?

A: Yes ma'am.

Q: And what was that Mr. Witness?

A: Several policemen and DENR employees passed by ma'am.

Q: Did you ask them where they were going?

A: Yes ma'am.

Q: And what did they say?

A: According to them they were going to a place called Laylay in the Municipality of San Teodoro ma'am.

Q: Did they tell you what the reason was in visiting the place?

A: No ma'am.

Q: And then what happened next Mr. Witness?

A: They already went ahead ma'am.

Q: Hours after the policemen and the employees of the DENR passed by what happened, Mr. Witness?

A: After more or less two to three hours later they already returned ma'am.

Q: Did you notice anything unusual Mr. Witness?

A: Yes, ma'am.

Q: And what was that?

A: They were already being accompanied by three mangyan persons ma'am.

Q: And could you identify before this Court who these mangyans were?

A: Yes ma'am.

Q: Could you identify the three?

A: Diosdado Sama, Bandy Masanglay, and Demetrio Masanglay ma'am.

Q: What was the reason that they were taken under custody by these policemen?

A: They cut down trees or lumbers ma'am.

Q: And where was the felled log cut Mr. Witness according to them?

A: In a land owned by the Mangyans ma'am.

Q: Where in particular Mr. Witness?

A: In Sitio Matahimik Barangay Baras, Baco ma'am.

Q: And according to them, what was the reason why that log was cut Mr. Witness?

A: Those logs would be used in a project being initiated by an NGO ma'am.

Q: What NGO and what project was it Mr. Witness?

A: Team MISSION ma'am.

Q: What particular project Mr. Witness?

A: Construction of a community comfort room ma'am.

Q: And you stated earlier Mr. Witness that the felled log was cut in the portion of the land owned by the Mangyans of Oriental Mindoro, am I correct?

A: Yes ma'am.

Q: Do you have any proof that the (discontinued) do you know of any proof that will establish the fact of ownership of the Mangyans?

A: Yes ma'am.

Q: What document is it Mr. Witness?

A: CADC 126 ma'am, x x x x

Q: And you know of the project by Team MISSION as regards the construction of the community comfort room because you yourself is also a Mangyan and the barangay captain of the area, correct?

A: Yes ma'am. (TSN 5, pp. 3-8)

[78] *DST Movers Corporation v. People's General Insurance Corporation*, 778 Phil. 235, 248-249 (2016).

[79] *Records*, p. 277.

[80] *Id.* at 170.

[81] *Id.*

[82] *Id.* at 12.

[83] 195 Phil. 604 (1981).

[84] Article 15 of the RPC provides:

ARTICLE 15. *Their Concept.* — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

[85] *People v. Macatanda*, *supra* note 83, at 510. (Emphasis ours)

[86] Section 20 (c) which provides:

Sec. 20. *Prohibited Acts.* - Except as may be allowed by the nature of their categories and pursuant to rules and regulations governing the same, the following acts are prohibited within protected areas: xxxx

(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; except, however, when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes;

[87] An Act Declaring Protected Areas and Providing for Their Management, Amending for This Purpose Republic Act No. 7586, Otherwise Known as the "National Integrated Protected Areas System (NIPAS) Act of 1992" and for Other Purposes, approved on June 22, 2018.

[88] Section 2 of R.A. No. 11083 provides: Sec. 2. Declaration of Policy, -xxx

"To this end, there is hereby established a National Integrated Protected Areas System (NIPAS), which shall encompass ecologically rich and unique areas and biologically important public lands that are habitats of rare and threatened species of plants and animals, biogeographic zones and related whether terrestrial, wetland or marine, all of which shall be designated as 'protected areas'.

[89] See Section 5 of R.A. No. 11083 for full list of protected areas.

[90] According to the Guidebook to Protected Areas in the Philippines, published by the Biodiversity Management Bureau and the DENR (2015), Mounts Iglit-Baco Natural Park was first established as a tamaraw reservation and bird sanctuary by virtue of Presidential Proclamation No. 557 in 1969, as a national park under R.A. No. 6148 in 1970, and as a protected area under both the NIPAS Act in 1992 and ENIPAS Act in 2018. It encompasses the municipalities of Sablayan, Calintaan, Rizal, and San Jose in Occidental Mindoro as well as municipalities of Gloria, Bansud, Bongabon, and Mansalay in Oriental Mindoro.

[91] The Guidebook to Protected Areas in the Philippines, id., stated that the Mangyans, an indigenous group of Mindoro, is further classified into at least eight ethno-linguistic groups: Iraya, Batangan, Hanuno'o, Alangan, Ratagnon, Tagaydan or Tadyawan, Buhid and Pula.

[92] Section 11 -B of the ENIPAS Act provides that

"Sec. 11-B. The Protected Area Management Office (PAMO). - There is hereby established a Protected Area Management Office (PAMO) to be headed by a Protected Area Superintendent (PASU) with a permanent plantilla position who shall supervise the day management, protection and administration of the protected area. A sufficient number of support staff with permanent plantilla position shall be appointed by the DENR to assist the PASU in the management of the protected area.

"The PASU shall be primarily accountable to the PAMB and the DENR for the management and operations of the protected area. Pursuant thereto, the PASU shall have the following duties and responsibilities: x x x x

"(i) Issue permits and clearances for activities that implement the management plan and other permitted activities in accordance with terms, conditions, and criteria established by the PAMS: Provided, That all permits for extraction activities, including collection for research purposes, shall also continue to be issued by relevant authorities, subject to prior clearance from the PAMB, through the PASU, in accordance with the specific acts to be covered;

[93] The IRR of the ENIPAS Act provides:

Rule 11-B.3 In addition to the functions enumerated in Section 11-B, the PASU shall perform the following duties and responsibilities: x x x

d. Recommend actions for cutting permit for planted trees solely for the traditional and subsistence uses by ICCs/IPs and tenured migrants, of up to five (5) cubic meters per applicant per year. Provided, that, PACBRMA holders with affirmed Community-based Resource Management Plan shall no longer be issued cutting permits. Provided, further, that the total volume cut shall not exceed the limits set by the PAMB, and that the location of the cutting is within the appropriate site within the Multiple Use Zone; and x x x (emphasis ours)

[94] Rule 23.5 of the IRR of the ENIPAS Act provides:

Rule 23.5 In case of protected areas that share common areas with ancestral territories covered by CADT/CALT, the DENR, upon the recommendation of the PAMB and with the FPIC of the affected ICCs/IPs, shall enter into a Protected Area Community-Based Resource Management Agreement (PACBRMA) with the tenured migrant communities of the protected areas.

The DENR shall organize individual tenured migrants into communities. Within one (1) year from the issuance of the PACBRMA, tenure holders shall be required to prepare a Community-Based Resource Management Plan (CBRMP), on the basis of the following processes: community mapping, plan preparation, map integration, final validation, PAMB endorsement, and affirmation by the DENR Regional Executive Director. Failure to implement the CBRMP shall be basis for the cancellation of the PACBRMA.

[95] Under the ENIPAS Act and its IRR, the National Integrated Protected Area System is placed under the control and administration of the DENR, through the Biodiversity Management Bureau (BMB). Before a protected area is declared as such, it undergoes a rigorous process where the DENR prepares reports in consultation with other key stakeholders such as local government units (LGUs), NGOs, and IPs taking into consideration all essential factors of the area such as irreplaceability, vulnerability, naturalness, abundance and diversity, geological and aesthetic features of the area. Upon receipt of recommendations from the DENR, the President shall issue a proclamation establishing the proposed protected areas until such time when Congress shall have enacted a law to that effect. Then, the PAMB, with the support of the DENR, shall formulate the Protected Area Management Plan (PAMP) with the participation of necessary agencies such as NGOs, LGUS, and all stakeholders such as the IPs and other local communities. This plan serves as the basic long-term framework for the management of the protected area which shall be harmonized with the IPs' Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) required under the IRR of the IPRA.

[96] See Declaration of Policy under Section 2 of the ENIPAS Act.

[97] *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, supra note 53.

[98] *Cruz v. Secretary of Environment and Natural Resources*, supra note 49, at 1077.

[99] Records, p. 170.

[100] See Separate Opinion of Justice Panganiban, *Cruz v. Secretary of Environment and Natural Resources*, supra note 49, at 1105.

[101] *Oposa v. Factoran*, supra note 69, at 713.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur in the result. Petitioners Diosdado Sama y Hinupas and Bandy Masanglay y Aceveda (petitioners) should be acquitted for the prosecution's failure to prove beyond reasonable doubt their criminal liability under Section 77 of the Forestry Code, as amended (Section 77).[1]

The essential facts are as follows: petitioners, who are part of the Iraya- Mangyan tribe, are among the indigenous peoples (IPs) in Mindoro. On March 15, 2005, they were caught cutting a dita tree using an unregistered power chainsaw, and were consequently charged under Section 77. While petitioners admit that they had no license to cut the tree, they argue that their act was justified pursuant to their right to utilize the natural resources within their ancestral domain for a communal purpose - that is, to build a community toilet. They also aver that as IPs, they are allowed to cut trees within their ancestral domain as part of their right to cultural integrity pursuant to the Indigenous Peoples' Rights Act of 1997[2] (IPRA). The lower courts, however, convicted them based on a strict application of the penal provision, holding that a violation of Section 77 is considered *malum prohibitum*.

At the onset, emphasis must be made on the fact that this case only centers on the criminal liability of herein petitioners for cutting one tree within their ancestral domain for the undisputed purpose of building a community toilet. They claim that such acts were done for the benefit of their IP community, and therefore, amounts to an apparent legitimate exercise of their right to use natural resources within their ancestral domain. In the court a quo's proceedings, the prosecution neither questioned the purpose for which the dita tree was to be used nor presented any evidence as regards the use of such tree for the benefit of non-IPs. This case, therefore, must be resolved on the basis of the peculiar circumstances attendant herein. Elementary is the rule in criminal law that the accused is entitled to an acquittal when there is reasonable doubt. To stress, the Court is called upon in this case to determine petitioners' criminal liability under Section 77 based on the specific facts established herein. Similar to Associate Justice Alfredo Benjamin S. Caguioa, I espouse a sentiment of judicial restraint in going over and beyond this framework of analysis, and in so doing, unnecessarily demarcate constitutional lines and borders that would gravely impact the rights of IPs in general relative to the application of environmental regulations affecting them.

In determining criminal liability, the elements of the crime must be proven to exist by the highest threshold of evidence — that is, proof beyond reasonable doubt. In this regard, case law states that:

Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.

Corollary to the foregoing, this Court has held that "the existence of criminal liability for which the accused is made answerable must be clear and certain. We have consistently held that penal statutes are construed strictly against the State and liberally in favor of the accused. When there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused." [3]

On its face, the first offense under Section 77 [4] may be broken down into the following elements:

- Cutting, gathering, collecting and removing:
 - (i) timber or other forest products from any forest land; or
 - (ii) timber from alienable or disposable public land or from private land; and
- the said act/s is/are done without any authority.

Relevant to the first element under Section 77 is Section 2, Article XII of the 1987 Constitution, which provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State, x x x

x x x x

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. (Emphases and underscoring supplied)

As explicitly stated, all "natural resources are owned by the State." [5] While categories of lands (i. e., lands of public domain and agricultural lands) were therein provided, there is no qualifier created for timber and other natural resources. [6] Moreover, while the provision allows the alienation of agricultural lands, it prohibits the

alienation of natural resources. Accordingly, it is sufficiently apparent that Section 77 punishes the cutting of timber - a natural resource - regardless of the character of the land where the tree was once situated.

Consistent with the State's ownership of natural resources, Section 57 of the IPRA accords IPs "priority rights" in the utilization of natural resources. The fact that the IPRA does not bestow ownership of natural resources has been discussed in the congressional deliberations therefor:[7]

HON. DOMINGUEZ. Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, we have decided to remove the provisions on natural resources because we all agree that belongs to the State. Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras.

Based on the foregoing, the subject timber[8] or dita[9] tree in this case was owned by the State even if it stood within an ancestral domain.[10] Considering that petitioners admitted that they cut the dita tree found within the ancestral domain, there is proof beyond reasonable doubt that the first element of Section 77 is present in this case.

On the contrary, however, it is doubtful that the second element of Section 77 obtains in this case. This is considering the undisputed contention that petitioners' act of cutting a singular dita tree was made pursuant to their rights as IPs.

To my mind, the intent behind Section 77 is the conservation of our natural resources consistent with the State's general policy to protect the environment. However, a review of the laws passed after the Forestry Code reveals that IPs have been granted a limited authority to utilize natural resources located within their ancestral domains as necessary for their subsistence. It is observed that unlike previous constitutions, the 1987 Constitution explicitly and repeatedly declares that the State "recognizes and promotes the rights of indigenous cultural communities." [11] In this regard, it has been stated that "[t]he 1987 Constitution's attitude towards IPs, with its emphasis on preservation, is a marked departure from regimes under the 1935 and 1973 Constitutions, which were typified by integration" (i.e., attuning IPs to the mainstream) that "inevitably tended to measures that eroded [their] identities." This shift in the constitutional appreciation of IPs' rights "reorients the State toward enabling [IPs] to maintain their identity," [12] which is, inter alia, characterized by the integral connection between their culture and the environment.

In this relation, it is apt to mention that Article 27 of the United Nations Convention on International Civil and Political Rights (Article 27) - to which the Philippines is a signatory - tasks the State party to protect the rights of ethnic minorities "to enjoy their own culture." Interpreting this provision, the United Nations Human Rights Committee (UNHRC) issued General Comment No. 23,[13] declaring that "culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of [IPs]." Thus, the UNHRC stated that the State party's obligation under Article 27 includes protecting the IPs' particular "way of life which is closely associated with territory and [the] use of its resources." [14] It concludes that such protection is "directed towards ensuring the survival and continued development of [the IPs'] cultural, religious[,] and social identity." Hence, based on these legal sources, protecting IPs' rights necessitates due regard for the centrality of the IPs' use of natural resources to their cultural identity.

The IPRA, which was enacted under the auspices of the 1987 Constitution, concretized the State's recognition and promotion of all IPs' rights. The protection granted to them is based on the recognition of their way of life,[15] characterized by their holistic relationship with the natural environment. Accordingly, the IPRA acknowledges the

IPs' right to ancestral domains, which is an all-embracing concept that pertains not only to "lands, inland waters, [and] coastal area" but also to the "natural resources therein,"[16] Ancestral domains also include land which may no longer be exclusively occupied by them, but to which they "traditionally had access for their subsistence." [17] Section 5 of the IPRA states that "all resources found therein shall serve as the material bases of their cultural integrity." The same provision explains that the indigenous concept of ownership "covers sustainable traditional resource rights," which refers to their right to "sustainably use, manage, protect, and conserve" certain resources.[18] Section 7 (b) of the IPRA also provides for their right to "manage and conserve natural resources" and to "share the profits from allocation and utilization of the natural resources found therein,"[19] Section 57 of the IPRA further grants IPs the priority rights in the harvesting, extraction, development or exploitation of any natural resources within their ancestral domains. Taken together, these provisions reveal a legislative intent to authorize IPs to use the resources within their ancestral domain, in line with the constitutional provision allowing small-scale utilization of natural resources.[20]

Worthy to note that aside from the IPRA, the State has enacted other statutes permitting IPs to utilize natural resources, including timber, within their domains for their domestic needs and subsistence.[21] Of particular significance is the 2018 Expanded National Integrated Protected Areas System Act (ENIPAS),[22] which prohibits the "cutting, removing, or collecting [of] timber within the protected area x x x without the necessary permit, authorization, certification of planted trees or exemption." [23] In recognition of IPs' rights,[24] an exception is added to the permit requirement, to wit: "when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes.[25] While the application of ENIPAS does not fully square with this case, it, however, provides statutory semblance showing the recognition of IPs' rights in a piece of environmental legislation. In this relation, it may not be amiss to highlight that the ENIPAS constitutes a stricter environmental regulation than what is applicable in areas not protected under this statute (as in this case); nevertheless, by the language of the law itself, the ENIPAS still recognizes the foregoing practices of IPs/ICCs as an exception to the prohibition of "cutting, removing, or collecting [of] timber within the protected area x x x without the necessary permit, authorization, certification of planted trees or exemption."

When taken against the entire framework of IP rights protection, I submit that there is ample legal basis to argue that the second element of the offense under Section 77 (i.e., "that the said act is done without any authority") equally recognizes, as an exception, the legitimate exercise of IPs' rights pursuant to their own cultural and traditional beliefs.

Further, it must be noted that the original iteration of Section 77 (then Section 68 of Presidential Decree No. 705 [1975]) was passed under the 1973 Constitution and specifically described "authority" as being "under a license agreement, lease, license or permit." [26] However, soon after the enactment of the 1987 Constitution or in July 1987, then President Corazon Aquino issued Executive Order No. 277 (EO 277) amending Section 77, which, among others, removed the above-mentioned descriptor, hence, leaving the phrase "without any authority," generally-worded. To my mind, the amendment of Section 77 may be read in light of the new legal regime which gives significant emphasis on the State's protection of our IPs' rights, which includes the preservation of their cultural identity. Given that there was no explanation in EO 277 as to the "authority" required, it may then be reasonably argued that the amendment accommodates the legitimate exercise of IPs' rights within their ancestral domains.

In this relation, the esteemed Chief Justice Diosdado M. Peralta has argued that the "authority" required under Section 77 must be understood as still requiring licenses issued by the DENR because of the provision's heading to wit: "Cutting, Gathering and/or collecting Timber or Other Forest Products Without License." A rule, however, in statutory construction, is that headings may be consulted in aid of interpretation, but "inferences drawn from

[them] are entitled to very little weight." [27]

Further, it must be borne in mind that Section 77 punishes two separate offenses. In *Revaldo v. People*: [28]

There are two distinct and separate offenses punished under Section 68 of the Forestry Code, to wit:

(1) Cutting, gathering, collecting!,] and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and

(2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations. [29]

Based on the provision itself, the first offense of cutting, gathering, collecting, removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land is qualified by the general phrase "without any authority," whereas the second offense of possessing timber or other forest products is qualified by the more specific phrase "without the legal documents as required under existing forest laws and regulations":

Sec. 68. Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License. - Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. (Emphases supplied)

Hence, should the first offense contemplate the requirement of a documentary license, then Congress should not have qualified it with the general phrase "without any authority," and instead, just applied the specific phrase "without the legal documents as required under existing forest laws and regulations" as in the second offense. The Congress' deliberate choice of words therefore reasonably supports the theory above-positd to allow for other exceptions to the first offense outside of the license requirement. At the very least, this creates a looming spectre of doubt in the application of penal law, which, as per our prevailing doctrines in criminal law, must be construed in favor of the accused, as petitioners in this case. To repeat the bedrock dictum, when there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused.

In this case, one (1) dita tree located within the ancestral domain was cut down by petitioners. The fact that they intended to use the felled tree to build a shared toilet for their indigenous community is undisputed. As it is equally established that petitioners did so not for any malevolent purpose but merely for their subsistence in line with their tribe's cultural traditions and beliefs, in my view, they should not be held criminally liable for violation of Section 77 of the Forestry Code for the reasons herein explained. As such, I agree with the ponencia that they should be acquitted.

[1] See Revised Forestry Code of the Philippines, Presidential Decree No. 705, May 19, 1975, as amended by Executive Order No. 277, July 25, 1987, and renumbered pursuant to Section 7 of Republic Act No. (RA) 7161, October 10, 1991.

[2] Entitled, "AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON

INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on October 29, 1997.

