

# PHILIPPINE NATURAL RESOURCES LAW JOURNAL

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The Legal Rights  
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# Philippine Natural Resources Law Journal

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## **Dealing with Crisis: An Indigenous Perspective on Conflicts, Disasters, and Pandemics**

Alim Bandara

## **How High Does the Sycamore Grow?: Climate Colonialism, Violent Histories, and the Path of Resistance**

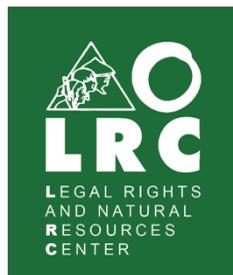
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## **Exploring the Legal Landscapes Protecting the Indigenous Knowledge and Genetic Resources in the Philippines**

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## **Abandoning the Neoliberalist Constitutional Narratives to Achieve Climate Justice**

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## Editor's note

This issue of the Philippine Natural Resources Law Journal proceeds from a local and urgent conviction: that the climate emergency is, at its core, a crisis of justice, shaped by deep historical patterns of power and governance. Founded on Philippine realities, an interrogation of colonial legacies entrenched in the country's legal and political systems is necessary. They remain the structures that ultimately and continue to determine who are vulnerable, who are heard, and who bears the cost of the ecological damage.

The Philippines experiences the yoke of climate impacts acutely. The country's environmental laws and economic priorities bear testament to colonial primacies. These are, in many ways, legacies of a colonial project designed for resource extraction and social control, legitimized as they found translation into the legal system (Foley, 2022). In the Philippine post-colonial state, this legal system became the framework applied in state structure that has often attended to elite and foreign interests over communal and ecological good (Tadem, 2015). More often than not, this has also caused the erasures of communities' practices of ecological balance and collective well-being, particularly of Indigenous peoples who remain in a state of liminality. Even as they are recognized in legal terms, they remain marginalized in practice. The Philippines' historical arc has produced a reality where environmental damage and social vulnerability are frequently two sides of the same coin.

The issue opens by grounding these theoretical critiques in the lived experience of Indigenous peoples with MSI Alim Bandara's examination of *rasay*, the experience of crisis from the narratives of the Tëduray and Lambangian Indigenous Peoples of Maguindanao and Sultan Kudarat provinces. Framed by their cosmology, *rasay* is more than a temporary hardship but a profound state of suffering (*kefasangan*) that can escalate into *gilak* (fear) and, if unremediated, into *sukna*—a point of irreparable damage. The narratives reveal that *rasay* arises from ruptures in the sacred relationships between humans, the community, and the natural world. Bandara argues that contemporary crises, including on-going conflicts and pandemics, are modern iterations of *rasay*. The narratives not only document alternative knowledge, they present an operable framework for navigating crisis rooted in ecological balance and collective well-being. The Tëduray and Lambangian narratives stand as testaments to the systems of law, governance, and environmental stewardship that exist outside, and in spite of, the state's imposed legal order.

Reyes’s essay provides an essential historical and political perspective to the climate crisis contextualized in the Philippine setting and how it is also inextricably connected to historical global structures. It lends its voice to the growing body of work that locate the climate crisis in historical colonialism and as a by-product of power imbalances in colonial relations. Reyes lends support to the argument that the climate crisis is a direct legacy of colonialism, arguing that extractive imperatives have deep roots in the violent colonial history of the Philippines. She traces the Philippine experience, evolving from traditional colonialism to “coloniality”—the persistent underlying logic of domination—and to its contemporary materializations in “green colonialism” and “internal colonialism.” She examines projects like the Kaliwa Dam and the deficiencies of national climate policies to demonstrate how initiatives peddled as sustainable often replicate colonial patterns of dispossession that continue to sideline indigenous and local communities.

Centering on a specific site where these legal and colonial systems converge, Brillo’s article examines the legal protective landscape for Indigenous knowledge, finding focus on intellectual property and bioprospecting. Her analysis begins with a local case—the discovery of antibiotic-resistant properties in Cordilleran medicinal plants, and uses it to analyze the global “Kwasi affair.” She unpacks the fundamental tension between the Western, individualistic intellectual property regime and the communal, intergenerational characteristics of Indigenous Knowledge (IK) and Genetic Resources (GR). While gauging international and domestic legal frameworks on IK and GR, Brillo identifies critical gaps and implementation challenges, highlighting the risk of “biopiracy.” She provides an example of the toils for a legal system that respects alternative worldviews and advocates for the strengthening of protections to ensure fair and equitable benefit-sharing of Indigenous Peoples, locating the defense of Indigenous knowledge as a crucial front in the broader struggle for climate and environmental justice.