[3] *lent v. Tullett Prebon (Philippines), Inc.*, 803 Phil. 163, 185-186 (2017); citation omitted.

[4] According to case law, Section 77 punishes two (2) separate offenses. See *Revaldo v. People*, 603 Phil. 332, 342 [2009]).

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

[6] See Professor Marvic M.V.F. Leonen (now Supreme Court Associate Justice), *The Indigenous Peoples' Rights Act: An Overview of Its Contents*, 4 [13] *The PHILJA Judicial Journal* 53-79, (2002): "Look at the provision in Section 2, Article XII of the Constitution: x x x There is a qualifier to land, but no qualifier to timber. It does not say timber planted on private land, or public or private timber, unlike in other systems in different parts of the world. In our jurisdiction, timber is always public domain; it cannot be alienated as timber. Of course, rights to timber can be alienated, but the timber itself cannot be alienated. And that is, the justification for the Forestry Code's allowance to the Department of Environment and Natural Resources [DENR] to grant a permit for tree-cutting. If it stands on private land, there is the special tree-cutting permit[.]" (pp. 63-64)

[7] See Justice Kapunan's opinion in, *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 1064 (2000).

[8] In *Mustang Lumber, Inc. v. CA* (327 Phil. 214, 235 [1996]), the Court stated that while the Revised Forestry Code does not define timber, "[i]t is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning. And insofar as possession of timber without the required legal documents is concerned, Section 68 of P.D. No. 705, as amended, makes no distinction between raw or processed timber. Neither should we. *Ubilex non distinguit nec nos distinguere debemus*."

[9] Merriam-Webster Dictionary defines "timber" as "growing trees or their wood" and "dita" as "a forest tree (*Alstoniascholaris*) of eastern Asia and the Philippines the bark of which was formerly used as an antiperiodic."

[10] See Justice Kapunan's opinion in *Cruz v. Secretary of Environment and Natural Resources*, supra note 7, at 1066-1070: "While as previously discussed, native title to land or private ownership by Filipinos of land by virtue of time immemorial possession in the concept of an owner was acknowledged and recognized as far back during the Spanish colonization of the Philippines, there was no similar favorable treatment as regards natural resources. The unique value of natural resources has been acknowledged by the State and is the underlying reason for its consistent assertion of ownership and control over said natural resources from the Spanish regime up to the present." "Having ruled that the natural resources which may be found within the ancestral domains belong to the State, the Court deems it necessary to clarify that the jurisdiction of the NCIP with respect to ancestral domains under Section 52 [i] of IPRA extends only to the lands, and not to the natural resources therein." See also Justice Panganiban's statement in *IPRA - Social Justice or Reverse Discrimination*, *The PHILJA Judicial Journal* 157-203 (2002) that "in all the Opinions rendered, there seems to be a general understanding that natural resources within ancestral domains were 'not bestowed' by IPRA on the indigenous people." p. 172.

[11] See Section 22, Article II (Declaration of Principles and State Policies) of the 1987 Constitution which provides that: "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development." See also Section 17, Article XIV thereof, to wit: "The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their

cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies."

[12] See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019.

[13] UNHCR, CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, available at: <https://www.refworld.org/docid/453883fc0.html> (last accessed on August 26, 2020).

[14] *Id.* See also *J.G.A. Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia*, Communication No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997 (2000).

[15] See *Ha Datu Tahdwig v. Lapinid*, *supra* note 12. See also Section 4, Chapter III of RA 8371.

[16] See Section 3(a) of the IPRA.

[17] *Id.*

[18] Section 3(o) of the IPRA.

[19] Section 7 of the IPRA recognizes and protects IPs' rights to the ancestral domains including the right to develop lands and natural resources.

[20] See paragraph 3, Section 2, Article XII of the 1987 Constitution.

[21] For one, the law establishing the government of Benguet has allowed IPs there to use timber and firewood for domestic purposes, particularly for cooking food, warming their houses, constructing their houses, or fencing plots of cultivating grounds. (See Section 20 of the Establishment of a Civil Government for Benguet, Act No. 49, November 23, 1900.) In 2001, the Northern Sierra Madre Natural Park (NSMNP) Act was enacted mandating the non-restriction of the IPs' use of the resources in the NSMNP for their "domestic needs or for their subsistence" and disallowance of the use of timber only if for livelihood purposes. See Section 19, RA 9125, entitled, AN ACT ESTABLISHING THE NORTHERN SIERRA MADRE MOUNTAIN RANGE WITHIN THE PROVINCE OF ISABELA AS A PROTECTED AREA AND ITS PERIPHERAL AREAS AS BUFFER ZONES, PROVIDING FOR ITS MANAGEMENT AND FOR OTHER PURPOSES.

[22] RA 11038, June 22, 2018, amending RA 7586.

[23] See Section 20 of the ENIPAS, as amended.

[24] Section 29 of the ENIPAS reads:

SEC. 29. Construction and Interpretation. - The provisions of this Act shall be construed liberally in favor of the protection and rehabilitation of the protected area and the conservation and restoration of its biological diversity, x x x Provided, That nothing in this Act shall be construed as a x x x derogation of ancestral domain rights under the Indigenous Peoples' Rights Act of 1997."

[25] Section 20 (c) of the ENIPAS reads thus:

"(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; except, however, when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes." (Emphases and underscoring supplied)

[26] The relevant portion of the provision states:

SEC. 68. Cutting, Gathering and/or Collecting Timber or Other Products without License. — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code." (Emphasis and underscoring supplied)

[27] *Kare v. Platon*, 56 Phil. 248, 250 (1931), citing *Black's Interpretation of Laws*.

[28] 603 Phil. 332 (2009).

[29] *Id.* at 342.

SEPARATE CONCURRING OPINION

"Such arrogance to say that you own
the land, when you are owned by it!
How can you own that which outlives
you? Only the people own the land
because only the people live forever.
To claim a place is the birthright of
everyone. Even the lowly animals
have their own place...how much
more when we talk of human
beings?"

Macli-ing Dulag, Pangat, Butbut
Tribe, Bugnay, Kalinga[1]

LEONEN, J.:

I concur that petitioners should be acquitted of the crime charged. I contribute to the discussion of the erudite ponente, Associate Justice Amy C. Lazaro-Javier, a disquisition on the pre-colonial experience and historical backdrop of the Filipino tribal groups' rights over their ancestral lands and domains, including the resources found there.

Petitioners are Iraya-Mangyans who reside in Barangay Baras, Baco, Oriental Mindoro.[2] They were indicted for violating Section 77 of Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, after they cut down a dita tree without a license or permit issued by the proper authority.[3] Section 77 of Presidential Decree No. 705 states:

SECTION 77. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. - Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in

the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

In praying for their acquittal, petitioners invoke their Indigenous People (IP) right to harvest dita tree logs, which allegedly constitute a part of their right to cultural integrity, ancestral domain, and ancestral lands. They insist that the felled dita tree was planted in their ancestral domain, over which the Iraya-Mangyans' exercise communal dominion.[4]

Settled is the rule that "[o]nly questions of law may be raised in a petition for review on certiorari." [5] Further, "[t]his Court is not a trier of facts." [6] It accords great weight and respect to the trial court's findings of fact, especially when affirmed by the Court of Appeals. [7]

However, this rule is not without exception. In *Medina v. Asistio, Jr.*: [8]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. [9] (Citations omitted, emphasis supplied)

Furthermore, it has been held that this Court may reevaluate the lower court's factual findings "when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal." [10]

Daayata v. People [11] explained the degree of proof necessary to sustain a conviction in criminal actions:

Conviction in criminal actions demands proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence states:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. [12]

In *Pit-og v. People*, [13] the petitioner was charged of theft after she took sugarcane and banana plants allegedly planted on the private complainant's land. The case involved a communal land called tayan owned by the tomayan group. A portion of the tayan was sold to private complainant Edward Pasiteng (Pasiteng), who planted sugarcane and banana plants there.

Pasiteng's lot was adjacent to the area cultivated by the petitioner, where she likewise planted banana plants and sugarcane. The petitioner was then convicted by the lower courts and the Court of Appeals. Yet, when the case reached this Court, the petitioner was acquitted based on reasonable doubt. This Court noted that "the areas cultivated by [Pasiteng] and Erkey were adjacent and so close to each other that the possibility of confusion as to who planted which plants is not remote." [14]

Further, this Court decreed that the prosecution's failure to definitively delineate the exact location where the petitioner harvested the plants equated to its failure to identify the real owner of the stolen items, thus:

Hence, the definitive identification of the area allegedly possessed and planted to sugarcane and bananas by Edward Pasiteng is imperative. There is on record a survey plan of the 512 square-meter area claimed by Edward but there are no indications therein of the exact area involved in this case. This omission of the prosecution to definitively delineate the exact location of the place where Erkey allegedly harvested Edward's plants has punctured what appeared to be its neat presentation of the case. Proof on the matter, however, is important for it means the identification of the rightful owner of the stolen properties. It should be emphasized that to prove the crime of theft, it is necessary and indispensable to clearly identify the person who, as a result of a criminal act, without his knowledge and consent, was wrongfully deprived of a thing belonging to him. [15] (Citation omitted, emphasis supplied)

As in *Pit-og*, a perusal of the records in this case reveals that circumstances had been overlooked by the lower courts, which if considered, casts reasonable doubt on petitioners' guilt.

In rendering a judgment of conviction, the Regional Trial Court primarily relied on the testimony of the prosecution's lone witness, Police Officer 3 Villamor Ranee (PO3 Ranee). According to him, he and his team were directed to conduct a surveillance operation against illegal loggers. While patrolling the mountainous area of Barangay Calangatan, they heard a chainsaw and saw a tree slowly falling down. [16] Upon hearing this, "they immediately crossed the river and climbed the hilly portion where the cutting was being done[.]" [17] He admitted that he did not witness petitioners cut the tree, and that he only saw them holding a chainsaw, thus:

Q

Mr. Witness, if you remember during the previous hearing, you stated that at the time that you arrived at the (discontinued). Mr. Witness during the previous hearing, you stated that at that time that you arrived at the alleged scene of the crime, you already saw the cut tree, is that correct?

A

Yes Ma'am.

Q

As such the tree was already cut at the time that you arrived, is that correct Mr. Witness?

A

Yes ma'am.

Q

How could you then say that one of the accused was the one operating the chainsaw when at the time that you arrived, the tree has already been fell?

A

Before I arrived at the alleged crime scene some of my companions already arrived ahead of me, ma'am.

Q

As such Mr. Witness, you cannot be testifying on the identity of the person who actually operated the said chainsaw, is that correct?

A

When I arrived he was the person holding the chainsaw ma'am.

Q

Holding the chainsaw Mr. witness but not actually using the chainsaw to cut the tree, is that correct?

A

He was just holding it ma'am.[18] (Emphasis in the original)

PO3 Ranee's testimony, that they did not personally witness petitioners cut the tree, casts reasonable doubt on petitioners' guilt. That he saw petitioners holding a chainsaw without them using it cannot suffice to hold them liable for the act for which they are being indicted for.

Likewise, PO3 Ranee's admission that his team's distance from the scene of the crime was approximately 50 meters further, reinforces the conclusion that they did not personally see petitioners commit the crime they are being charged with.[19]

The Court of "Appeals decreed that petitioners failed to prove ownership of the land where the felled dita tree was found. This failure equates to their inability to demonstrate their right to use and enjoy the land in accordance with Republic Act No. 8371.[20]

However, petitioners insist that they own the land and have occupied it since time immemorial. Their ownership is evidenced by Certificate of Ancestral Domain Claim (CADC) No. R04-CADC-126, issued by the Department of Environment and Natural Resources (DENR).[21]

The ponencia took judicial notice of the fact that CADC No. R04- CADC-126 "covers the municipalities of Baco, San Teodoro and Puerto Galera in Oriental Mindoro with a land area of 33,334 hectares." It was issued to the Iraya-Mangyan tribe on June 5, 1998. As of March 31, 2018, CADC No. R04-CADC-126 is pending conversion to a Certificate of Ancestral Domain Title.(CADT).[22]

The CADC's existence casts reasonable doubt on who the real owner of the subject area is, along with the resources found there. In the absence of proof beyond reasonable doubt, petitioners' acquittal becomes imperative. As ruled in *People v. Ganguso*: [23]

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[24] (Citations omitted)

I share the observation of Associate Justice Estela M. Perlas-Bernabe that laws passed after the Revised Forestry Code cast reasonable doubt as to the criminal liability of the accused.[25]

Presidential Decree No. 705 was passed in 1975. Its declared policy includes the "protection, development and rehabilitation of forest lands... to ensure their continuity in productive condition." [26] At the time the law was enacted, the 1973 Constitution devoted one (1) provision concerning national cultural minorities. [27] Article XV, Section 11 provides:

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

Upon the ratification of the 1987 Constitution, the State's attitude towards indigenous people shifted from integration to maintaining and preserving the indigenous people's identity. "[I]t commits to not only recognize, but also promote, 'the rights of indigenous cultural communities.'" [28] In addition, the 1987 Constitution affirms to "protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being." [29]

Taking this shift into account, subsequent laws incorporated the concept of ancestral land and recognized the rights of indigenous peoples. [30]

The Comprehensive Agrarian Reform Law of 1988 provides:

SECTION 9. Ancestral Lands. — For purposes of this Act, ancestral lands of each indigenous cultural community shall include, but not be limited to, lands in the actual, continuous and open possession and occupation of the community and its members: Provided, that the Torrens System shall be respected.

The right of these communities to their ancestral lands shall be protected to ensure their economic, social and cultural well-being. In line with the principles of self-determination and autonomy, the systems of land ownership, land use, and the modes of settling land disputes of all these communities must be recognized and respected.

Similarly, the National Integrated Protected Areas System Act of 1992 states:

SECTION 13. Ancestral Lands and Rights Over Them. — Ancestral lands and customary rights and interest arising therefrom 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.

As mentioned in the Philippine Mining Act of 1995:

SECTION 16. Opening of Ancestral Lands for Mining Operations. — No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned.

Further, the Wildlife Resources Conservation and Protection Act provides:

SECTION 27. Illegal Acts. — Unless otherwise allowed in accordance with this Act, it shall be unlawful for any person to willfully and knowingly exploit wildlife resources and their habitats, or undertake the following acts:

(a) killing and destroying wildlife species, except in the following instances;

(i) when it is done as part of the religious rituals of established tribal groups or indigenous cultural communities[.]

And lastly, as stated in the Expanded National Integrated Protected Areas System Act of 2018 or Republic Act

No. 11038:

SECTION 18. Section 20 of Republic Act No. 7586 is hereby amended to read as follows:

SEC. 20. Prohibited Acts. — Except as may be allowed by the nature of their categories and pursuant to rules and regulations governing the same, the following acts are prohibited within protected areas'.

(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; except, however, when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes[.]

On this note, Chief Justice Diosdado M. Peralta (Chief Justice Peralta) is of the view that no law relieves the Indigenous Cultural Communities/Indigenous Peoples (ICC/IPs) from the obligation of obtaining the necessary cutting permit. He opines that while the State recognizes their cultural practices, indigenous peoples are not exempt from the country's regulatory policies on forests and natural resources. Further, he continues that the DENR and National Commission on Indigenous Peoples (NCIP) have issued Joint Administrative Order No. 2008-01 (DENR-NCIP JAO No. 2008-01) effectively harmonizing the provisions of Presidential Decree No. 705 and the Indigenous Peoples' Rights Act of 1997 (IPRA).[31]

I regret that I am unable to join Chief Justice Peralta's sentiment.

DENR-NCIP JAO No. 2008-01 provides for the guidelines for the recognition and registration of ICC/IPs' Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP). It further states that the forest resource utilization permit shall only be issued to ICCs/IPs with registered STIFRMSP.[32]

In criminal cases, the burden of proving the accused's guilt lies with the prosecution. It is charged with the duty of proving the elements constituting the crime charged. "The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense."[33]

In this case, petitioners' lack of authority to cut and utilize the tree is a negative allegation and constitutes an element of the crime charged. As in cases involving illegal possession of firearms, petitioners' lack of authority may be established by a testimony or certificate from the administrative agencies tasked with issuing this permit.[34] Unfortunately, the prosecution offered no certification from the DENR to prove that no permit was issued in favor of petitioners.

However, it must be clarified that the requirement of negative certification must apply only to situations where indigenous peoples are being accused of cutting trees within their ancestral domain, as in this case. This is because the indigenous peoples own the land covered by their ancestral domain, and the resources found there.

In addition, it must be emphasized that under the present legal framework, the State commits to recognize and protect the rights of indigenous cultural communities to their ancestral lands. In this regard, recent criminal and environmental legislations, such as The Expanded National Integrated Protected Areas System Act of 2018, have acknowledged the exercise by the indigenous peoples of their cultural practices and traditions to be an exception from the permit requirement.

Further, the continuing inclination towards considering these cultural practices as an exception casts reasonable doubt on whether or not petitioners should be held guilty under Presidential Decree No. 705. The preferential application of these later laws is not only in accord with the pro reo principle, but also with the concept of social justice.

The ponencia sustained petitioners' argument and decreed that Iraya-Mangyans have a right, as indigenous peoples, to harvest a dita tree for the communal use of their group. This right constitutes a manifestation of petitioners' right to preserve their cultural integrity^[35] and an economic manifestation of their right to their ancestral domain and ancestral land.^[36]

I agree with the ponencia.

The Iraya-Mangyans are indigenous peoples publicly known to be residing in Mindoro Island. Specifically, the Iraya-Mangyans occupy certain municipalities in Occidental Mindoro such as: (1) Abra de Ilog; (2) Paluan; (3) Mamburao; (4) and Sta. Cruz.^[37] They can also be found in Oriental Mindoro, particularly in the municipalities of Puerto Galera, San Teodoro, and Baco.^[38]

Although Iraya is a term which denotes people from the upland or upstream, they originally lived in the lowlands or the town proper known as the poblacion or lumang bayan. They were, however, forced to flee to the uplands when armed men invaded their area.^[39]

Like all other indigenous peoples, Iraya-Mangyans have always had a unique relationship with nature, specifically their land and its resources. This relationship comes from a belief of a higher being that has bestowed upon them the land and its resources, which must be respected, so as not to incur its wrath. This belief has then ingrained a sense of respect for the land and resources within each Filipino tribal group member.^[40]

To them, nature is a space where the natural and supernatural meet. They conform to the view that nature is guarded by spirits. For this reason, Iraya-Mangyans utilize natural resources in accordance with the spirits' wishes.^[41]

To the Iraya-Mangyans, nature is a source of their sustenance and economic needs. The forest and water not only provide for their subsistence, but likewise supply their timber needs. Accordingly, they treat nature with utter respect and work for its preservation.^[42]

Moreover, Iraya-Mangyans recognize that they must utilize the resources in a manner as not to deplete it. They observe certain traditional restrictions to ensure that the resources in their lands are not exhausted to the point of extinction. For instance, they refrain from cutting bamboo shoots and certain native grasses, as they are used for weaving. In cutting down trees, Iraya-Mangyans recognize that not all logs must be cut. Some species must be preserved as a means to control erosion.^[43]

Iraya-Mangyans are generally engaged in swidden agriculture or shifting cultivation.^[44] As such, they possess intricate knowledge of the tropical ecosystem. They employ a methodological procedure which yields maximum benefits without destroying the environment from which they derive their sustenance.^[45]

In choosing their fields, they consider the floral composition of the site to determine soil properties. They avoid the headwaters of streams to protect the water source. In the kaingin, a fireline is made so that the fire will not spread. Instead of starting from the lower portion, the burning is started from the top. Then, the lower portion is burned. In such case, the fire could not spread upward, preventing the other areas from getting burned. Before, there was no necessity to make a fireline in the kaingin because of the abundance of trees. Now that the trees are getting depleted, the elders encouraged the community to use a fireline to protect the forest.

Big trees are covered with saha ng saging (banana trunks) so that heat will not destroy them if the same is within the Kaingin area. They also do not use explosives and high-powered inflammable substances. During the early times, they use stones and/or bamboos rubbed against each other to create fire. Lately, they resorted to the use of matches.^[46]

The intricate knowledge of the Iraya-Mangyans in terms of the tropical ecosystem indicates the existence of practices and traditions which date back to the pre-colonial period. These practices and traditions serve as a material basis of their cultural integrity. In this regard, the IPRA takes into account the ICCs/IPs cultural well-being, among others, by recognizing the following rights: (1) the applicability of their customary laws relating to property rights or relations; (2) the significance of their culture, traditions and institution on formulating national laws and policies; and (3) the assurance that ICCs/IPs benefit equally with respect to opportunities which the laws and education, health, and other services beneficial to ICCs/IPs.[47]

By these, the State guarantees that these culture and traditions are recognized, respected, and protected.[48]

The complexity of the legal backdrop of indigenous land rights can be attributed to the colonial experience of indigenous populations.[49] Prior to colonization, the sense of community was integral in the concept of ownership and property.

Since time immemorial, Filipino tribal groups have occupied and cultivated countless hectares of Philippine soil. They have adopted and practiced their own method of recognizing and acknowledging property rights based upon "kinship, communal affiliation, and local custom[.]"[50]

By the time the Spaniards reached our shores, these tribal groups have already developed their own sets of customs, traditions, and laws. These customs and traditions included the practice that everyone within the group should participate in the communal ownership over their land. This denotes a communal ownership grounded upon historical patterns of usage.[51]

"Ownership" to the indigenous peoples of the Philippines has been described as the "tribal right to use the land or to territorial control." Ownership in this sense is equivalent to work. Ceasing to work means losing one's claim to ownership. In this paradigm, individuals are considered as mere "secondary owners" or "stewards of the land." Only beings of the spirit world may be the "true and primary or reciprocal owners of the land." On the other hand, "property" refers to things which require the application of labor or those "produced from labor." [52]

Indigenous peoples view their lands as communal, which means that it can be used by anybody who is a recognized member of the group. It is regarded as "a collective right to freely use the particular territory." Indigenous peoples also view land in the "concept of 'trusteeship.'" They believed that it is "not only the present generation, but also the future ones, which possess the right to the land." [53]

Unfortunately, certain government policies threaten the Filipino indigenous peoples' way of life. There are those who are denied the resources found within the very land they have occupied and cultivated for many years. As a result, the economic base upon which their survival rests is put at risk.[54]

I concur in the result. Petitioners should be acquitted.

I

For almost 21,500 years prior to Ferdinand Magellan's arrival in 1521, the Philippines had already been inhabited by different tribal groups.[55] These groups have "developed a wide array of legal norms, leadership structures... dispute settlement processes[.]"[56] and property norms.[57] These matters reflect environmental, cultural, and historical factors which were unique to the pre-conquest natives of the Philippine archipelago.[58]

These indigenous property concepts were present throughout the Philippine archipelago, and was concerned with generalized patterns of territorial behavior relating to ownership of land.[59]

There was, however, a dearth of literature pertaining to land ownership during the pre-conquest era. This

notwithstanding, it had been a widespread custom that any person who acquires for himself and his close kin long term rights over a land, maintains such right so long as he continues to use the land. This practice made sure that the land would not remain indefinitely idle, since non-use of the land would mean forfeiture of one's right over it.[60]

The arrival of the Spaniards, and the subsequent subjugation of the different groups under its authority, paved the way for a new rule concerning land ownership over the Philippine archipelago.

Through discovery and conquest, Philippines passed to Spain. As a result, all lands of the Philippine archipelago came under the dominion of the Spanish Crown.[61]

Upon their arrival in the Philippines, the Spaniards discovered that Filipinos living in settlements were scattered along water routes and riverbanks. Accordingly, they implemented a process called *reduccion*, wherein Spanish missionaries were tasked to establish *pueblos*. Spaniards used the policy of *reduccion* to introduce and impose the Hispanic culture and civilization upon the Filipinos.[62]

The establishment of *pueblos* meant that the old *barangays* were divested of their lands. These lands were declared "crown lands or *realengas*, belonging to the Spanish king." [63] By this reason, "the natives were stripped of their ancestral rights to land." [64]

The Spaniards justified their sovereign claims based on discovery [65] and through the Law of the Indies, they introduced the concept of the Regalian Doctrine or *jura regalia*. [66] It constituted as the Spaniard's elaborated legal framework through which they can administer the Philippines from Madrid, [67] thus:

The capacity of the State to own or acquire property is the state's power of dominium. This was the foundation for the early Spanish decrees embracing the feudal theory of *jura regalia*. The "Regalian Doctrine" or *jura regalia* is a Western legal concept that was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal Cédulas. The Laws of the Indies, i.e., more specifically, Law 14, Title 12, Book 4 of the *Novísima Recopilación de Leyes de las Indias*, set the policy of the Spanish Crown with respect to the Philippine Islands in the following manner:

"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, it is our will that all lands which are held without proper and true deeds of grant be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.

We therefore order and command that all viceroys and presidents of pretorial courts designate at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will." [68] (Citations omitted, emphasis in the original)

Having exclusive dominion over the lands in the Philippines, the Spanish government began issuing royal grants and concessions which effectively distributed land rights to the Spaniards and loyal Spanish subjects. This notwithstanding, the Law of the Indies, and the subsequent laws enacted by the Spanish government, made it clear

that the distribution of land rights and interests should not impair the rights and interests of the natives in their holdings.[69]

The Spanish Government's intention to guarantee the rights of the natives over their lands was reiterated and further clarified in the subsequent Royal Decree of October 15, 1754, which stated that the native's "justified long and continuous possession" qualified them for title to their cultivated land. The Royal Decree considered as valid title the native's ancient possession of their land, notwithstanding the possessor's failure to produce title deeds over the land.[70]

The Royal Cedula Circular of March 3, 1798 further expounded on this matter and proclaimed that "the will of the 'Crown' as expressed in various, instructions, royal edicts, orders and decrees, that the distribution of land to conquistadores' discoverers, and settlers should never prejudice the natives and their land-holdings." [71]

Despite the apparent deference of the Spanish Government to the native's rights over their lands, subsequent laws, however, triggered their legal disenfranchisement.[72]

On June 25, 1880, a Royal Decree was enacted stating that "all persons in possession of real property were to be considered owners provided they, had in good faith occupied and possessed their claimed land for at least [10] years." [73]

The Royal Decree of 1880 was followed by the Spanish Mortgage Law which had for its purpose "the systematic registration of land titles and deeds as well as for possessory claims." It was adopted as a means of registering and subjecting to taxation the lands held pursuant to the Royal Decree of 1880. The law provided that "'owners who lack recorded title of ownership' could have their interests registered during a possessory information proceeding[.]" However, the title was a mere record of possession which can later be converted into a record of ownership after 20 years from its date of issue.[74]

By 1894, the unresolved applications for official documentary recognition of ownership reached 200,000. The natives were unable to show titles to their lands except by actual possession. The natives were presumed to be unaware of the Spanish laws concerning registration and documentation of lands by reason of "[t]he uneven Spanish impact, abuses by colonial officials, the absence of effective notice, illiteracy, lack of money to pay for transportation fares and legal prerequisites, e.g. filing fees, attorney's fees, survey costs[.]" [75]

In a final attempt to remedy the problems concerning property registration, the Spanish Government issued the Royal Decree of February 13, 1894, otherwise known as the Maura Law. It was the last land law promulgated by the Spanish colonial regime in the Philippines.[76] The preamble provided that the law's purpose is to, "insure to the natives, in the future, whenever it may be possible, the necessary land for cultivation, in accordance with traditional usages." [77] However, a contrary intention was revealed in Article 4 of the law, which provides:

The title to all agricultural lands which were capable of adjustment under the Royal Decree of 1880, but the adjustment of which has not been sought at the time of promulgation of this Decree... will revert to the State.

Any claim to such lands by those who might have applied for adjustment of the same but have not done so at the time of the above-mentioned date, will not avail themselves in any way or at any time.[78]

The Maura law imposed a unilateral registration deadline[79] to all natives for their customary claims over their lands, otherwise, their land will be taken away or confiscated by the Crown.[80] In a sense, it was the first law which empowered the Spanish government to deny legal recognition of the native's customary property rights. It was a manifestation of "the colonial regime's insensitivity to the plight and potentials of the masses." [81]

The law's effects, based on wrong premises, proved to be enduring. It was later used by the American colonizers

as basis to deny recognition of ancestral property rights. Further, the law became the foundation for what will be the known as the Regalian Doctrine in modern times.[82]

II

On the international scale, war broke out between Spain and the United States of America. Spain surrendered on May 1, 1898, and the United States was set to secure a sovereign claim over the Philippines.[83]

On December 10, 1898, Spain ceded the Philippines to the United States through the Treaty of Paris. The Treaty provided that all immovable properties which, in conformity with law, belonged to the Crown of Spain, had been relinquished and ceded to the United States. Nevertheless, Article VIII of the Treaty recognized that, "the relinquishment and cession... cannot in any respect impair the property rights which by law belong to peaceful possession." [84]

In 1899, the first Philippine Commission, also known as the Schurman Commission, started to receive reports as to the vast tracts of lands considered to be private. However, they were more interested in the extent of land rights acquired by the United States and focused its attention to the Philippine archipelago's public domain. Investigations were then conducted, which revealed that almost half of the archipelago was considered public.[85] This estimate notwithstanding, only 10% of the total land mass was documented and recognized by the Spanish Regime:

The remaining portions of the private domain belonged to hundreds of thousands of people who held, or were believed to hold, undocumented customary rights or some local variation of a customary/colonial right which lacked proper documentation.[86]

President William McKinley (President McKinley) then issued a directive, ordering the Philippine Commission:

[T]o impose, regardless of custom, "upon every branch and division of the colonial government" the "inviolable" constitutional mandates that no person shall be deprived of property without due process of law and that just compensation be paid for all private property taken for public use[.][87](Citation omitted)

The Taft Commission disregarded not only President McKinley's instruction, but likewise its predecessor's findings, and claimed that "Article VIII vested ownership of 92.3% of the total Philippine land mass, or approximately 27,694,000 hectares, in the U.S. Government." [88] This percentage included forest lands and mineral resources, which were considered part of the public domain. In effect, the Taft Commission's estimate discounted the undocumented property rights possessed by Filipino groups over their respective ancestral lands and domains.[89]

Subsequently, the United States Congress passed the Organic Act of July 1, 1902, otherwise known as the Philippine Bill. It extended to the Filipino people most of the guarantees in the American Bill of Rights which included the constitutional right not to be deprived of private property without due process of law and just compensation.[90] Section 13 of the Philippine Bill likewise authorized the Philippine Commission to promulgate rules concerning disposition of public lands.[91] Section 14 further empowered the Philippine Commission to prescribe the rules for perfecting titles to public lands by qualified applicants.[92] Finally, Section 16[93] mandated that in the sale of public domain, actual occupants shall be given preference.[94]

Shortly thereafter, or on November 6, 1902, the Land Registration Act was enacted. It established, among others, the Court of Land Registration tasked to hear applications for registration filed pursuant to its provisions.[95] It likewise empowered the Court of Land Registration to adjudicate conflicting claims to title.[96]

The enactment of the Land Registration Act saw the implementation of a "complete system of registration on the general lines of the Torrens system." [97]

The Torrens system created a guarantee that certificates of title over lands shall be indefeasible^[98] and that "all claims to the parcel of land are quieted upon issuance of said certificate[,]"^[99] thus:

The Torrens system registers and guarantees the legal rights of private land owners. The system was devised during the 1830s by Sir Robert Torrens who had served as commissioner of customs in South Austria before becoming a land registrar of deeds. ...

The Torrens system promotes the use of land as a marketable commodity. Unlike customary systems, a Torrens title holder need have no relation to the land other than what is stated in the Torrens document. A Torrens title holder is also generally free to convey his or her rights to anyone, regardless of whether or not they belong to the community where the land is located or whether they intend to use the land or leave it idle.^[100]

Subsequently, Act No. 926, otherwise known as the Public Land Act, was passed. It provided for the various modes as to how public lands can be alienated either through a homestead application, sale, lease, issuance of free patents to native settlers, creation of town sites, or for perfection of titles and Spanish grants. In this regard, the Public Land Act recognized the natives' rights over land that they have continuously occupied and cultivated, either by themselves or through their ancestors:

SECTION 32. Any native of the Philippine Islands now as occupant and cultivator of unreserved, unappropriated agricultural public land, as defined by the Act of Congress of July first, nineteen hundred and two, who has continuously occupied and cultivated such land, either by himself or through his ancestors, since August first, eighteen hundred and ninety; or who prior to August first, eighteen hundred and ninety eight continuously occupied and cultivated such land for three years immediately prior to said date, and who has been continuously since July fourth, nineteen hundred and two, until the date of the taking effect of this Act, an occupier and cultivator of such land, shall be entitled to have a patent issued to him without compensation for such tract of land, not exceeding sixteen hectares, as hereinafter in this chapter provided.

In 1919, Act No. 2874^[101] superseded Act No. 926. The second Public Land Act "was more comprehensive in scope but limited the exploitation of agricultural lands to Filipinos and Americans and citizens of other countries which gave Filipinos the same privileges."^[102]

The Public Land Act was followed by Act No. 1148 or the Forest Act. Prior to its enactment on May 7, 1904, the Organic Law of July 1, 1902 already provided, to some extent, the legal framework and procedure for the allocation of legal rights relating to forest lands and the resources found there. The Organic Law provided that the United States Government shall have the power "to issue licenses to cut, harvest, or collect timber or other forest products."^[103] The Organic Law proscribed the cutting, destruction, removal, or appropriation of forest resources "except by special permission of [the] Government and other such regulations as it may prescribe."^[104]

Gifford Pinchot, an official of the United States Forest Service and primary author of the Forest Act, believed that forests must be harvested on a commercial scale. By this reason, the Forest Act contained provisions which empowered the United States Government "to issue licenses for up to [20] years 'for the cutting, collection, and removal of timber, firewood, gums, resins, and other forest products.'"^[105]

One of the salient provisions of the Forest Act is the authority given to the bureau chief to grant gratuitous licenses for the free use of timber and other forest products, provided that it shall be reasonable in quantity, within definite territorial limits, and that it is only for domestic purposes.^[106]

An amendment to the free use provision was later introduced, allowing the bureau director to designate specific parcels of land as communal forests. Persons who wish to utilize timber and other forest products were free to do so within the designated communal forests. After the said amendment took place, numerous municipalities and

townships applied for the grant and designation for communal forests within their jurisdiction.[107]

Meanwhile, by reason of the deteriorating condition of the public forest, the United States Government issued General Order No. 92 to address the unauthorized practice of swidden farming or kaingin which the Americans considered as "the most destructive agency in the Philippine forests[.]"[108]

The legal prohibition against swidden farming proved to be ineffective in most forest zones. The United States Government claimed that municipal and provincial authorities had full knowledge of the swidden farming happening within their jurisdiction, but had not acted upon it in any way.[109]

United States Government officials lamented the continued practice of swidden farming. They stated that if the Filipinos were left on their own devices and desire to continue with their practice of swidden farming, it would "consume their capital as well as their interests." [110]

Interestingly, this sentiment from United States Government officials confirmed a degree of autonomy enjoyed by rural people, including municipal and provincial officials, away from the centralized nature of the American regime. This also revealed the erroneous perception that Filipinos who practiced swidden farming are considered as destroyers of forest resources.[111]

III

In 1936, Commonwealth Act No. 141 was enacted. It provides for the methods by which the government may dispose of agricultural lands, namely: "(1) [f]or homestead settlement; (2) [b]y sale; (3) [b]y lease; [and] (4) [b]y confirmation of imperfect or incomplete titles[.]"[112]

Further, as mentioned in Associate Justice Reynato Puno's separate opinion in *Cruz v. Secretary of Natural Resources*:[113]

Commonwealth Act No. 141 remains the present Public Land Law and it is essentially the same as Act 2874. The main difference between the two relates to the transitory provisions on the rights of American citizens and corporations during the Commonwealth period at par with Filipino citizens and corporations.[114] (Citation omitted)

Amendments to Commonwealth Act No. 141 were made in 1964. Otherwise known as the Manahan Amendments, Republic Act No. 3872 introduced the following amendments to Sections 44 and 48:

SECTION 1. A new paragraph is hereby added to Section 44 of Commonwealth Act Numbered One hundred forty-one, to read as follows:

"SEC. 44. Any natural-born citizen of the Philippines who is not the owner of more than twenty-four hectares and who since July fourth, nineteen hundred and twenty-six or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twenty-four hectares.

"A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, whether disposable or not since July 4, 1955, shall be entitled to the right granted in the preceding paragraph of this section: Provided, That at the time he files his free patent application he is not the owner of any real property secured or disposable under this provision of the Public Land Law."

SECTION 2. A new sub-section (c) is hereby added to Section 48 of the same Act to read as follows:

"(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 sub-section (b) hereof." (Underscoring supplied)

Led by Senator Manuel Manahan, then-Chairman of the Senate Committee on National Minorities, the amendments' objective was to address the cultural minorities' continuing loss of their ancestral homes by reason of the "grant of pasture leases or permits to the more aggressive Christians[.]" It was "to give Tribal Filipinos 'a fair chance and equal opportunity' to acquire title to public lands." [115]

The Manahan amendments had the effect of creating "a distinction between applications for judicial confirmation of imperfect titles by members of national cultural minorities and applications by other qualified persons in general[.]" [116] thus:

Members of cultural minorities may apply for confirmation of their title to lands of the public domain, whether disposable or not; they may therefore apply for public lands even though such lands are legally forest lands or mineral lands of the public domain, so long as such lands are in fact suitable for agriculture. The rest of the community, however, "Christians" or members of mainstream society may apply only in respect of "agricultural lands of the public domain," that is, "disposable lands of the public domain" which would of course exclude lands embraced within forest reservations or mineral land reservations. [117] (Emphasis in the original.)

In 1977, the distinction established by the Manahan amendment was expressly abandoned by Presidential Decree No. 1073 when the latter limited the application of Section 48 (b) and (c) "to alienable and disposable lands of the public domain[.]" [118]

IV

After the Philippines gained its independence from the United States, the Filipino people ratified the 1935 Constitution on May 14, 1935. [119]

One of the primary objectives of the framers of the 1935 Constitution was to guarantee "the nationalization and conservation of the natural resources of the country." [120] They considered it to be of great importance to ensure that the State's power of control over the natural resources was recognized and established. By this reason, the delegates to the Constitutional Convention adopted and incorporated Article XIII, Section 1 in the 1935 Constitution, [121] which states:

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

Article XIV, Section 8 of the 1973 Constitution echoed the same provision:

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public

domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.

In the same way, Article XII, Section 2 of the 1987 Constitution provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The abovementioned constitutional provision has been interpreted and construed to embody the feudal theory of *jura regalia* or the Regalian Doctrine.