Finally, we bring the collection together with the foundational analysis presented in Roset's article, which focuses its attention on the Philippine legal system, particularly the Supreme Court, and interrogates the foundational philosophies that guide the Court's interpretation of the law. Roset posits that despite the progressive enshrinement of social justice and environmental rights in the 1987 Constitution, the High Court's hermeneutics remain capitalist and investment-focused. Through a critical examination of jurisprudence, particularly of the United Overseas Bank case, Roset demonstrates how the Court has, at times, employed legal fictions that prioritize industrial stability and capitalist interests over legal proscriptions and their social justice implications. Roset argues that this judicial department has profound consequences for climate justice, where ecological integrity and communal well-being are undervalued in favor of economic growth models that have historically driven environmental exploitation and degradation. By establishing this critique of the judiciary's role, Roset provides an understanding of how colonial and capitalist logics are actively maintained by the state.

Together, the four articles form a critical progression: beginning with the living, practiced alternatives that embody resistance, to the historical structures of exploitation that enables the climate crisis, to the contemporary legal contestations over Indigenous knowledge and resources, and finally, to an exposition of how colonial foundations continue to capture judicial reasoning. They serve as reminders that a reckoning with the colonial foundations of the nation's legal system is a prerequisite to attain genuine climate and social justice in the Philippines. This position lays the foundation for debunking the extractive logic that the dominant framework was designed to enable, and sets the trajectory toward a constitutional order that ensures an ecocentric and socially just reality. This issue invites readers to understand that having a livable planet is inseparable from the struggle to decolonize the law itself.

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# DEALING WITH CRISIS: AN INDIGENOUS PERSPECTIVE ON CONFLICTS, DISASTERS, AND PANDEMICS

Alim Bandara

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## Introduction

There is no direct Teduray and Lambangian equivalent for the word “crisis,” word that exactly to mean crisis. However, the concept is captured descriptively by the word “*rasay*,” which encompasses *kēfasangan* (sufferings), *kēmarasayan* (sacrifices) and *kērēgēnan* (difficulties) is descriptive of crisis because *rasay* tells about *kēfasangan* (sufferings), *kēmarasayan* (sacrifices) and *kērēgēnan* (difficulties). The *rasay* may be due to human and natural made condition/s affecting all of the *lēnimbag* (creation), including *kēilawan* (human beings). Another word to describe crisis is “*gilak*” or fear. The confluence of prolonged, widespread *rasay* and *gilak*, where solutions are absent or extremely difficult, constitutes then what is called “*sukna*”—a state beyond crisis that is characterized by irreparable damage where the damage done is extremely difficult to restore or beyond repair.

To understand how the Tēduray and Lambangian deal and confront the crisis, it is important first to briefly revisit their worldview, particularly their understanding of the relations of the *kēilawan* (human beings) to their surroundings, including the air and the heavenly bodies. These belief systems are deeply entrenched and embodied in the *Tēgudon*, or customary laws and principles, of the Kēsēfanangguwit Timuay (Timuay Justice and Governance - TJG). The TJG is the Indigenous Political Structure (IPS) of the Tēduray and Lambangian in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) and portions of Sultan Kudarat province in region XII.

Similarly, the oral narratives on human and natural calamities actually encountered by the Tēduray and Lambangian within their *ingēd* are equally important to revisit, such as the *dulet*, a disease similar to the Covid-19 pandemic; the great famine due to drought or *lēnggob*; and the *alangkat*, which was a movement to defend, preserve, and protect the *ingēd* (territory) and *Tēgudon* (customs and traditions) of the Tēduray and Lambangian. All of these have become legendary narratives to the Tēduray and Lambangian and have contributed largely to strengthening their resilience in the face of *rasay* and *gilak* through protracted and prudent responses.

Lastly, in assessing the Indigenous Peoples' (IP) situation in the context of crisis and pandemics, it is important to gauge the level of *rasay*, *gilak*, and the possibility of *sukna*. Narratives on traditional ways of responding to *rasay* and *gilak*, and how to prevent *sukna*, are a potentially useful reference for formulating of policy critiques and recommendations for present-day duty bearers, even if they may be considered outdated to modern societal practices. Like antiques, these traditions hold value in the right time and place. Their relevance and applicability to life and society may be appreciated more fully in the future, if not today.