My esteemed colleague, Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa) is of the view that ancestral domains and lands are beyond Section 77's coverage.[122] He insists that the law only covers public and private lands to which categories ancestral domains and lands neither apply.[123] He maintains that ancestral domains and lands are indisputably presumed to have been held by the ICCs/IPs under a claim of ownership even before the Spanish Conquest, and deemed to have never been part of the public domain.[124]

Associate Justice Caguioa opines that the indigenous concept of ownership notwithstanding, ICCs/IPs are only granted the right to sustainably use the natural resources found in ancestral domains.[125] He postulates that ownership over the natural resources remains with the State and the ICCs/IPs' right is limited to managing and conserving these resources for future generations.[126]

Associate Justice Estela M. Perlas-Bernabe shares Associate Justice Caguioa's sentiment that the right accorded to ICCs/IPs with respect to natural resources found in their ancestral domain is limited to the utilization of these resources.[127]

With utmost respect to my colleagues, it is my opinion that the indigenous concept of ownership covers not only the ancestral domains and land, but also the natural resources found there.

The State's alleged ownership over the natural resources is founded on the doctrine of *jura regalia*, which provides that "all lands of the public domain as well as all natural resources enumerated therein, whether on private or public land, belong to the State." [128]

I reiterate my opinion previously expressed in *Heirs of Malabanan v. Republic*, [129] *Republic v. Tan*, [130] and *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, [131] that the 1987 Constitution does not provide for the Regalian Doctrine.

A perusal of Article XII, Section 2 of the 1987 Constitution reveals that the State's ownership of lands is limited to "lands of the public domain[.]" Further, "[l]ands that are in private possession in the concept of an owner since time immemorial are considered never to have been public[.]" since the state never owned them.[132]

In addition, the doctrine of *jura regalia* is a feudal theory introduced by the Spaniards. However, its application in the Philippines was put to an end upon the arrival of the Americans. The landmark case of *Cariño v. Insular Government*^[133] clarified on this matter.^[134]

On June 22, 1903, Mateo Cariño (Cariño), an Igorot of the Province of Benguet, filed a petition before the Court of Land Registration in order to register a piece of land located in the same province.^[135] According to Cariño, he and his ancestors owned the land over 50 years before the Treaty of Paris. They have maintained fences for cattle and have cultivated the land subject of the petition for registration. Furthermore, they have been recognized as owners of the land by the other Igorots. Cariño also stated that he had inherited the land from his father in accordance with Igorot custom, and that he had made prior applications before the Spanish Crown to register the land, but nothing seemed to have come of it.^[136]

The Court of Land Registration gave due course to the petition for registration. However, the Benguet Court of First Instance reversed the decision on appeal and dismissed Cariño's application. This decision was affirmed by the Philippine Supreme Court.^[137]

Through a writ of error, the case reached the United States Supreme Court. It reversed the Philippine Supreme Court's decision and upheld Carino's ownership of the land in question. The United States Supreme Court decreed that, whatever Spain's position may have been in relation to the status of Cariño's application for registration, it does not follow that he had lost his rights over the land subject of registration when the United States assumed sovereignty over the Philippines. Thus:

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.^[138]

Citing the Philippine Bill of 1902, the United States Supreme Court went on further and held:

In the light of the declaration that we have quoted from section 12, it is hard to believe that the United States was ready to declare in the next breath that "any person" did not embrace the inhabitants of Benguet, or that it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association — one of the profoundest factors in human thought — regarded as their own.

It is true that, by section 14, the government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some, but not all, Spanish conditions had been fulfilled, and to issue patents to natives for not more than 16 hectares of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land, and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners at that date. We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat. It is true again that there is excepted from the provision that we have quoted as to the administration of the property and rights acquired by the United States, such land and property as shall be designated by the President for military or other reservations, as this land since has been. But there still remains the question what property and rights the United States asserted itself to have acquired.

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand* every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is

doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof." [139]

Cariño established the notion that Igorots and, by analogy, other groups with similar customs and long associations, have constitutionally protected native titles to their respective ancestral lands. [140] It also emphasized that, based on native custom and long association, there exists a legal foundation that the ancestral lands of some native groups within the Philippine archipelago are owned pursuant to private, communal title. [141]

The doctrine espoused in Cariño was further reinforced by the United States Supreme Court in *Reavis v. Fianza*. [142]

Reavis involved two (2) gold mines situated in the province of Benguet. These mines were in a tract of land, the sole and exclusive possession of which belonged to an Igorot named Toctoc. The gold mines were developed by Igorot miners in accordance with their customs. [143]

Toctoc neither had any paper title over the mines nor was he granted concession by the Spanish Government. This notwithstanding, Toctoc's "title and ownership thereto were generally known and recognized by the people of the community [,]" including the Spanish officials. [144]

Upon Toctoc's death, the mines' possession and ownership passed on to his heirs, which included *Fianza*. Toctoc's heirs continued to live and work on the mines without interruption. However, in 1901, *Reavis* entered upon the subject mines and proceeded to stake his claims on them. *Reavis* was in the honest but mistaken belief that the mines were part of the abandoned and forfeited Spanish grant of a certain *Holman*. Insisting ownership over the mines, *Fianza* filed a formal protest against *Reavis*. [145]

When the case reached the United States Supreme Court, it sustained *Fianza*'s claim of ownership of the mines and decreed:

The appellees are Igorots [sic], and it is found that, for fifty years, and probably for many more, *Fianza* and his ancestors have held possession of these mines. He now claims title under the Philippine act of July 1, 1902, chap. 1369, 45, 32 Stat, at L. 691. This section reads as follows:

'That where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent.'

It is not disputed that this section applies to possession maintained for a sufficient time before and until the statute went into effect. . . . The period of prescription at that time was ten years. . . . Therefore, as the United States had not had the sovereignty of the Philippines for ten years, the section, notwithstanding its similarity to Rev. Stat. 2332, U. S. Comp. Stat. 1901, p. 1433, must be taken to refer to the conditions as they were before the United States had come into power. Especially must it be supposed to have had in view the natives of . . . the islands, and to have intended to do liberal justice to them. By 16, their occupancy of public lands is respected and made to confer rights. In dealing with an Igorot [sic] of the province of Benguet, it would be absurd to expect technical niceties, and the courts below were quite justified in their liberal mode of dealing with the evidence of possession and the possibly rather gradual settling of the precise boundaries of the appellees' claim. . . . At all events, they

found that the appellees and their ancestors had held the claim and worked it to the exclusion of all others down to the bringing of this suit, and that the boundaries were as shown in a plan that was filed and seems to have been put in evidence before the trial came to an end.[146]

Reavis recognized the extent of the natives' rights over their ancestral territories. It acknowledged that their rights extend not only to the lands, but likewise include the natural resources found in them.[147] Accordingly, the State's power over these resources extend only"to its regulation. The State, as laid down under Section 57 of IPRA, can only provide for the guidelines and limitation on how these resources can be utilized, thus:

SECTION 57. Natural Resources within Ancestral Domains. — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

V

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

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

V(A)

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

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

- (a) Firstly, enumerating the civil and political rights of all members of indigenous cultural communities or indigenous peoples, regardless of their relation to ancestral lands or domains;
- (b) Secondly, enumerating the social and cultural rights of all members of indigenous cultural communities or indigenous peoples;
- (c) Thirdly, recognizing a general concept of indigenous property right and granting title thereto; and
- (d) Finally, creating a National Commission on Indigenous Peoples (NCIP) to act as a mechanism to coordinate implementation of the law as well as a final authority that has jurisdiction to issue Certificates of Ancestral Domain/LandTitles." [158]

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

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

V(B)

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

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

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

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

VI

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

a) Ancestral Domains,— Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

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

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

Ownership under the New Civil Code is defined under Articles 427 and 428. It is understood as either: "... the independent and general power of a person over a thing for purposes recognized by law and within limits

established thereby," or "a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another." Moreover, ownership is said to have the attributes of *jus utendi*, *fruendi*, *abutendi*, *disponendi* et *vindicandi*. One therefore is said to own a piece of land when s/he exercises, to the exclusion of all others, the rights to use, enjoy the fruits and alienate or dispose of it in any manner not prohibited by law.[168]

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

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

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

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

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

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

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

[2] Ponencia, p. 9.

[3] Id. at 3-4.

[4] Id. at 9.

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

[6] Id.

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

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

[9] Id. at 232.

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

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

[12] Id. at 117-118.

- [13] 268 Phil. 413 (1990) [Per C.J. Fernan, Third Division].
- [14] Id. at 422.
- [15] Id. at 422-423.
- [16] Ponencia, p. 3.
- [17] Rollo, p. 18, Petition citing TSN dated May 4, 2020.
- [18] Id. at 18-19.
- [19] Id. at 18.
- [20] Id. at 85-86.
- [21] Rollo, pp. 162-163. Reply.
- [22] Ponencia, p. 40 citing < <https://www.doe.gov.ph/sites/default/files/pdf/eicc/cadt-region04.pdf> >.
- [23] 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].
- [24] Id. at 325.
- [25] See J. Perlas-Bernabe Separate Concurring Opinion, pp. 4-7.
- [26] Pres. Decree No. 705 (1975), sec. 2(d).
- [27] See Ha Datu Tawahig v. Lapinid, G.R. No. 221139, March 20, 2019, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> > [Per J. Leonen, Third Division].
- [28] Ha Datu Tawahig v. Lapinid, G.R. No. 221139, March 20, 2019, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> > [Per J. Leonen, Third Division].
- [29] CONST, art. XII, sec. 5.
- [30] See Marvic M.V.F. Leonen, Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy, 1998 phil. peace & hum. rts. rev. 159, 161 (1998).
- [31] See C.J. Peralta Separate Opinion, pp. 16-23.
- [32] DENR-NCIP JAO NO. 2008-01, sec. 10 (10.1).
- [33] People v. Asis, 439 Phil. 707, 728 (2002) [Per J. Panganiban, En Banc].
- [34] People v. Velasco, G.R. No. 231787, August 19, 2019, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65645> > [Per J. Caguioa, Second Division].
- [35] Ponencia, p. 38.
- [36] Id. at 41.
- [37] Portia M. Panegro and Francia C. Bulatao, Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains, 47 ATENEO L. J. 624, 626 (2002).
- [38] Ponencia, p. 9.
- [39] Portia M. Panegro and Francia C. Bulatao, Claims and Counterclaims in the Mt. Halcon and Mi. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains, 47 ATENEO L. J. 624, 627 (2002).

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

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

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

[43] *Id.* at 634.

[44] *Id.* at 629.

[45] *Id.* at 635.

[46] *Id.*

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

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

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
 - b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
 - c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
 - d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;
 - e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and
 - f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.
- Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

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

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

[49] See June Prill-Brett, *Indigenous Land Rights and Legal Pluralism among Philippine Highlanders*, 28 Law

and Society in Southeast Asia 687, 691-692 (1994).

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

[51] Id.

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

[53] Id.

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

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

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

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

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

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

[60] Id.

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

[62] Id. at 954.

[63] Id.

[64] Id.

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

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

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

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

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

[70] Id. at 274—275.

[71] Id. at 275.

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

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

[74] Id.

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

[76] Id. at 108.

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

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

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

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

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

[82] Id.

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

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

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

[86] Id.

[87] Id. at 250-251.

[88] Id. at 251.

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

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

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

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

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

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

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

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

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

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

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

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

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

[98] *Id.* at 282.

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

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

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

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

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

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

[104] Id.

[105] Id. at 273.

[106] Id. at 274.

[107] Id. at 276.

[108] Id. at 277.

[109] Id. at 278.

[110] Id.

[111] Id.

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

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

[114] Id.

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

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

[117] Id.

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

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

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

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

[121] Id.

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

[123] Id. at 6-8.

[124] Id. at 8-9.

[125] Id. at 13-14.

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

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

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

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

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

[131] J. Leonen, Separate Opinion in Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources, G.R. Nos. 202897, 206823 & 207969, August 6, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65416>> [Per J. Hernando, En Banc].

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

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

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

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

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

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

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

[139] Id. at 458-460.

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

[141] Id. at 279.

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

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

[144] Id. at 614.

[145] Id. at 615.

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

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

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

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

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

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

[156] *Id.* at 963.

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

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

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

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

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

[161] *Id.* at 162.

[162] *Id.* at 170.

[163] *Id.*

[164] *Id.* at 171.

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

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

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

[168] *Id.* at 178.

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

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

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

SEPARATE OPINION

CAGUIOA, J.:

The factual backdrop of the case is simple and quite straightforward: petitioners, who are members of the Iraya-Mangyan indigenous community and residing within their ancestral domain in the hinterlands of Baco, Oriental Mindoro, within the contemplation of the Republic Act No. (R.A.) 8371 or the Indigenous Peoples' Rights Act (IPRA), felled one dita^[1] tree for the construction of a communal toilet, without having first secured a permit from the Department of Environment and Natural Resources (DENR) pursuant to Section. 77^[2] of the Forestry Reform Code of the Philippines (Presidential Decree No. [P.D.] 705), as amended. The factual context of the case covers a breadth of interwoven legal issues that bear upon the foremost question of whether or not herein petitioners may be rightly convicted.

If peered from a constitutional law angle, the view is fraught with reluctance and equal but contrary propositions exist, in part due to the fact that our laws have evolved with inexactness, and have become open to a plurality of persuasions. The lens of constitutional determination may invite that the case be seen from a "State v. Indigenous Peoples" point of view, on the one hand, or a "healthful ecology" framing, on the other. To my mind, neither viewpoint invalidates the other, for the socio-historically complex relation between indigenous peoples' rights and environmental laws are so inextricably linked that any imprecise step in one direction or another may cost highly for both separate but joined causes.

I would be remiss if I fail to recognize the very valid points raised by Chief Justice Diosdado M. Peralta in his Dissenting Opinion, not the least of which is the overarching reasonable fear that the position I espouse, if followed to its logical conclusion, may open the gates for abuse and perhaps facilitate the ease of pillaging our forest covers. Although I maintain my position that these fears, although grounded, may not be the apt cornerstone from which to best reference the resolution of the present issues, I recognize that the Chief Justice raises real and valid apprehensions, which tell me that this case does not lend itself most suited for the adjudication of these deeply contested questions of law, which may be, for now, best left to the wisdom and clarification of the legislature.

I further submit that the present case may be resolved without needing a constitutional determination or conclusive harmonization of laws. From the more immediate standpoint of criminal law, the facts of this case are clear. I concur with the ponencia's finding that petitioners here do not incur any criminal liability. From the lens of criminal law, the determination of whether the Court has sufficient basis to find that the accused here are guilty of the act betrays gray areas of interpretations and legislative intents behind the penal provision, specifically the acts included in the violation under P.D. 705, one of which was levelled against petitioners. These equivocal areas must, therefore, and until conclusively determined, color the present prosecution with reasonable doubt, which must be resolved in favor of herein accused.

I thus maintain the non-culpability of petitioners for the following reasons: first, petitioners may not be found guilty of violating P.D. 705, Sec. 77 as the lands enumerated therein do not include ancestral domains; and second in any event, the petitioners' act of cutting the dita tree was undertaken with the required "authority." As Sec. 77 itself provides, petitioners' act of cutting a single dita tree for the purpose of building a toilet for the use of their community is well within the rights granted to Indigenous Cultural Communities (ICCs) or Indigenous Peoples (IPs) under the IPRA, and is therefore beyond the ambit of the crimes penalized therein, with its authority rising from no less than the Constitution and the bedrock rationale of the IPRA itself.

To be sure, this Opinion does not assert that members of the ICCs/IPs be wholly exempted from the reach of the courts' jurisdiction over criminal offenses. Rather, it submits that there can be no finding of a crime having been committed where none was intended by laws. This Opinion does not look at P.D. 705 with the intention of

subverting it and granting sweeping, unmerited exemptions in favor of members of the ICCs/IPs. Plainly, no exemption is being carved out for petitioners, for one cannot be exempted from a law that did not contemplate them, to begin with.

In the ultimate analysis, while I maintain my position that petitioners cannot be held criminally liable for violating P.D. 705, I likewise recognize the reasonable points raised by the Chief Justice in his dissent. I, too, recognize that at least three other members of the Court have also given their positions as regards this case. These opinions are in addition to those espoused by the ponencia. Evidently, interpreting the law as it affects the concerns of IPs and the environment invites diverse points of view which hinders the Court from finding accused's guilt beyond reasonable doubt. The ramifications of laying down definitive pronouncements in this case that go beyond the criminal liability of the accused may indeed have far-reaching consequences that are already beyond what is necessary in resolving the instant case.

That being said, I shall lay down the bases for my position that petitioners are not liable under P.D. 705.

Petitioners did not violate P.D.

70S, Sec. 77.

P.D. 705, Sec. 77, as amended, states:

Section 77. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

This provision punishes two distinct and separate offenses:

- (1) cutting, gathering, collecting, or removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and
- (2) possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[3]

Here, the Information states:

The undersigned Prosecutor, under oath, accuses DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, BANDY MASANGLAY y ACEVEDA, residents of Barangay Baras, Baco, Oriental Mindoro with the crime of Violation of Presidential Decree No. 705 as amended, committed as follows:

That on or about the 15th day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating, and mutually helping one another did and then-and there willfully, unlawfully, feloniously and knowingly cut with the use of unregistered power chainsaw, a Dita tree, a forest product, with

an aggregate volume of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php 20,000.00) PESOS, Philippine Currency.

Contrary to law.[4]

Indubitably, petitioners were charged with the first offense — namely, the cutting of a dita tree "without any authority." [5] Thus, to be convicted under this charge, the following elements must first be proven:

- (1) Act of cutting, gathering, collecting, or removing
 - Timber or forest products from any forest land, or
 - Timber from alienable or disposable public land, or from private land; and
- (2) Absence of any authority to do such act.

Finding both elements to be present, the lower courts convicted petitioners.

Contrary to the foregoing, I submit that petitioners did not violate any of the punishable acts under P.D. 705, Sec. 77. Otherwise stated, the elements of the offense charged are not present in this case. First, since the dita tree was located within the petitioners' ancestral domain, the offense did not take place in any of the locations contemplated in Sec. 77. In other words, P.D. 705, Sec. 77 is no longer applicable, especially with the enactment of the IPRA. Second, even assuming that P.D. 705, Sec. 77 is still applicable to ancestral domains, the absence of a permit from the DENR does not mean that petitioners are guilty of the charge, as they, under the IPRA, already possessed the required "authority" to cut the dita tree.

Absence of the first element:
petitioners cut the dita tree within
their ancestral domain, which is
neither "forest land," "alienable
or disposable public land," nor
"private land."

To be considered a violation of Sec. 77, the law itself requires that the timber or forest product is cut, gathered, collected, or removed from any "forest land," "alienable or disposable public land," or "private land."

Cutting within an ancestral domain of ICCs/IPs was not contemplated by P.D. 705, Sec. 77.

As the Court held in *Savage v. Taypin* [6] "we must strictly construe the statute against the State and liberally in favor of the accused, for penal statutes cannot be enlarged or extended by intendment, implication or any equitable consideration." [7]

It also held in *Centeno v. Villalon-Pornillos* [8] (*Centeno*):

[Penal laws] are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused." [9]

In construing penal laws, the Court further held:

x x x If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal

statute should be regarded as without its intendment.[10]

Here, the lower courts erred in failing to appreciate the location of the dita tree, which, again, was well within the petitioners' ancestral domain.

I disagree. On this note, it should be emphasized that "[t]he law does not operate in vacuo nor should its applicability be determined by circumstances in the abstract." [11]

I submit that ancestral domains are distinct from public or private lands, and any cutting of timber or forest product therein was not contemplated by Sec. 77 of P.D. 705. Sec. 77 cannot be read in isolation. Its interpretation should not only be construed strictly against the State and in favor of the accused, but it must consider changes brought about by the 1987 Constitution, its recognition of ancestral domains, and the enactment of the IPRA.

"Forest land," [12] as used in P.D. 705, includes three sub-categories: (1) public forests, (2) permanent forests or forest reserves, and (3) forest reservations, which are defined in the statute itself:

SECTION 3. Definitions. —

a) Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.

b) Permanent forest or forest reserves refers to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes.

x x x x ,

g) Forest reservations refer to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes. (Underscoring supplied)

From these definitions, it is clear that all subcategories of "forest land" are classified as lands of the public domain.[13] Similarly, and as the name suggests, "alienable or disposable public land"[14] also forms part of the public domain.

On the other hand, while the term "private land" is not expressly defined in P.D. 705, it is indirectly referred to in Sec. 3 (mm), which defines a "private right" as "titled rights of ownership under existing laws, and in the case of national minority to rights of possession existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds, and old clearings, but exclude productive forest inclusive of logged-over areas, commercial forests and established plantations of the forest trees and trees of economic values." [15]

To my mind, these definitions do not cover the concept of ancestral domains. Ancestral domains are neither "public" nor "private land" as contemplated by Sec. 77 of P.D. 705.

Ancestral domains were recognized in the 1987 Constitution when it stated that Congress may provide for the applicability of customary laws governing property rights in determining the ownership and extent of ancestral domains. Article XII, Sec. 5 of the 1987 Constitution on National Economy and Patrimony states:

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

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

Implementing the foregoing, Congress enacted the IPRA, which defined ancestral domains as "all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial x x x." [16] These areas even include "forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise x x x." [17] Sec. 3 of the IPRA states:

SECTION 3. Definition of Terms. — For purposes of this Act, the following terms shall mean:

a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators [.] (Emphasis and underscoring supplied)

Through the IPRA, the State recognized the rights of the ICCs/IPs to their ancestral domains by virtue of native title, and such formal recognition is through the Certificate of Ancestral Domain Title (CADT), if obtained at the election of the ICCs/IPs themselves. [18] Native title is defined in the IPRA as "pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." [19]

This concept of "native title" can be traced back to the 1909 case of *Cariño v. Insular Government* [20] (*Cariño*) where the United States Supreme Court upheld the claim by an IP that the parcels of land owned by him were absolutely owned by him and his predecessors-in-interest through the years, as opposed to the Regalian Doctrine invoked by the Government of the Philippines. Thus:

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the Organic Act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitudes of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof." [21]

Institutionalizing *Cariño* was one of the principal goals in enacting the IPRA. The sponsorship speeches for the progenitor bills of the IPRA both mentioned *Cariño* as one of the law's conceptual anchors. In his Sponsorship Speech, Senator Juan S. Flavio said:

xxx [O]ur legal tradition subscribes to the Regalian Doctrine as reinstated in Section 2, Article XII of the

Constitution xxx

x x x x

[But] decisional law has made exception to the doctrine.

As early as 1909, in the case of *Cariño vs. Insular Government*, the court has recognized long occupancy of land by an indigenous member of the cultural communities as one of private ownership, which, in legal concept, is termed "native title." This ruling has not been overturned. In fact, it was affirmed in subsequent cases.

But the executive department of the government since the American occupation has not implemented the policy. In fact, it was more honored in its breach than in its observance, its wanton disregard shown during the period of the Commonwealth and the early years of the Philippine Republic when government "organized and supported massive resettlement of the people to the land of the ICCs.[22]

Cariño was also cited as one of the bases for the IPRA in the interpellations of the precursor bill in the House of Representatives.[23]

In jurisprudence, this concept that was rooted in *Cariño* has been recently upheld in the case of *Republic v. Cosalan*,[24] where the Court held that:

Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.[25]

Ancestral domains and lands are thus unique in that they were never public lands, but may include forest lands, and which the ICCs/IPs have held for their communities under a claim of private ownership. Thus, these are indisputably presumed to have been held in this way before the Spanish Conquest.

Expanding on this peculiar nature of ancestral domains, which he describes as neither public nor private lands, former Chief Justice Reynato S. Puno, in his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*[26] (*Cruz*), stated:

The right of ownership and possession of the ICCs/IPs to their ancestral domains is held under the indigenous concept of ownership. This concept maintains the view that ancestral domains are the ICCs/Ips['] private but community property. It is private simply because it is not part of the public domain. But its private character ends there. The ancestral domain is owned in common by the ICCs/IPs and not by one particular person. The IPRA itself provides that areas within the ancestral domains, whether delineated or not, are presumed to be communally held. These communal rights, however, are not exactly the same as co-ownership rights under the Civil Code. Co-ownership gives any co-owner the right to demand partition of the property held in common. The Civil Code expressly provides that "[n]o co-owner shall be obliged to remain in the co-ownership." Each co-owner may demand at any time the partition of the thing in common, insofar as his share is concerned. To allow such a right over ancestral domains may be destructive not only of customary law of the community but of the,very, community itself.

Communal rights over land are not the same as corporate rights over real property, much less corporate condominium rights. A corporation can exist only for a maximum of fifty (50) years subject to an extension of another fifty years in any single instance. Every stockholder has the right to disassociate himself from the corporation. Moreover, the corporation itself may be dissolved voluntarily or involuntarily.

Communal rights to the land are held not only by the present possessors of the land but extends to all

generations of the ICCs/IPs, past, present and future, to the domain. This is the reason why the ancestral domain must be kept within the ICCs/IPs themselves. The domain cannot be transferred, sold or conveyed to other persons. It belongs to the ICCs/IPs as a community.[27]

Chief Justice Puno went on to state that "[f]ollowing the constitutional mandate that 'customary law govern property rights or relations in determining the ownership and extent of ancestral domains,' the IPRA, by legislative fiat, introduces a new concept of ownership. This is a concept that has long existed under customary law." [28] He continues:

Custom, from which customary law is derived, is also recognized under the Civil Code as a source of law. Some articles of the Civil Code expressly provide that custom should be applied in cases where no codal provision is applicable. In other words, in the absence of any applicable provision in the Civil Code, custom, when duly proven, can define rights and liabilities.

Customary law is a primary, not secondary, source of rights under the IPRA and uniquely applies to ICCs/IPs. Its recognition does not depend on the absence of a specific provision in the civil law. The indigenous concept of ownership under customary law is specifically acknowledged and recognized, and coexists with the civil law concept and the laws on land titling and land registration.

x x x x

The moral import of ancestral domain, native land or being native is "belongingness" to the land, being people of the land — by sheer force of having sprung from the land since time beyond recall, and the faithful nurture of the land by the sweat of one's brow. This is fidelity of usufructuary relation to the land — the possession of stewardship through perduring, intimate tillage, and the mutuality of blessings between man and land; from man, care for land; from the land, sustenance for man.[29]

Clearly, the ICCs/IPs' ownership of their ancestral domains is unique. It is different from the "titled ownership under existing laws" or "right of possession" by "national minorities" contemplated by P.D. 705. ICCs/IPs have ownership — not mere possession — that is characterized as "private but communal," a description that is antithetical to the concept of "titled ownership" as known in civil law.

Given the foregoing, the letter of P.D. 705, Sec. 77 cannot be conceived to cover the cutting of timber or forest products in ancestral domains, as to do so would be a strained construction of a penal statute. It would penalize an act despite the lack of textual support to make it so. It would be an arbitrary and baseless expansion of a penal statute.

The foregoing disquisition thus begs the question: If P.D. 705, Sec. 77 is not applicable to ancestral domains, does this mean that timber and forest products found therein can be cut by anyone — IPs or non-members of IPs alike — without limitations?

The answer would be in the negative.

In cases where non-members of IPs illegally cut trees in ancestral domains, it would still be punishable, not by P.D. 705, Sec. 77, but by the penal provisions of the IPRA, particularly Sec. 72 in relation to Sec. 10, which states:

SECTION 10. Unauthorized and Unlawful Intrusion. — Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights hereinbefore enumerated, measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs. (Emphasis and underscoring supplied)

In fact, compared to P.D. 705, Sec. 77, the provision on "unauthorized and unlawful intrusion" (Sec. 72) bears a

heavier penalty:

SECTION 72. Punishable Acts and Applicable Penalties. — Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act. (Emphasis and underscoring supplied)

The IPRA itself allows non-members of IPs to utilize natural resources in ancestral domains, subject to certain conditions:

SECTION 57. Natural Resources within Ancestral Domains. — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five" (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally. That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.[30] (Emphasis and underscoring supplied)

Simply put, when it comes to ancestral domains, Sec. 77 of P.D. 705 no longer finds application as it is the provisions of IPRA that have kicked in and now operate.

Do IPs have unbridled discretion as regards the utilization of natural resources which may be found in their ancestral domains? In other words, do the "priority rights" granted by Sec. 57 mean that IPs can exploit the natural resources in ancestral domains without limits? Again, the answer is no.

The IPRA recognizes
the ICCs/IPs right to the sustainable
use of the natural resources
found in ancestral domains

A thorough reading of the rights recognized under the IPRA reveals that the IPRA allows ICCs/IPs to utilize the natural resources that may be found in ancestral domains. This is rooted in the indigenous concept of ownership, recognized by the IPRA, which is significantly different from the concept of ownership under civil law.

According to the IPRA,

[the indigenous] concept of ownership sustains the view that ancestral and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private hut community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights."[31]

In turn, sustainable traditional resource rights refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and

hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices.[32]

For IPs, this is easy to understand, as nothing provided for in the IPRA is new to them. The IPRA simply recognizes what their practices are. This recognition of the rights of IPs is not confined only in the domestic setting — it is reflected as well in the international sphere. The United Nations Declaration on the Rights of Indigenous Peoples[33] (UNDRIP) states that the United Nations General Assembly (UNGA) "recogniz[es] the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources." [34] Moreover, the provisions of the UNDRIP itself state that:

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress!

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Thus, that the IPs have their own ways of life and have a unique relationship with the land they live in, and that States have a concomitant duty to respect and protect the rights emanating from that, are matters recognized internationally — only made binding to the Philippines by its enactment of the IPRA.

There is thus no doubt that ICCs/IPs are allowed to use the land and the natural resources found in their ancestral domains. To allay any fears that this formulation will mean the unfettered use of the natural resources in ancestral domains, thereby causing irreversible damage to the detriment of future generations, it is important to point out that the IPRA itself clarifies the limitations of the use allowed for ICCs/IPs. As previously discussed, the IPRA only recognizes sustainable traditional resource rights that allows the IPs to "sustainably use x x x in accordance with their indigenous knowledge, beliefs, systems and practices"[35] the resources which may be found in the ancestral domains which, in turn, are "private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed." [36] This is complemented by Sec. 7 of the IPRA, which states:

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

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

b) Right to Develop Lands and Natural Resources. — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights[.] (emphasis and underscoring supplied)

In this connection, I fully agree with Chief Justice Puno's formulation in his Separate Opinion in Cruz that the proper reading of the IPRA insofar as the rights of ICCs/IPs to the natural resources are concerned is to read it in the context of small-scale utilization of natural resources by Filipino citizens which is allowed by the Constitution:[37]

Ownership over the natural resources in the ancestral domains remains with the State and the ICCs/IPs are merely granted the right to "manage and conserve" them for future generations, "benefit and share" the profits from their allocation and utilization, and "negotiate the terms and conditions for their exploration "for the purpose of "ensuring ecological and environmental protection and conservation measures. " It must be noted that the right to negotiate the terms and conditions over the natural resources covers only their exploration which must be for the purpose of ensuring ecological and environmental protection of, and conservation measures in the ancestral domain. It does not extend to the exploitation and development of natural resources.

Simply stated, the ICCs/IPs' rights over the natural resources take the form of management or stewardship. For the ICCs/IPs may use these resources and share in the profits of their utilization or negotiate the terms for their exploration. At the same time, however, the ICCs/IPs must ensure that the natural resources within their ancestral domains are conserved for future generations and that the "utilization" of these resources must not harm the ecology and environment pursuant to national and customary laws.

The limited rights of "management and use " in Section 7 (b) must be taken to contemplate small-scale utilization of natural resources as distinguished from large-scale. Small-scale utilization of natural resources is expressly allowed in the third paragraph of Section 2, Article XII of the Constitution "in recognition of the plight of forest dwellers, gold partners, marginal fishermen and others similarly situated who exploit our natural resources for their daily sustenance and survival." Section 7 (b) also expressly mandates the ICCs/IPs to manage and conserve these resources and ensure environmental and ecological protection within the domains, which duties, by their very nature, necessarily reject utilization in a large-scale.[38]

Absence of the second element:
petitioners had "authority " to cut
the tree under the IPRA

It is clear from the foregoing that the IPRA allows ICCs/IPs to use natural resources found in their ancestral domains, albeit in a limited way.[39]

Nevertheless, even assuming that ancestral domains are part of "forest lands," "public lands," or "private lands," as contemplated by P.D. 705, Sec. 77 — it is nonetheless my considered view that petitioners still cannot be held criminally liable because the second element of the crime of violation of P.D. 705 is also not present.

As demonstrated, petitioners' act of cutting the dita tree was done "with authority" emanating from the IPRA; hence, they cannot be held criminally liable. For a better understanding of the "authority" necessitated by the law,

a review of its legislative history is imperative.

In 1974, P.D. 389 or the Forestry Reform Code was enacted. Sec. 69 thereof punished the cutting, gathering, and/or collection of timber or other products from forest land:

SECTION 69. Cutting, Gathering, and/or Collection of Timber or Other Products. — The penalty of prison correccional in its medium period and a fine of five (5) times the minimum single forest charge on such timber and other forest products in addition to the confiscation of the same products, machineries, [equipment,] implements and tools used in the commission of such offense; and the forfeiture of improvements introduced thereon, in favor of the Government, shall be imposed upon any individual, corporation, partnership, or association who shall, without permit from the Director, occupy or use or cut, gather, collect, or remove timber or other forest products from any public forest, proclaimed timberland, municipal or city forest, grazing land, reforestation project, forest reserve of whatever character; alienable or disposable land: Provided, That if the offender is a corporation, partnership or association, the officers thereof shall be liable.

The same penalty above shall also be imposed on any licensee or concessionaire who cuts timber from the license or concession of another without prejudice to the cancellation of his license or concession, as well as his perpetual disqualification from acquiring another such license or concession. (Emphasis and underscoring supplied)

In 1975, P.D. 705 was enacted in order to revise several provisions of P.D. 389, including the above-quoted section, to wit:

SECTION 68. Cutting, Gathering and/or Collecting Timber or Other Products without License. — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; Provided, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or forest products to cut, gathered, collected or removed, and the machinery, equipment, implements and tools used therein, and the forfeiture of his" improvements in the area.

The same penalty plus cancellation of his license agreement, lease, license or permit and perpetual disqualification from acquiring any such privilege shall be imposed upon any licensee, lessee, or permittee who cuts timber from the licensed or leased area of another, without prejudice to whatever civil action the latter may bring against the offender. (Emphasis and underscoring supplied)

In 1987, this provision was further amended through Executive Order No. (E.O.) 277, which retains its present wording, to wit:

SECTION 1. Section 68 of Presidential Decree (P.D.) No. 705, as amended, is hereby amended to read as follows:

Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. - Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be

deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or "forest products are found. (Emphasis and underscoring supplied)

In 1991, Sec. 68 above was eventually renumbered to Sec. 77 through R.A. 7161.[40]

As regards the "authority" required by law for the cutting, gathering, and/or collecting timber or other forest products, its evolution is summarized below:

P.D. 389 (1974)

P.D. 705 (1975)

E.O. No. 277 (1987)

"permit from the Director"

"any authority under a license agreement, lease, license, or permit"

"any authority"

The evolution in the language of the law is not without significance. From the preceding discussion, it can be deduced that the authority required by the law has been expanded and is no longer confined to those granted by the DENR. The use of the phrase "any authority" in the law's present wording — without any qualification — ought to be construed plainly and liberally in favor of petitioners. This is in accordance with the hornbook principle that penal laws shall be construed liberally in favor of the accused.[41] Moreover, applying the doctrine of *casus omissus pro omisso habendus est* (meaning, a person, object or thing omitted from an enumeration must be held to have been omitted intentionally).[42] it can be logically concluded that the limitation on the authority to those issued only by the DENR has been intentionally removed.

Considering the foregoing, I am of the view that the "authority" contemplated in P.D. 705, as amended, should no longer be limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA.[43]

To have a strict interpretation of the term "authority" under Sec. 77 of P.D. 705 despite the clear evolution of its text would amount to construing a penal law strictly against the accused, which cannot be countenanced. To stress,

[o]nly those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought.[44]

More importantly, to construe the word "authority" in P.D. 705, Sec. 77 as excluding the rights of ICCs/IPs already recognized in the IPRA would unduly undermine both the text and the purpose of this novel piece of legislation and significantly narrow down the rights recognized therein.

The varying positions
in the case show
reasonable doubt which
calls for petitioners' acquittal

The discussion above lays down my position that petitioners cannot be held liable for violating P.D. 705. Nevertheless, even if the premises I have laid down would be rejected by the Court, I maintain that petitioners in this case should be acquitted.

Contrary to the assertions I have put forth, Chief Justice Peralta dissents and puts the present issues in a different perspective, mainly arguing that the ancestral domains of the indigenous peoples were never carved out from the application of the country's forestry laws, whether by the IPRA or by P.D. 705,[45] and that ancestral domains are not exempted from the regulations in place that pertain to forest use. He adds that the IPRA and P.D. 705 are not pitted against each other, as they cover applications, and complement rather than contradict each other.[46] most agree that the two laws are not conflicting, and neither one is prevailed upon by the other, as these laws may be both interpreted and applied to the case in a way that breathes life to both, as I have attempted to elucidate above. In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not petitioners were well within their rights when they cut the dita tree, such doubt must be resolved to stay the Court's hand from affirming their conviction.

It has been opined that the effect of requiring petitioners to apply for a permit from the DENR to use a resource in their ancestral domain in accordance with their customs is benign, as they are not prohibited from doing so but only imposed upon with prior conditions. This requirement may indeed be benign, and should have simply been complied with by herein petitioners. This simple enough requirement, however, is an operative indication of an underlying constitutional conviction, the conclusiveness of which the Court may not now be prepared to adjudicate. This requirement quietly asks: how can they seek the consent of another without being counterintuitive to the special, nuanced, and self-limiting autonomy granted to them under the law? How can the Court conceive of finding that indigenous communities are as free as the 1987 Constitution can allow, but must, for the act of felling one tree within their land and for their own customary use, have to seek the State's permission? How can the Court lay down these incongruent premises and hold them both true in the same breath? And yet, on the other hand, the Chief Justice, in his dissent, aptly asks the difficult question of where the line must be drawn with respect to the determination of sustainable community use of an IP's ancestral domain resource.

I acknowledge the assertion made by the Chief Justice that "the case before Us presents far more interrelated issues for whether We would like to admit it or not, the seemingly innocuous acquittal of petitioners herein would ultimately result in considerable implications the Court may not have intended." [47] But this caution cuts both ways. The same assertion can be made to a conviction of petitioners — that such, too, may result in considerable implications the Court may not have intended. ,,

To be sure, the facts of this case may not lend itself to all the answers, but perhaps the honor of the work before the Court is in the attempt. I believe that my earlier submission that the self-limiting and tight window within which the indigenous peoples may cut trees from their own ancestral domain without prior permission is narrow enough as to sidestep any need to reconcile rights granted by the IPRA vis-a-vis forestry regulations. This supports the primary aspiration that animates the IPRA, that is to restore to ICCs/IPs their land and affirm their right to cultural integrity and customary ways of life, with socio-cultural and legal space to unfold as they have done since time immemorial.