### **Indigenous Peoples' Knowledge Systems and Practices: understanding the *rasay* in the context of seven Teduray and Lambangian principles**

We first identify seven foundational principles central to this understanding:

1. *Rëfa lowoh* (Closeness and good relationship with nature) – The environment is the foundational source of food, medicine, and materials for the home. It is also the foundation for culture, tradition, and custom. The environment is an extension of the life and body of all *këilawan*, including the air and other heavenly bodies like the stars, the moon, and the sun. It is also understood that maintaining a good relationship with nature is secondary only to one's relationship with the Creator (Tulus).
2. *Gëtimu* (Collective leadership) – *Gëtimu* it is a tradition form of collective leadership that promotes a free, peaceful, and abundant community. Through this lived experience, the *Baglalan* (Tribal Title Holders) and the Teduray and Lambangian constituents strongly believe that such a collective model of leadership remains effective and appropriate even in contemporary times.
3. *Timanan* (Communal ownership of everything in the community) – This is the belief that resources are not individually owned but are shared by the community. Humans are considered stewards of the earth and are free to use its resources to live and survive. The Timuay Justice and Governance recognizes the tribes' long-standing experience with communal ownership, particularly regarding land and other essential livelihood sources. Simultaneously, it respects individual property rights.

4. *Sërifata* (Equal status of every human in the society) – This principle of human equality is rooted in the view of land as the Mother to humanity. In this view, as children of the same Mother, all people are equal. It is forbidden to use or exploit other human beings to elevate one's own status in society.

5. *Këfiyo fëdëw* (Peace of mind as basis of justice and development) – Peace of mind is defined as the absence of conflict within the community, whether physical or emotional. This state serves as the foundation for justice and development for all, not merely for the satisfaction of an individual or a few people in the community.

6. *Lumut minanga* (Progressive pluralism) – This principle is characterized by an openness to other individuals or groups as fellow human beings. While open to other peoples' beliefs and mindsets, this openness does not mean sacrificing their own principles or adopting traditions foreign to their *ingëd* (territory).

7. *Sëmfo fëdëw/tabang* (volunteerism) – This is the practice of providing free service to other people and the community, whether by a *baglalan* or a constituent of a leadership structure, clan or governance system. It encompasses services, large or small, that are offered to any individual or community in need of help.

Rasay is experienced not only by the këilawan (human beings) but by all creation. This may be due to human-made or natural conditions that affect and disturb the normal situation in a specific area or neighborhood. For instance, cutting down a tree causes *rasay* for the tree itself, and catching a wild animal, regardless of purpose, causes *rasay* for the animal. On the other hand, the person performing the action experiences *rasay*. In its true sense, *rasay* is embedded in the life of every creature.

Rasay can almost be seen as a way of life; however, if we simply accept it as an unavoidable fact of life, then what is the purpose of life on the *dunya* (earth)? This is where the seven principles of life play their role. The oneness of the këilawan with other creation is central in this relationship.

Recognizing and respecting the material interconnection is crucial, given the interdependence of the body and life of every creatures. Above all, there exists a spiritual tie between the *rēmogor* (soul) of the human beings and *sēgoyong* of other creations. This connection explains the tradition of communicating with nature through *fēgētaw* (asking permission/consent) via ritual in all undertakings, whether small or big. Conversely, humans should read and understand the messages from nature to maintain a harmonious relationship.

As mentioned previously, *rasay* is embedded in every living creature. However, for human beings specifically, the *bliyan* (O. Mosela, personal communication, October 8, 2018) enumerated at least three (3) basic sources of *rasay*, as follows:

1. *Layaf* (hunger) — This is a lack of food, which may be due to the destruction of nature or the misappropriation of resources and the products of human labor. When there is no food to eat or a scarcity of food in the *ingēd*, this condition is called *mēilu*.
2. *Druun* (sickness /illness/disease) — This refers to physical and emotional pain acquired from bad spirits and energies, whether originating from nature or as a product of human knowledge and activity.
3. *Lidu* (conflict) — This is the presence of disagreement among individuals or groups of people that may result to violent acts within and between communities.