The IPRA's safeguards have been suggested as insufficient, and the IPs rights over their ancestral domain may very well be so easily abused by non- IPs with proprietary interests in the forest lands. Truly, I submit that these are valid reservations. But I humbly offer, as well, that this may not be the proper yardstick against which we measure the considerations of the issues at hand. For the difficulty in arguing based on fear of a disastrous outcome is that it is impossible to disprove albeit not yet true, and in the meantime, the Court is building walls where the legislature may have intended doors.

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

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

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

And still, and all told, the Court must not forget, the facts of the case remain to be this: two men felling ONE dita tree to build one communal toilet for their indigenous community. Although having risen to the heights of contested constitutional interpretations, this case remains to be a criminal one, where the liberty of petitioners hang in the balance.

On this note, it may be well to remember that the case of Cruz which dealt with the constitutionality of the provisions of the IPRA was decided by an equally divided Court.[48] This only goes to show that there are still nuances concerning the rights of IPs within their ancestral land and domain that are very much open to varying interpretations. Prescinding from this jurisprudential history, perhaps the instant case may not provide the most sufficient and adequate venue to resolve the issues brought about by this novel piece of legislation. It would be the height of unfairness to burden the instant case against petitioners with the need to resolve the intricate Constitutional matters brought about by their mere membership in the IP community especially since a criminal case, being personal in nature, affects their liberty as the accused.

The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe the IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, vis-a-vis forestry laws, has failed or delivered on its fundamental promise. That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether or not they are guilty of an offense, but whether or not there was even an offense to speak of. At most, this doubt only further burdens the fate of the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity.

At the very least, this doubt must merit their acquittal.

Based on these premises, I vote to GRANT the petition. Petitioners DIOSDADO SAMA y HINUPAS and BANDY MASANGLAY y ACEVEDA, as well as their co-accused DEMETRIO MASANGLAY y ACEVEDA, should be ACQUITTED in Criminal Case No. CR-05-8066.

[1] Scientific name: *Alstonia scholaris*. Also known as devil's tree (English), rite (Indonesian), pulau (Malay), among others. See: < http://apps.worldagroforestry.org/treedb/aftpdfs/alstonia_scholaris.PDF>

[2] SECTION 77. Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished

with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

[3] Bon v. People, 464 Phil. 125 (2004); Lalican v. Hon. Vergara, 342 Phil. 485 (1997); Revaldo v. People, 603 Phil. 332 (2009).

[4] Rollo, pp. 48-49.

[5] Id.

[6] G.R. No. 134217, May 11, 2000, 331 SCRA 697.

[7] Id. at 704.

[8] G.R. No. 113092, September 1, 1994, 236 SCRA 197.

[9] Id. at 205. (Emphasis and underscoring supplied)

[10] Id. (Emphasis and underscoring supplied)

[11] Id. at 205-206.

[12] P.D. 705, Sec. 3(d).

[13] Section 5 of PD 705 affirms this view: "[t]he Bureau [of Forest Development] shall have jurisdiction and authority over all forest land, grazing lands, and all forest reservations including watershed reservations presently administered by other government agencies or instrumentalities."

[14] Section 3(c) defines this as "those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes x x x."

[15] P.D. 705, Sec. 3(mm). (Underscoring supplied)

[16] IPRA, Sec. 3.

[17] Id.

[18] Section 11 of the IPRA:

SECTION 11. Recognition of Ancestral Domain Rights. — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

[19] IPRA, Section 3 (1).

[20] 41 Phil. 935 (1909).

[21] Id.

[22] Sponsorship Speech of Senator Flavio, Legislative History of SBN 1728, II RECORD SENATE 10TH

CONGRESS 2ND SESSION 253 (October 16, 1996).

[23] Interpellation of August 20, 1997, 6:15 p.m., I RECORD HOUSE 10TH CONGRESS 3RD SESSION 514 (October 20, 1997):

MR. OSMENA. But you are vesting economic rights upon this community. This is where my whole problem is. Because a Christian Filipino who wants to mine chrome, iron ore, or whatever, has to go to the Department of Energy and Natural Resources and apply for mineral sharing agreements and file a lot of papers. In our Constitution, natural resources are national patrimony. But in this bill, you have - in face, I do not know how is the constitutionality of this provision, you are now giving mineral rights to the members of a cultural community. Is that a correct interpretation, Your Honor?

MR. ANDOLANA. Yes, to some extent, it may be interpreted that way. In fact, the committee has considered that vested prior rights must be respected in a claim of mineral or natural resources. MR. OSMENA. Again, Your Honor...

MR. ANDOLANA. But when we are going to recall a decision of the US Supreme Court when we were still under the United States of America, in the case of *Cariño vs. Insular Government*, these rights are already vested even before the establishment of the Republic of the Philippines and even before the Spanish regime. (Emphasis supplied)

[24] *Republic v. Cosalan*, G.R. No. 216999, July 4, 2018, 870 SCRA 575.

[25] *Id.* at 587. (Emphasis supplied)

[26] G.R. No. 135385, December 6, 2000, 347 SCRA 128.

[27] *Id.* at 222-223. (Emphasis and underscoring supplied, italics omitted)

[28] *Id.* at 223.

[29] *Id.* at 224-225. (Emphasis supplied, italics omitted)

[30] IPRA, Sec. 57.

[31] IPRA, Sec. 5.

[32] IPRA, Sec. 3(o).

[33] Although non-binding as it is merely a UNGA Declaration, it constitutes evidence of state practice on the matter. The United Nations describes UNDRIP as the "most comprehensive international instrument on the rights of indigenous peoples" as 144 states have voted in its favor, including the Philippines, and the 4 countries that initially voted against it have "reversed their position and now support the Declaration." See: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

[34] UNDRIP, preambular clauses.

[35] IPRA, Section 3(o). (Emphasis and italics supplied)

[36] IPRA, Sec. 5. (Emphasis and underscoring supplied)

[37] Article XII, Section 2, paragraph 3 of which states that "[t]he Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons."

[38] Separate Opinion of Justice Puno in *Cruz v. Secretary of Environment and Natural Resources*, *supra* note 26

at 233-235. (Italics in the original, emphasis supplied)

[39] Again, the parameters of the IPRA are sustainable use "in accordance with their indigenous knowledge, beliefs, systems and practices."

[40] R.A. 7161 provides:

SECTION 7. Section 77 of Presidential Decree No. 705, as amended, as numbered herein, is hereby repealed.

Section 68 of Presidential Decree No. 705, as amended by Executive Order No. 277 dated July 25, 1987, and Sections 68-A and 68-B of Presidential Decree No. 705, as added by Executive Order No. 277, are hereby renumbered as Sections 77, 77-A and 77-B.

[41] *People v. Temporada*, 594 Phil. 680 (2008).

[42] *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*, G.R. No. 228539, June 26, 2019, accessed at < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65316> >.

[43] This should not be taken to mean that mere ownership, especially as understood in civil law, already constitutes the "authority" required by Sec. 77, P.D. 705. As discussed, the ownership exercised by the IPs over their ancestral domains is different from the civil law understanding of ownership.

[44] *People v. Garcia*, 85 Phil. 651, 686 (1950).

[45] Chief Justice Peralta's Dissenting Opinion, pp. 22-23.

[46] *Id.*

[47] Dissenting Opinion of Chief Justice Diosdado M. Peralta, p. 40.

[48] As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same. Accordingly, pursuant to Rule 56, Section, 7 of the Rules of Civil Procedure, the petition is DISMISSED.

SEPARATE CONCURRING OPINION

ZALAMEDA, J.:

Petitioners are before this Court seeking their acquittal from the offense punished under Section 77 of Presidential Decree No. 705 (P.D. 705), specifically the offense of cutting down a tree without the requisite permit or authority. Petitioners, who are members of the Iraya-Mangyan indigenous cultural community (ICC), averred that they are not criminally liable because they were merely exercising their legitimate right to use and enjoy the natural resources within their ancestral domains, and were acting in accordance with their elders' directions.

The People, however, argued that petitioners violated the law when they logged the dita tree, for which violation they must be held accountable. They further argue that petitioners, even as members of an indigenous cultural group, enjoy no right more special or distinct from the rest of the Filipino people. Petitioners' mere act of cutting a tree without permit is sufficient for conviction.

I concur in the result reached by my distinguished colleague, J. Lazaro-Javier, in her ponencia.

Section 77[1] of P.D. 705, as amended by E.O. No. 277, criminalizes two (2) distinct and separate offenses, namely: (a) the cutting, gathering, collecting and removing of timber or other forest products from any forest land,

or timber from alienable or disposable public land, or from private land without any authority; and (b) the possession of timber or other forest products without the legal documents required under existing laws and regulations.[2]

Indisputably, jurisprudence has consistently declared the offenses under Section 77 of P.D. 705 to be mala prohibita[3] In this regard, the People, through the Office of the Solicitor General, is correct in arguing that criminal liability attaches once the prohibited acts are committed, and criminal intent is irrelevant for purposes of conviction.[4]

The malum prohibitum nature of an offense, however, does not automatically result to a conviction. The prosecution must still establish that the accused had intent to perpetrate the act.[5]

Intent to perpetrate has been associated with the actor's volition, or intent to commit the act.[6] Volition or voluntariness refers to knowledge of the act being done.[7] In previous cases, this Court has determined the accused's volition on a case to case basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances.[8]

In the early case of U.S. v. Go Chicho,[9] the accused was convicted of violating Section 1 of Act No. 1696[10] prohibiting the display of any flag, banner, emblem, or device used during the late insurrection in the Philippines against the United States. In affirming the conviction, this Court rejected the accused's defense that proof of criminal intent is a pre-requisite for conviction under Act, No. 1696. The Court explained that there are crimes, such as those punishable under Act No. 1696, where the intention of the person who commits the crime is entirely immaterial. The act itself, without regard to the intention of the doer, produces the evil effects sought to be prevented.

The Court then proceeded to distinguish between intent to commit the crime and intent to perpetrate the act, viz:

Care must be exercised in distinguishing the difference between the intent to commit the crime and the intent to perpetrate the act. The accused did not consciously intend to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself— intent and all. The wording of the law is such that the intent and the act are inseparable. The act is the crime. The accused intended to put the device in his window. Nothing more is required to commit the crime.

In *People v. Bayona*,[11] this Court was faced with determining whether the accused's intention for carrying a firearm within 50 meters from the polling place is material to ruling on the propriety of his conviction. In that case, the accused argued that he had no intention to go inside the polling place, much less to vote or campaign for anybody. The Court found that the accused's intent to perpetrate the act had been sufficiently established. However, it clarified that a man with a revolver, who merely passes along a public road on election day within 50 meters of a polling place does not violate the provision of law in question. For the same reason, a peace officer who pursues a criminal, as well as residents within 50 meters of a polling place who merely clean or handle their firearms within their own residences on election day cannot be considered carrying firearms within the contemplation of the legal prohibition.

In *Magno v. Court of Appeals*,[12] however, this Court looked beyond the accused's issuance of a check in order to determine the propriety of his conviction for violating Batas Pambansa Blg. 22 (BP 22). The Court acquitted the accused upon finding that the checks were issued to cover a warranty deposit in a lease contract, where the lessor-supplier was also the financier of the deposit. The Court noted that the accused did not issue the check on account or for value but as part of a *modus operandi* whereby the supplier of the goods is, at the same time, privately financing the transaction. In acquitting the accused, this Court referred to the utilitarian theory, or the "protective theory" in criminal law, which "affirms that the primary function of punishment is the protection of

society against actual and potential wrongdoers." The Court did not consider the accused as the wrongdoer, but rather the victim of a vicious transaction.

On the other hand, the Court, in *People v. De Gracia*,^[13] discussed intent to perpetrate in the offense of illegal possession of firearms. The Court held that, in addition to proving the fact of possession of a firearm, the prosecution must also establish that the accused had *animus possidendi* or an intent to possess the firearm. Intent being an internal state of mind, courts are allowed to infer it from prior and contemporaneous acts of the accused, and the surrounding circumstances. Thus, the Court considered the background of the accused as a soldier to conclude that he knew the import of having such a large quantity of explosives and ammunition in his possession. The Court ruled that as long as it is established that the accused freely and consciously possessed the firearm, conviction is proper. Conversely, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered as illegal possession of a firearm.

In the same vein, in *People v. Dela Rosa*,^[14] this Court acquitted the surrendering rebels of the crime of illegal possession of firearms. The Court ruled that physical or constructive possession of firearms, without *animus possidendi*, is not punishable. The Court found that the four (4) accused had no intent to perpetrate the prohibited act, considering that they already surrendered the firearms prior to the arrival of the police. This Court declared that the accused's possession was harmless, temporary, and only incidental for the purpose of surrendering the weapons to the authorities.

In *Tigoy v. Court of Appeals*,^[15] this Court found that the truck driver who transported lumber had intent to perpetrate the offense. After classifying Section 68 of P.D. 705, as amended by Executive Order No. 277, as a *mala prohibita* offense, the Court stated that conviction for such offense is proper as long as it is established that the act was committed knowingly and consciously. The Court noted the driver's demeanor upon apprehension by the police - refusing to stop when required by the police and offering "grease money" when he was finally apprehended. The Court held that these actions show the driver had knowledge that he was transporting and was in possession of undocumented lumber in violation of law.

Contrariwise, in *Spouses Veroy v. Layague*,^[16] this Court dismissed the criminal case for illegal possession of firearms upon the prosecution's failure to establish that accused spouses had knowledge that firearms were stored in their provincial home in Davao.

Meanwhile, in cases with two or more accused, this Court has ruled that intent to perpetrate cannot be deduced from the mere presence of a person at a place where a prohibited act was committed. In *Fajardo v. People*,^[17] the Court acquitted one of the accused charged with the offense of illegal possession of firearms because it was not proven that she participated or had knowledge or consent of her co-accused's possession of receivers.

In *Saguin v. People*,^[18] the accused were an accountant and cashier, respectively, of a provincial hospital. They were charged with violation of Section 23 of PD 1752,^[19] as amended, which punishes the failure to remit contributions and loan "payments to the Home Development Mutual Fund. Ruling in favor of the accused, the Court noted that the law was worded to punish failure to remit contributions if the same is "without lawful cause or with fraudulent intent." The Court observed that the accused were justified in their non-remittance because the financial operations of the hospital had been devolved to the provincial government, resulting in confusion as to who was responsible for making the remittance.

In *Dela Cruz v. People*,^[20] this Court further elaborated that the defense of the accused must be weighed with the prosecution evidence in determining the presence of *animus possidendi*. In assessing the viability of the defense of planting of evidence, courts should consider: (1) the motive of whoever allegedly planted the illegal firearm(s); (2) whether there was opportunity to plant the illegal firearm(s); and (3) the reasonableness of the situation

creating the opportunity. In that case, the Court found it unlikely that the firearms would be planted in accused's baggage, as he was a frequent traveler and well-versed with port security measures.

In *Mendoza v. People*,^[21] this Court gave credence to the testimony of the accused and his witness that the firearms were placed in the compartment of the motorcycle without his knowledge. The Court noted that the accused was merely a designated driver, and not the owner of the motorcycle; hence, cannot be remotely charged with or presumed to have knowledge of the subject firearm.

Based on the foregoing, it is clear that to determine the presence of an accused's intent to perpetrate a prohibited act, courts may look into the meaning and scope of the prohibition beyond the literal wording of the law. Although in *malum prohibitum* offenses, the act itself constitutes the crime, courts must still be mindful of practical exclusions to the law's coverage, particularly when a superficial and narrow reading of the same with result to absurd consequences. Further, as in *People v. De Gracia*^[22] and *Mendoza vs. People*,^[23] temporary, incidental, casual, or harmless commission of prohibited acts were considered as an indication of the absence of an intent to perpetrate the offense.

In the United States, the legislature's authority to define criminal acts, and dispense with the requirement of criminal intent for their conviction, is also equally settled.^[24] The State may, in the exercise of police power, impose regulatory measures where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se*. Such class of offenses, in the absence of an express provision to the contrary, do not require a specific criminal intent.^[25] However, there are cases where US federal courts order the defendants' acquittal for prohibitory offenses if it is established that they had no knowledge of the prohibition.

In *Lambert v. California*,^[26] the US Supreme Court reversed the defendant's conviction for violating a Los Angeles Municipal Code that makes it a criminal offense a felon, convicted elsewhere in California, to be present in Los Angeles without registering with the police. The US Supreme Court explained that conviction is improper if it was not established that the defendant knew the duty to register and where there was no proof of the probability of such knowledge.

The New York district court applied the same reasoning in *United States v. Barnes*,^[27] when it reversed the conviction of the defendant, a convicted sex offender in New York, who moved to New Jersey in 2005 without informing the requisite authorities in either state. In that case, the district court found that the defendant could not have complied with the federal law requiring him to update his residence information despite state law necessitating the same procedure. The Court found that the federal and state laws differ in that the latter provided for a dramatically lesser penalty than the former. It also noted the impossibility of compliance since the defendant had no knowledge, at the time he moved to New Jersey and prior to the promulgation of the federal rule, that the same would have retroactive application.

Significantly, the US Supreme Court has always considered the complexities of the subject prohibitory law in fixing the standard of specific criminal intent required for their prosecution. For instance, in *Cheek v. United States*,^[28] a tax evasion case, the US Supreme Court ruled that the State must prove that: (1) the law imposed a duty on the defendant; (2) he knew the duty required by the law; and (3) he voluntarily and intentionally violated that duty. The defendant, who was prosecuted for tax evasion and failing to file a return, believed that no tax was owing. He asserted his contention that wages are not income and that he was not a taxpayer within the meaning of the law. The US Supreme Court vacated defendant's conviction and remanded the case to the lower court for further proceedings. It held that in the factual determination of knowledge and belief, the defendant must be allowed to present evidence on good faith misunderstanding of the tax law, since such defense would negate the

element of knowledge.

A reading of Canadian and Australian case law indicates that courts in these jurisdictions consider the aboriginal background of the accused in determining the criminality of their acts under prohibitive laws.

In *Yanner v. Eaton*,^[29] the High Court of Australia upheld the dismissal of the charge against Murrando Yaner, a member of the Gunnamulla clan of the Gangalidda tribe of Aboriginal Australians, for taking fauna in the tribe's area without license. Yaner hunted and caught two (2) juvenile estuarine crocodiles in Cliffdale Creek in the Gulf of Carpentaria area in Queensland. He and other members of his clan ate some of the crocodile meat and froze the rest of the meat and the skins of the crocodiles. The High Court, of Australia explained that the aborigines' relationship to their lands transcends the regular subjects of State regulations, viz:

Native title rights and interests must be understood as what has been called "a perception of socially constituted fact" as well as "comprising various assortments of artificially defined jural right" And an important aspect of the socially constituted fact of native title rights and interests that is recognised by the common law is the spiritual, cultural and social connection with the land. Regulating particular aspects of the usufructuary relationship with traditional land does not sever the connection of the Aboriginal peoples concerned with the land (whether or not prohibiting the exercise of that relationship altogether might, or might to some extent). That is, saying to a group of Aboriginal peoples, "You may not hunt or fish without a permit", does not sever their connection with the land concerned and does not deny the continued exercise of the rights and interests that Aboriginal law and custom recognises them as possessing. (Emphasis ours)

This acknowledgment of the aborigines' relationship with the land was reiterated in *Akiba v. Commonwealth of Australia*.^[30] The High Court of Australia ruled that the Commonwealth Fisheries and the Queensland Fisheries laws, which both required licensing for fishing, did not extinguish the relationship of the aboriginal people to the land, nor extinguish the native title bundle of rights.

On the other hand, the Supreme Court of Canada's opinion in *R v. Sappier; R v. Gray*,^[31] is enlightening. In that case, the Supreme Court of Canada affirmed the acquittal of three (3) members of the Maliseet and Mi'kmaq indigenous groups accused of possession and cutting of timber for domestic uses. In finding that wood was integral to the culture of indigenous tribes, the Supreme Court of Canada explained the necessity of adopting a liberal approach in the determination of the existence of a claimed aboriginal right. Despite the lack of direct evidence establishing a nexus between the harvest of wood to each of the tribe's customs and cultural practices, the Court nevertheless inferred that such aboriginal right to log trees exists because it was undertaken for the tribe's survival. It resolved that in order to establish an aboriginal right, a specific activity need not be shown to be a defining feature of a specific indigenous community. It suffices that the practice or act is integral to the distinctive culture of the aboriginal peoples.

The Court also explained that claimed aboriginal right must be viewed in light of modern-day circumstances so as to give effect to their Constitutional policy of protecting the distinctive cultures of aboriginal people, viz:

Although the nature of the practice which founds the aboriginal right claim must be considered in the context of the pre-contact distinctive culture of the particular aboriginal community, the nature of the right must be determined in light of present-day circumstances. As McLachlin C.J. explained in *R. v. Marshall*, "[l]ogical evolution means the same sort of activity, carried on in the modern economy by modern means." It is the practice, along with its associated uses, which must be allowed to evolve. The right to harvest wood for the construction of temporary shelters must be allowed to evolve into a right to harvest wood by modern means to be used in the construction of a modern dwelling. Any other conclusion would freeze the right in its pre-contact form.

Before this Court, the Crown submitted that "[l]arge permanent dwellings, constructed from multidimensional

wood, obtained by modern methods of forest extraction and milling of lumber, cannot resonate as a Maliseet aboriginal right, or as a proper application of the logical evolution principle", because they are not grounded in traditional Maliseet culture. I find this submission to be contrary to the established jurisprudence of this Court, which has consistently held that ancestral rights may find modern form: Mitchell, at para. 13. In Sparrow, Dickson C.J. explained that "the phrase 'existing aboriginal rights' must be interpreted flexibly so as to permit their evolution over time." Citing Professor Slattery, he stated that "the word 'existing' suggests that those rights are 'affirmed in a contemporary form rather than in their primeval simplicity and vigour.' In Mitchell, McLachlin C.J. drew a distinction between the particular aboriginal right, which is established at the moment of contact, and its expression, which evolves over time. L'Heureux-Dube J. in dissent in Van der Peet emphasized that "aboriginal rights must be permitted to maintain contemporary relevance in relation to the needs of the natives as their practices, traditions and customs change and evolve with the overall society in which they live." If aboriginal rights are not permitted to evolve and take modern forms, then they will become utterly useless. Surely the Crown cannot be suggesting that the respondents, all of whom live on a reserve, would be limited to building wigwams. If such were the case, the doctrine of aboriginal rights would truly be limited to recognizing and affirming a narrow subset of "anthropological curiosities," and our notion of aboriginality would be reduced to a small number of outdated stereotypes. The cultures of the aboriginal peoples who occupied the lands now forming Canada prior to the arrival of the Europeans, and who did so while living in organized societies with their own distinctive ways of life, cannot be reduced to wigwams, baskets and canoes. (Emphasis ours)

The peculiar circumstances of this case require the same liberal approach. This Court simply cannot brush aside petitioners' cultural heritage in the determination of their criminal liability. Unlike the accused in *People v. De Gracia*, petitioners cannot be presumed to know the import and legal consequence of their act. Their circumstances, specifically their access to information, and their customs as members of a cultural minority, are substantial factors that distinguish them from the rest of the population.

Former Chief Justice Reynato Puno, in his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*,^[32] explained it aptly:

Indigenous peoples share distinctive traits that set them apart from the Filipino mainstream. They are non-Christians. They live in less accessible, marginal, mostly upland areas. They have a system of self-government not dependent upon the laws of the central administration of the Republic of the Philippines. They follow ways of life and customs that are perceived as different from those of the rest of the population. The kind of response the indigenous peoples chose to deal with colonial threat worked well to their advantage by making it difficult for Western concepts and religion to erode their customs and traditions. The "infeles societies" which had become peripheral to colonial administration, represented, from a cultural perspective, a much older base of archipelagic culture. The political systems were still structured on the patriarchal and kinship oriented arrangement of power and authority. The economic activities were governed by the concepts of an ancient communalism and mutual help. The social structure which emphasized division of labor and distinction of functions, not status, was maintained. The cultural styles and forms of life portraying the varieties of social courtesies and ecological adjustments were kept constantly vibrant.

Land is the central element of the indigenous peoples' existence. There is no traditional concept of permanent, individual, land ownership. Among the Igorots, ownership of land more accurately applies to the tribal right to use the land or to territorial control. The people are the secondary owners or stewards of the land and that if a member of the tribe ceases to work, he loses his claim of ownership, and the land reverts to the beings of the spirit world who are its true and primary owners. Under the concept of "trusteeship," the right to possess the land does not only belong to the present generation but the future ones as well.

Customary law on land rests on the traditional belief that no one owns the land except the gods and spirits, and that those who work the land are its mere stewards. 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, or ownership by residents of the same locality who may not be related by blood or marriage. The system of communal ownership under customary laws draws its meaning from the subsistence and highly collectivized mode of economic production.

As for the Mangyans, their challenges in availing learning facilities and accessing information are well documented.[33] The location of their settlements in the mountainous regions of Mindoro, though relatively close to the nation's capital, is not easily reached by convenient modes of transportation and communication. Further, the lack of financial resources discourages indigenous families to avail and/or sustain their children's education.[34] Certainly, by these circumstances alone, Mangyans cannot reasonably be compared to those in the lowlands in terms of worldview and behavior.

In the Mangyans' worldview, the forest is considered a common property of all the residents of their respective settlements. This means that they can catch forest animals, gather wood, bamboo, nuts, and other wild plants in the forest without the permission of other residents.[35] They can generally hunt and eat animals in the forest, except those they consider inedible, such as phytons, snakes and large lizards.[36] They employ swiddens or the kaingin system to cultivate the land within their settlements.[37]

Based on the foregoing, to hold petitioners to the same standards for adjudging a violation of P.D. 705 as non-indigenous people would be to force upon them a belief system to which they do not subscribe.[38] The fact that petitioners finished up to Grade 4 of primary education neither negates their distinct way of life nor justifies lumping indigenous people (IP) with the rest of the Filipino people. Formal education and customary practices are not mutually exclusive, but is in fact, as some studies[39] note, co-exist in Mangyan communities as they thrive in the modern society. It may be opportune to consider that in indigenous communities, customs and cultural practices are normally transferred through oral tradition.[40] Hence, it is inaccurate to conclude: that a few years in elementary school results to the total acculturation of IPs.

Moreover, the degree of petitioners' education should be viewed in conjunction with the crime with which they are charged. Compared to killing or any type of assault, cutting a tree without a license is not inherently or obviously wrong as to reasonably give rise to a presumption of knowledge. Taken together with petitioners' custom of communal ownership of natural resources within their ancestral domains, it is unfair to assume that petitioners were aware that they needed to secure a permit for the logging of one (1) tree intended for their community's use, and that failing to do so would result to their incarceration.

It is for the same reason that petitioners' case should be viewed differently from *People v. Macatanda*[41] and *US v. Maqui*,[42] where the accused, a member of an ICC, was charged with cattle rustling. It is easy to understand that membership in an indigenous community, or one's lack of education, is irrelevant for purposes of determining their guilt because such acts are obviously illicit.

As already discussed, Mangyans perceive all the resources found in their ancestral domain to be communal. They are accustomed to using and enjoying these resources without asking permission, even from other tribes, much less from government functionaries with, whom they do not normally interact. Moreover, by the location of their settlements, links to local government units or information sources are different from those residing in the lowlands.[43] As such, the Court may reasonably infer that petitioners are unaware of the prohibition set forth in Sec. 77 of P.D. 705.

Along with the Supreme Court of Canada's discussion in *R v. Sappier*; *R v. Gray*,[44] the fact that petitioners used a chainsaw in logging a single dita tree should not diminish the connection of the act to the Mangyans' way of life, nor should it be considered as a decisive fact supporting petitioners' conviction for the offense charged. The use of

a chainsaw should simply be viewed as a practical means of fulfilling their community's needs using modern and available tools. It should not detract from the fact that it was carried out in obedience to their elders' directives, and consistent with their customs. Acts done within the context of an indigenous cultural community's belief system and way of life should be interpreted flexibly as to allow for modern means of expression.

The acquittal of petitioners do not aim to exempt their specific group not expressly excluded under P.D. 705. To clarify, I do not propose a blanket exemption of all members of ICCs from criminal liability. Certainly, such proposition would unduly impede criminal prosecution to the detriment of the State and the rest of the Filipino people. In voting for acquittal, I simply aim to recognize that the distinct circumstances of the case at bar call for its examination within a broader legal environment extraneous from the letter of the law. Similarly, I do not seek to nullify nor undermine the provision and policy behind P.D. 705. My opinion merely intends to make a determination on the limited issue presented in this petition, viz: whether under the circumstances, petitioners who are IPs, should be held criminally liable under P.D. 705 for logging one (1) dita tree within their ancestral domain.

In this regard, I do not find that this Court's decisions in *Lim v. Gamosa*[45] and *PEZA v. Carantes*[46] are determinative of the issue presented in this petition. None of these cases deal with criminal liability arising from a prohibitory law regulating activities of indigenous people within their ancestral domains. At the risk of being repetitive, my vote is simply a result of my determination that the circumstances do not establish petitioners' intent to perpetrate the offense under Sec. 77 of P.D. 705. It is in no way a pronouncement that members of ICCs are absolutely exempted from securing permits to utilize resources. Neither should it be construed as a judicial sanction of small-scale logging or any form of commercial activity involving wood or timber, nor the use of indigenous people as conduits or accomplices to illegal logging operations. In any case, no evidence has been presented that indigenous people or ICCs have, in fact, been engaged or largely responsible in the problem of illegal logging here in the Philippines.

In my opinion, P.D. 705, which took effect in 1975, should be viewed under the prism of the 1987 Constitution which recognizes the right of ICCs. The noble objectives of P.D. 705 in protecting our forest lands should be considered in conjunction with the Constitution's mandate of recognizing our indigenous groups as integral to our nation's existence.[47] I submit that under our present Constitutional and legal regime, courts cannot summarily ignore allegations or factual circumstances that pertain to indigenous rights or traditions, but must instead carefully weigh and evaluate whether these are material to the resolution of the case. As rightfully noted by Senior Associate Justice Perlas-Bernabe, the enactment of various laws manifests the State's consent to the IPs' limited utilization of the natural resources within their ancestral lands and/or domains. It is my belief that such laws modify the meaning of intent to perpetrate and justify a solicitous approach in determining culpability under Sec. 77 of P.D. 705 if the accused is a member of an ICC.

This does not mean, however, that the Court should create a novel exempting circumstance in the prosecution of illegal logging activities. I am merely proposing that courts make a case-to-case determination whether an accused's ties to an ICC affects the prosecution's accusations or the defense of the accused. Simply put, courts should not ignore indigeneity in favor of absolute reliance to the traditional purpose of criminal prosecution, which are deterrence and retribution.[48] As in this case, if there is proof that the logging of a tree is committed within the legitimate bounds of the exercise of an IP's rights and within their lands or domains, the act cannot be considered a violation of Sec. 77 of P.D. 705.

At any rate, petitioners' unique relations with their lands and the State's recognition of the same through various laws and international concessions put in doubt petitioners' culpability under P.D. 705. The fact that petitioners were apprehended while cutting a single tree, an act which is intrinsically tied to their life in the ICC and within their ancestral domain, puts in question the definition and coverage of the prohibition. I submit that such doubts

should be resolved in favor of the accused. In dubio pro reo. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[49]

In summation, an acknowledgment of the Mangyan's unique way of life negates, or at the very least, casts doubt on petitioners' intent to perpetrate the prohibited act. Taken with the fact that petitioners were caught cutting only one (1) dita tree at the time they were apprehended, and that it was done in obedience to the orders of their elders, it is clear that the cutting of the tree was a casual, incidental, and harmless act done within the context of their customary tradition. As the Court of last resort, We are called upon to look into the meaning and scope of the prohibition beyond the literal wording of the law.

In view thereof, I vote to GRANT the Petition and acquit the accused on reasonable doubt.

[1] SECTION 77. Gathering and/or collecting Timber, or Other Forest Products Without License.- Any person who shall cut, gather, collect, removed timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

[2] *Monge v. People*, G.R. No. 170308, 07 March 2008; 571 Phil. 472-481 (2008).

[3] *Crescencio v. People*, G.R. No. 205015, 19 November 2014; 747 Phil. 577-589 (2014); *Villarin v. People*, G.R. No. 175289, 31 August 2011; 672 Phil. 155-177 (2011); *Revaldo v. People*, G.R. No. 170589, 16 April 2009; 603 Phil. 332-346 (2009).

[4] *Id*

[5] See *Fajardo v. People*, G.R. No. 190889, 10 January 2011; 654 Phil. 184-207 (2011).

[6] *ABS-CBN Corp. v. Gozon*, G.R. No. 195956, 11 March 2015; 755 Phil. 709-782 (2015).

[7] *Id*.

[8] *Dela Cruz v. People*, G.R. No. 209387, 11 January 2016; 776 Phil. 653-701 (2016).

[9] G.R. No. 4963, 15 September 1909; 14 Phil. 128-142 (1909).

[10] *The Flag Law* (1907).

[11] G.R. No. 42288, 16 February 1935; 61 Phil. 181-186 (1935).

[12] G.R. No. 96132, 26 June 1992; 285 Phil. 983-993 (1992).

[13] G.R. Nos. 102009-10, 06 July 1994; 304 Phil. 118-138 (1994).

[14] G.R. No. 84857, 16 January 1998; 348 Phil. 173-189 (1998).

[15] G.R. No. 144640, 26 June 2006; 525 Phil. 613-624 (2006).

- [16] G.R. No. 95630, 18 June 1992; 285 Phil. 555-566 (1992).
- [17] G.R. No. 190889, 10 January 2011; 654 Phil. 184-207 (2011).
- [18] G.R. No. 210603, 25 November 2015; 773 Phil. 614-630 (2015).
- [19] Home Development Mutual Fund Law of 1980.
- [20] G.R. No. 209387, 11 January 2016; 776 Phil. 653-701 (2016).
- [21] G.R. No. 234196, 21 November 2018.
- [22] Supra at note 13.
- [23] Supra at note 22.
- [24] *United States v. Balint*, 258 U.S. 250 (U.S. March 27, 1922); *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240 (1952).
- [25] *United States v. Allard*, 397 F. Supp. 429 (D. Mont. July 21, 1975).
- [26] 355 U.S. 225, 78 S. Ct. 240 (1957).
- [27] 2007 U.S. Dist. LEXIS 53245 (S.D.N.Y. 23 July 2007).
- [28] 498 U.S. 192 (U.S. 8 January 1991).
- [29] [1999] HCA 53, 07 October 1999, <
<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1999/53.html> > (visited on 15 August 2020).
- [30] [2013] HCA 33, 07 August 2013, <
<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2013/33.html> >; (visited 16 Augst 2020).
- [31] 2006 SCC 54, <<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2329/index.do?q=R.+v.+Sappier>> (visited 16 August 2020).
- [32] G.R. No. 135385, 06 December 2000: 400 Phil. 904-1115 (2000).
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[49] Zafray Dechosa v. People, G.R. No. 190749, 25 April 2012. 686 Phil. 1095-1110.

DISSENTING OPINION

LOPEZ, J.:

This case stemmed from an Information dated May 27, 2005, charging Diosdado Sama and Bandy Masanglay (petitioners) with violation of Section 77[1] of Presidential Decree (PD) No. 705, known as the Revised Forestry Code of the Philippines. Allegedly, the petitioners unlawfully and knowingly logged a dita tree with the use of unregistered power chainsaw, without any authority required under the existing laws and regulations. The petitioners were caught in flagrante delicto when Police Officer (PO) 3 Villamor D. Ranee, together with his team comprised of police officers and representatives of the Department of Environment and Natural Resources (DENR), were patrolling the mountainous areas in Barangay Calangatan, San Teodoro, Oriental Mindoro, to address the illegal logging operations in the area.

The petitioners claimed that they were Iraya-Mangyan Indigenous Peoples (IPs) and admitted cutting the dita tree planted within their ancestral domain. However, the cutting was for the purpose of constructing their community toilet - a project initiated and organized by a Non-Government Organization (NGO).

The Regional Trial Court convicted the petitioners and ruled that cutting down the dita tree without a corresponding permit is a violation of PD No. 705, a *malum prohibitum*. The Court of Appeals affirmed the petitioners' conviction. However, the ponencia acquitted the petitioners.

Prefatorily, I agree with the ponencia that the Constitution and Indigenous Peoples' Rights Act (IPRA)[2] have recognized and strengthened the rights of IPs. I also agree that the dita tree collected by the petitioners is a specie of timber gathered from a private land (or forest or alienable land) within the contemplation of Section 77 of PD No. 705. I likewise concur that "as outlined, Section 77 requires prior authority for any of the acts of cutting, gathering, collecting, removing timber or other forest products even from those lands possessed by IPs falling within the ambit of the statute's definition of private lands." This is precisely what Section 77 of PD No. 705 seeks to penalize - the cutting of tree sans authority. Nevertheless, the ponencia acquitted the petitioners based on reasonable doubt that the dita tree was cut and collected without authority from the State. It anchored the reasonable doubt on "the confusion arising from the new legal developments, particularly, the recognition of the indigenous peoples' (IPs) human rights normative system, in our country."

Regretfully, I respectfully dissent. Mere confusion brought about by the legal developments should not be used as a basis to acquit the petitioners, especially when it was not proven and shown, both from the literal text and the intent of the law, that IPs are indeed exempted from PD No. 705.

Furthermore, I respectfully opine that the basis for the acquittal in *Saguin v. People*,[3] does not merely rest on the confusion of the laws. The Court considered the devolution of the functions of the hospital to the provincial government as the legal basis for exonerating accused Saguin, et al. Since they had no more duty to make the remittances, they could not be held liable under PD No. 1752, as amended:

"By April 1, 1993, however, the RMDH had been devolved to the Provincial or Local Government of Zamboanga del Norte. Thus, all financial transactions of the hospital were carried out through the Office of the Provincial Governor. The petitioners, therefore, had legal basis to believe that the duty to set aside funds and to effect the HDMF remittances was transferred from the hospital to the provincial government. Hence, the petitioners should not be penalized for their failure to perform a duty which were no longer theirs and over which they were no longer in control.

x x x x

The devolution of the hospital to the provincial government, therefore, was a valid justification which

constituted a lawful cause for the inability of the petitioners to make the HDMF remittances for March 1993." [4] (Emphases supplied.)

As opposed to *Saguin*, here, it is not clear whether indigenous people have legal basis to cut trees without permits, free from government regulation. Ultimately, the case before us begs the resolution of the indispensable question — Does the IPRA categorically and specifically grant in favor of indigenous people the authority to cut, gather, collect, remove timber or other forest products free from criminal liability under PD No. 705?