This understanding of *rasay*—arising from *layaf*, *druun*, and *lidu*—provides a crucial lens for examining a more modern and pervasive source of suffering: the introduction of a cash economy and its attendant values into a relational world. The traditional systems of the Tēduray and Lambangian, governed by the seven principles, are now navigating a powerful external force that redefines the very meaning of resources and exchange. This leads us to a critical concept for understanding contemporary challenges: *drantung sēnduratan*, or the power of deceit, which manifests today in the complex role of money and the distortion of wealth.

*Drantung* means power and *sēnduratan* means deceit. Currently, this phenomenon is interpreted as arising from the existence of cash and money, which enable the easy and fast circulation of the economy through trade. However, the presence of money creates a powerful temptation to act against the seven (7) principles, treating nature and the environment as objects of exploitation for income and profit. This is followed by a strong tendency toward individualism, selfishness, and greed, to the point of losing all respect for the jungles and mother earth.

In a trading society, Indigenous peoples bear a double burden. For example, in traditional society, layaf occurs only because of a scarcity of food, a state of mēilu in a specific area. But today, how can one say there is a state of mēilu when food and other items are visibly displayed in trading centers and markets? The crucial gap in many cases is the lack of money to access what is needed. By the traditional definition of mēilu, this is not mēilu at all, and yet people are mēlayaf (hungry). In the absence of a fitting description for this situation, the TJG baglalan in mid 1990s called this as bunëg or roughly translated as a stunted economy and society. A more compassionate description, however, is tadin, meaning being redirected or lost, resulting in a state of disorder and confusion.

Overall, the current state of layaf, druun, and lidu can still be viewed as largely due to the stunted economic, political, and cultural condition of the Indigenous peoples—stunted in the sense that they stand guard over their own knowledge systems and practices, yet cannot fully operate autonomously nor be totally integrated into mainstream society. Restoration efforts are underway, but they will not be accomplished soon. Moreover, there is fear that sukna may occur if conditions do not change to the better.

## **Rasay Narratives: Tëduray and Lambangian experiences of Alangkat, Dulet and Lënggob**

### **Alangkat: a movement for the defense and protection of Tëduray and Lambangian, their territory, governance system and customary practices**

Prior to the alangkat movement, there existed widespread cases of sunggud or kidnaping for slave trading and piracy, which victimized the Tëduray and Lambangian along the coast, in upland areas of what is now Datu Blah Sinsuat municipality, and along the rivers of Tran, Tëbuan, Mëtëbër, Dohon and Buyaan rivers. Sunggud referred to the kidnapping of young and able-bodied men and women not for ransom but to be sold as slaves. Furthermore, beautiful or good-looking women were to be married by the kidnapper or buyer or, failing that, were raped. The most notorious perpetrators of the sunggud were the Ranawën, roughly meaning the people of Ranaw or people of the lakes.

Among the renowned Tëduray leaders who fought the *sunggud* were the ancestors of the Damfil clan, who were believed to possess *këbël*—an amulet that made the body impervious to bladed weapons. They defended the coastal areas of Nalkan, Tambak, and Resa all located in present-day Datu Blah Sinsuat municipality. In the east, the Dohon river (now under Talayan, Guindulungan and portions of South Upi) were defended by Foko Këmër, a Lambangian *këbël* bearer. The downstream sections of Dohon were defended by the ancestors of Mobukatur and his followers. While the oral narratives provide no specific timeline, the storytellers estimate these events occurred long before and during the American period in Mindanao (Z. Ali, personal communication, September 12, 2020).

To establish a clearer timeline, it is helpful to cite few lines from the book *Muslim Rulers and Rebels, Everyday Politics and Armed Separation in the Southern Philippines* (McKenna, 1998):

With slave raiding in the Spanish Philippines greatly diminished after 1846, the gap in the supply to Sulu was filled through increased raids by Cotabato Muslims on upland groups in eastern Mindanao. The Cotabato Chinese became active intermediaries in the expanded slave trade from Mindanao to Sulu (Warren, 1981; Wickberg, 1965). During the 1872 smallpox epidemic and famine in Cotabato, Jesuit missionaries bought for redemption children from Chinese middlemen, who had purchased them from their Muslim owners or parents with the intention of reselling them in Sulu (Bernad, 1984). An 1890 Jesuit report describes Chinese traders on the upper Pulangi purchasing slaves from slave raiders. Cotabato Chinese merchants were also involved in the gutta-percha boom of the 1880s. They exported this forest product (used as insulation in the building of the transatlantic cable) to Singapore via Sulu (Wickberg, 1965). These late nineteenth-century export opportunities gave impetus to Chinese enterprise in Cotabato, and by the turn of the century the external trade of Cotabato as well as Sulu was controlled by Chinese merchants (Warren, 1981).