I answer in the negative. To construe IPRA as a subset of the term "authority" under Section 77 of the Revised Forestry Code will, in effect, make IPRA an exception to the penal provisions of PD No. 705. While the IPRA mentions of the rights of IPs to claim ownership over areas traditionally and actually occupied by them, to manage and conserve natural resources within the ancestral domains, the right to cultural integrity, or such other rights which every indigenous person should enjoy under the law, there is no mention of any exemption from the licensing requirement as far as the cutting, gathering, collecting, or removing of timber or other forest products is concerned. This Court cannot simply expand the implications of the provisions of IPRA to carve out an exception in favor of indigenous people, when such has not been clearly established to be the intent of the legislature. To do so would run counter to the well-established rule of strict interpretation against exceptions.

In *Samson v. CA*, [5] we ruled that "under the rules of statutory construction, exceptions, as a general rule, should be strictly, but reasonably construed; they extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception. Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication." [6]

Notably, the IPRA provides an exemption from taxes in favor of ancestral domains owned by indigenous people, to wit:

SEC. 60. Exemption from Taxes. — All lands certified to be ancestral domains shall be exempt from real property taxes, special levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes or upon titling by private persons: Provided, That all exactions shall be used to facilitate the development and improvement of the ancestral domains.

Had it been the intent of the legislature to consider the IPRA as an additional authority for indigenous people to cut, gather, collect, remove timber or other forest products within the ancestral domain as an exception to the penal provisions of the Revised Forestry Code, it would have simply expressed so, similar to the clear import to exempt ancestral domains from real property taxes and other forms of state exaction. The fact that no such import was provided under the IPRA is a testament to the proposition that the IPRA was never intended as an exception to the requirement of a permit, license, agreement, or such other authority as may be applicable.

I maintain my submission that the IPs do not possess the right to cut forest products free from state regulation. There is no indication that they are excluded from the coverage of PD No. 705. This can be gleaned from a scrutiny of both the literal text and the legislative intent behind PD No. 705, IPRA, and other pertinent regulations.

First. The language of Section 77 of PD No. 705, which remained unamended even with the passage of IPRA, is plain and clear - any person who shall cut xxx forest products x x x without any authority xxx shall be punished. The use of the word "any person," without any distinction nor exemption as to the coverage of the penal provision, makes it clear that everyone is a potential offender of the crime. Where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemus*.

Second. It appears that the Legislature, in enacting PD No. 705, already considered the members of the indigenous groups. Therefore, they could be penalized under its provisions.

Third. Sections 37 to 39 of PD No. 705, as amended, provide for the statutory basis for the State to protect our forests and regulate timber utilization in all classes of lands:

SEC. 37. Protection of all Resources. — All measures shall be taken to protect the forest resources from destruction, impairment and depletion.

SEC. 38. Control of Concession Area. — In order to achieve the effective protection of the forest lands and the resources thereof from illegal entry, unlawful occupation, kaingin, fire, insect infestation, theft, and other forms of forest destruction, the utilization of timber therein shall not be allowed except through license agreements under which the holders thereof shall have the exclusive privilege to cut all the allowable harvestable timber in their respective concessions, and the additional right of occupation, possession, and control over the same, to the exclusive of all others, except the government, but with the corresponding obligation to adopt all the protection and conservation measures to ensure the continuity of the productive condition of said areas, conformably with multiple use and sustained yield management.

x x x x

SEC. 39. Regulation of Timber Utilization in all Other Classes of Lands and of Wood-Processing Plants. The utilization of timber in alienable and disposable lands, private lands, civil reservations, and all lands containing standing or felled timber, including those under the jurisdiction of other government agencies, and the establishment and operation of saw-mills and other wood-processing plants, shall be regulated in order to prevent them from being used as shelters for excessive and unauthorized harvests in forest lands, and shall not therefore be allowed except through a license agreement, license, lease or permit. (Emphasis supplied.)

Fourth. The IPRA merely gives the indigenous people "priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains," viz:

Sec. 57. Natural Resources within Ancestral Domains. — The ICCs/IPs shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the all extractions shall be used to facilitate the development and improvement of the ancestral domains. (Emphasis supplied.)

Fifth. The IPRA bestowed not only rights, but also imposed obligations, upon the indigenous people, to conserve natural resources and maintain ecological balance therein. One way of fulfilling their obligation is to follow laws which are geared towards minimizing the unregulated and indiscriminate logging of trees.

Sec. 9. Responsibilities of ICCs/IPs to their Ancestral Domains. — ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

- a. Maintain Ecological Balance- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;
- b. Restore Denuded Areas- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; x x x.

Sixth. The IPRA does not exempt the IPs from the licensing requirement. The State did not relinquish its ownership over the natural resources found in ancestral domains.

A perusal of the congressional deliberations on the IPRA, as pointed out by the esteemed and learned Senior Associate Justice Perlas-Bernabe, would show that it was not the intention of the Legislature, by enacting the IPRA, to bestow ownership of natural resources to the indigenous people. "The subject timber or dita tree in this case was owned by the State even if it stood within an ancestral domain," viz:

Relevant to the first element under Section 77 is Section 2, Article XII of the 1987 Constitution, which provides:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State, x x x.

x x x x

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. (Emphases and underscoring supplied.)

As explicitly stated, all "natural resources are owned by the State." While categories of lands (i.e. lands of public domain and agricultural lands) were therein provided, there is no qualifier created for timber and other natural resources. Moreover, while the provision allows the alienation of agricultural lands, it prohibits the alienation of natural resources. Accordingly, Section 77 punishes the cutting of timber - a natural resource - regardless of the character of the land where the tree was once situated.

Consistent with the State's ownership of natural resources, Section 57 of the IPRA accords IPs mere "priority rights" in the utilization of natural resources is clear from the congressional deliberations therefor:

HON. DOMINGUEZ: Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, we have decided to remove the provisions on natural resources because we all agree that belongs to the State. Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras.

Based on the foregoing, the subject timber or dita tree in this case was owned by the State even if it stood within an ancestral domain. Considering that petitioners admitted that they cut the dita tree found within the ancestral domain, the first element of Section 77 is present.[7] (Citations omitted.)

Therefore, the State has the power to enact laws to regulate the logging of trees and the utilization of timber and other natural resources found therein. Precisely, PD No. 705 is an example of such regulation.

Seventh. The Legislature intended to impose an all-encompassing and overreaching prohibition to log trees without license or permit. This is evident from the government regulations on the rights of private landowners to cut, gather, and utilize trees.

For instance, under DENR Administrative Order (AO) No. 2000-21, a Private Land Timber Permit must be applied for even by a landowner "for the cutting, gathering and utilization of naturally grown trees in private lands." [8] On the other hand, a Special Private Land Timber Permit is "issued to a landowner specifically for the cutting, gathering and utilization of premium hardwood species including Benguet pine, both planted and naturally-grown trees." [9] Interestingly, even the ownership, possession, sale, importation, and use of chain saw is regulated by the government, to conserve, develop and protect the forest resources. [10] These regulations show

the aggressive measures of our government to regulate the protection of our forests and trees.

Eighth. There is no indication that indigenous people are excluded from the broader regulatory powers of the State.

It appears that the Court, in the past, had already been confronted with the same dilemma of harmonizing lack of instruction and cultural minority with criminal liability.

In *People v. Macatanda*,^[11] the accused therein was convicted of the crime of cattle rustling under PD No. 533. In his appeal, he faulted the court *a quo* for refusing to appreciate the "mitigating circumstances of (1) lack of instruction, and (2) [his] being a member of a cultural minority, being a Moslem." The Court rejected such argument and ruled that:

Appellant, however, prays for a lenient approach in consideration of his being an ignorant and semi-uncivilized offender, belonging to a cultural minority, the two separate circumstances to be joined together to constitute the alternative circumstance of lack of instruction to mitigate his liability x x x.

x x x

Some later cases which categorically held that the mitigating circumstance of lack of instruction does not apply to crimes of theft and robbery leave us with no choice but to reject the plea of appellant. Membership in a cultural minority does not per se imply being an uncivilized or semi-uncivilized state of the offender, which is the circumstance that induced the Supreme Court in the *Maqui* case, to apply lack of instruction to the appellant therein who was charged also with theft of large cattle. Incidentally, the *Maqui* case is the only case where lack of instruction was considered to mitigate liability for theft, for even long before it, in *U.S. vs. Pascual*, a 1908 case, lack of instruction was already held not applicable to crimes of theft or robbery, x x x.^[12]

Even in the earlier 1914 case of *United States v. Juan Maqui*,^[13] the Court refused to completely exonerate the accused who was considered as an "uncivilized Igorot." The Court still convicted him but mitigated his penalty, to wit:

We are satisfied beyond a reasonable doubt as to the guilt of the accused, but we are opinion that in imposing the penalty the trial court should have taken into consideration as a mitigating circumstance the manifest lack of "instruction and education" of the offender. It does not clearly appear whether he is or not an uncivilized Igorot, although there are indications in the record which tend to show that he is. But in any event, it is very clear that if he is not a member of an uncivilized tribe of Igorots, he is a densely ignorant and untutored fellow, who lived in the Igorot country, and is not much, if any, higher than they in the scale of civilization. The beneficent provisions of article 11 of the Penal Code as amended by Act No. 2142 of the Philippine Legislature [Now Article 15 of the Revised Penal Code] are peculiarly applicable to offenders who are shown to be members of these uncivilized tribes, and to other offenders who, as a result of the fact that their lives are cast with such people far away from the centers of civilization, appear to be so lacking in "instruction and education" that they should not be held to so high a degree of responsibility as is demanded of those citizens who have had the advantage of living their lives in contact with the refining influences of civilization.^[14]

The 1981 case of *Macatanda* already settled that there is no such thing as uncivilized cultural minority which would Warrant "lenient treatment" from criminal liability:

The *Maqui* case was decided in 1914, when the state of civilization of the Igorots has not advanced as it had in reaching its present state since recent years, when it certainly can no longer be said of any member of a cultural minority in the country that he is uncivilized or semi-uncivilized.^[15]

Hence, the mere fact that the petitioners belonged to the cultural minority or are lacking access to information

should not be used to acquit or completely absolve them from liability. To adopt the "liberal approach" would be to carve out an exemption from penal laws in favor of indigenous people, which could not have been the intention of our government, or of any government for that matter.

The principle "ignorance of the law excuses no one from compliance therewith" must be upheld. The conclusive presumption that everyone knows the law, and that no one can be excused from compliance therefrom, constitutes the very bonds of a lawful and orderly society.

There is no inconsistency between the IPRA and the Revised Forestry Code. Statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[16] Merely because a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one[.17]

As pointed out by Chief Justice Peralta, the DENR- National Commission on Indigenous Peoples (NCIP) Joint AO No. 2008-01 effectively harmonized the provisions of PD No. 705 with the IPRA:

As a matter of fact, the DENR, together with the NCIP, had already effectively harmonized these interests found in the provisions of P.D. No. 705 and the IPRA when it issued DENR-NCIP Joint AO No. 2008-01. By virtue of the joint order, the State duly recognized the inherent right of the IPs to self-governance as well as their contribution to the conservation of the country's environment and natural resources, ensuring equitable sharing benefits thereof.

Evidently, a reasonable balance between IP rights under the IPRA and protection of forest resources under P.D. No. 705 is already in place. Pursuant to the joint order above, the State expressly recognizes and adheres to the Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) of IPs as well as their Indigenous Knowledge Systems and Practices (IKSP) under their customary laws. Said order mandates all concerned stakeholders consisting of the IPs, the DENR, NCIP, Local Government Units (LGU) to come into an agreement which shall explicitly employ these customary IP practices consistent with their own traditions and cultures to govern their resource utilization within subject forest areas. It is after a rigorous and comprehensive process of consultation and dialogue between and among the parties that the DENR shall issue a forest resource utilization permit upon registration of their STIFRMSP as well as the Joint Implementing Rules and Regulations aimed not only at institutionalizing indigenous and traditionally managed forest practices but, at the same time, utilizing said practices for the protection of the natural resources found in managed forest lands.[18]

Ultimately, the IPs are not being deprived of their rights under the IPRA over the ancestral domains and the natural resources. Their preferential right over the natural resources found within their ancestral domains is neither taken away from them nor trampled upon by the government. What is merely required is that they secure documentation or permit, through their leaders or representatives, and with the guidance and cooperation of the NCIP and the DENR, before executing their logging activities. This is to ensure that the government may keep track of the areas they are allowed to log, that the purpose of their logging is within the bounds of IPRA, and, ultimately, to preserve the Philippine forestry. This is the most prudent thing that the State must do as *parens patriae* not only for this generation but for the future Filipino generations to come.

One must not lose sight of the danger that this precedent might set for persons, who, in the future, may find themselves under the same or similar factual circumstances. A single instance of cutting a dita tree, if not sanctioned by the government, when done simultaneously on every single day of the year, by every indigenous person living across the Philippine islands, could cause tremendous impact on our environment. The present and the future generations will ultimately be the victims of the deleterious impact of sanctioning logging without permit:

The Court can well take judicial notice of the deplorable problem of deforestation in this country, considering that the deleterious effects of this problem are now imperiling our lives and properties, more specifically, by causing rampaging floods in the lowlands. While it is true that the rights of an accused must be favored in the interpretation of penal provisions of law, it is equally true that when the general welfare and interest of the people are interwoven in the prosecution of a crime, the Court must arrive at a solution only after a fair and just balancing of interests.[19] (Emphasis supplied.)

It must be noted that property rights are always subject to the State's police power, or the authority to enact legislation that may interfere with personal liberty or property to promote the general welfare.[20] Indeed, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of policy power because property rights, though sheltered by due process, must yield to general welfare.[21]

I understand that the conviction of the petitioners may be viewed as harsh considering their customs and way of life, and that what was involved was a lone dita tree. But compassion should not deter us from faithfully enforcing our criminal and environmental laws to their full extent. In any case, under Article 5[22] of the Revised Penal Code, the Court may recommend executive clemency when the penalty is excessive.[23]

In sum, the strict application of PD No. 705 amounts to nothing more than the Court's fealty to uphold the people's right to a balanced and healthful ecology, a basic right assumed to exist from the inception of humankind,[24] characterized as no less important than any of the civil and political rights mentioned under the Bill of Rights,[25] the advancement of which may even be said to predate all governments and constitutions[26] — for the benefit of the present and future generations, including that of the Iraya Mangyans and other indigenous people all across the archipelago.

Lest it be forgotten, PD No. 705 is a special law enacted to regulate the "management, utilization, protection, rehabilitation, and development of forest lands." [27] Violation of Section 77 is a *malum prohibitum* crime.[28] The commission of the prohibited act is the crime itself regardless of the intent of the doer.[29] Unless and until the Legislature amends PD No. 705, or a clear and categorical exemption from PD No. 705 is legislated, the conviction of the petitioners must be sustained. To reiterate, the Court cannot simply expand the implications of the provisions of IPRA to carve out an exception in favor of indigenous people, when such has not been clearly established by the intent of the Legislature.

Finally, with all due respect to the erudite disquisition of the ponencia, all is not lost for its pedagogical exhaustiveness that beckons for alternative standards that would give substance to the IP rights to preserve their cultural integrity, ancestral lands and ancestral domains, based on the exceptions to the generality principle of criminal laws. The application of the laws of preferential application, like the Constitution, IPRA, and other relevant laws advanced by the learned and esteemed jurists Senior Associate Justice Estela Perlas-Bernabe, Justice Marvic Leonen, Justice Alfredo Benjamin Caguioa, and the ponente herself, may sustain the acquittal of the petitioners. Also, the postulation of Justice Rodil Zalameda that there is lack of intent to perpetrate the act may be applied in favor of the petitioners. However, I am not convinced yet for the reasons stated above.

Accordingly, I vote to DENY the petition and affirm the conviction of the petitioners.

[1] SECTION. 77. Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: x x x

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

[2] Republic Act No. 8371; approved on October 29, 1997.

[3] 773 Phil. 614(2015).

[4] Id. at 627-628 (2015).

[5] 230 Phil. 59 (1986).

[6] Id. at 64, citing Francisco, Statutory Construction, p. 304, citing 69 C.J., Section 643, pp. 1092-1093

[7] Separate Opinion of Senior Associate Justice Estela M. Perias-Bernabe, pp. 2-4.

[8] DENR Administrative Order No. 2000-21; See <
<https://forestry.denr.gov.ph/index.php/fmb-product-and-services/private-land-timber-permit> >, accessed last August 20, 2020

[9] DENR Administrative Order No. 2000-21, See <
<https://forestry.denr.gov.ph/index.php/fmb-product-and-services/special-private-land-timber-permit> >, accessed last August 20, 2020

[10] Chain Saw Act of 2002, Republic Act No. 9175, November 7, 2002 Section 2 thereof provides:

SEC. 2. Declaration of Policy. — It is the policy of the State, consistent with the Constitution, to conserve, develop and protect the forest resources under sustainable management. Toward this end, the State shall pursue an aggressive forest protection program geared towards eliminating illegal logging and other forms of forest destruction which are being facilitated with the use of chain saws. The State shall therefore regulate the ownership, possession, sale, transfer, importation and/or use of chain saws to prevent them from being used in illegal logging or unauthorized clearing of forests.

[11] 195 Phil 604 (1981).

[12] Id. at 609-610.

[13] 27 Phil. 97(1914).

[14] Id. at 100-101.

[15] Supra note 10, at 610.

[16] Republic v. Yahan, 736 Phil. 397, 410 (2014).

[17] Valera v. Tuason, Jr., 80 Phil. 823, 827 (1948), citing Statutory Construction, Crawford, p. 634.

[18] Dissenting Opinion of Chief Justice Diosdado M. Peralta, pp. 12-14.

[19] Lalikan v. Hon. Vergara, 342 Phil 485, 498 (1997).

[20] Acosta v. Ochoa, G.R. Nos. 211559, 211567, 212570 & 215634, October 15, 2019.

[21] Manila Memorial Park, Inc. v. Sec. of the Dep't. of Social Welfare and Dev't., 722 Phil. 538, 568 (2013).

[22] Art. 5. Duty of the Court in Connection with Acts Which Should Be Repressed but Which are Not Covered by the Law, and in Cases of Excessive Penalties. — Whenever a court has knowledge of any act which it may

deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

[23] *Idanan v. People*, 783 Phil. 429, 440 (2016).

[24] The Court, in the landmark case of *Oposa v. Hon. Factoran, Jr.*, 296 Phil. 694 (1993), pronounced:

"While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind, x x x." *Id.* at 713.

[25] *Id.*

[26] *Id.*

[27] The whereas clause of PD No. 705 provides:

WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;

WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;

WHEREAS, it is also imperative to place emphasis not only on the utilization thereof but more so on the protection, rehabilitation and development of forest lands, in order to ensure the continuity of their productive condition;

WHEREAS, the present laws and regulations governing forest lands are not responsive enough to support re-oriented government programs, projects and efforts on the proper classification and delimitation of the lands of the public domain, and the management, utilization, protection, rehabilitation, and development of forest lands;

[28] See *Aquino v. People*, 611 Phil. 442 (2009).

[29] *Id.*, citing *People v. Bayona*, 61 Phil. 181, 185 (1935); *People v. Ah Chong*, 15 Phil. 488, 500 (1910); and *U.S. v. Go Chico*, 14 Phil. 128, 132 (1909); Ramon C. Aquino, *The Revised Penal Code*, Vol. 1, 1987 ed., pp. 52-54.

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