His need for firearms to resist the Spaniards, along with his recognition of the shortage of marketable slaves for Sulu, provided Datu Utu, the last independent Sultan of Buayan, with an irresistible incentive. He and his datus ignored the centuries-old clientage arrangement between the Magindanaon and the Tiruray and began to raid them to acquire slaves to exchange for firearms.

Responding to new political exigencies and new economic opportunities, upriver *datus*, in the final decades of precolonial Cotabato, sold their Tiruray clients into slavery in the distant Sulu Sultanate. A combination of Spanish military pressure and British-impelled economic incentives had produced a dramatic (if predictable) alteration of production relations between Magindanaon *datus* and the Tiruray, whereby collectors of commodities became themselves commodities as *datus* reduced former clients to chattel slaves.”

The historical record confirms that slave trading was a reality that involved and significantly affected the Teduray.

### The Alangkat

“Alang” and “langkat” are two synonymous terms that serve different purposes and functions. The first refers to a blockade on a specific route or direction, while the second serves as fence or barrier surrounding a protected area or place. In summary, *alang* and *langkat*, combined as *alangkat*, represent protection mechanisms for the Tëduray and Lambangian.

Anchored on this belief, the people of Mt. Firis and Mt. Lëngkuwos led by F/Sgt Mow, united (an event oral historians estimate occurred between 1921-1926) to form a group of committed Tëduray and Lambangian leaders and initiate the *alangkat* movement. The primary objective was to mount an active defense against the remnants of *sunggud* perpetrators who were committing atrocities against the Tëduray and Lambangian of Mt. Firis and to as far as Ligodën, a Dulangan Manobo area now within the municipality of Esperanza, Sultan Kudarat. The second objective was to protect and defend the customary laws and leadership titles of the Tëduray and Lambangian against the Philippine Commonwealth’s policy of integration, which sought to replace traditional titles with foreign designations such as *Tiniente del barrio* or *headman*.

F/Sgt Mow, the founder of the *alangkat* movement, traced his origin from Uruk Culina or Pedro Culina hill, in Cotabato City. Accounts of his childhood is shrouded in mystery. He grew up under the care of his guardian and foster mother, Idëng Kamfilu (mother of Kamfilu).

According to available records, he was enlisted with the Philippine Constabulary in Bongao, Sulu, on December 1, 1910, alongside friends from the Cotabato area. He also served in the Lanao and Davao areas of the Moro province. Oral history recounts that he left the Constabulary from an assignment in the Davao area with his close friend, Bilual Mokalbënëng, and went directly to Kloh Kënilid, a place near the sacred Mt. Firis.

Later, he settled in Batëw and declared it as his home place. From that time, people began to gather there. As a symbol of cooperation and unity, each person brought a small stone to place at the site of present-day Batëw, which grew into the large stone that stands there today.

Like their predecessors who fought the *sunggud*, they focused on enhancing their fighting skills by using the *tabas* (a special *bolo* weapon), *fana* (bow and arrow), *sundang* (sword) and other weapons. They also upgraded the *këbël* into the *fëliyos*—an amulet believed to protect the body from harm during combat.

From Mt. Firis and Mt. Lëngkuwos, the *alangkat* movement spread to as far as Bantëk, a *barangay* located in Upi, Maguindanao, and down to Mëgono, a boundary sitio between Bungcog, Upi, Maguindanao and Kusiong, Datu Odin Sinsuat, Maguindanao, overlooking the Mumpong-Tapian coastlines. In each of their stations, they conducted rigorous fighting drills and weapons rehearsals using bladed arms. At times, errors during these rehearsals resulted in the deaths of their *kuyug* (warriors). According to witnesses, however, the *Kuyugon*, or team leader/ commander, could chant over the deceased to restore them to life.

Those drills drew the attention of the Philippine Constabulary during the Philippine Commonwealth period, who began identifying the movements of the leaders and locations. F/Sgt Mow was easily identified due to his military record. Aware that an attack by the Philippine Constabulary was imminent, he chose to surrender to Capt. Irving Bryant Edwards to spare the civilians from military assault. Capt. Edwards was a US soldier-teacher who founded the Upi Agricultural School on August 19, 1919, and was married to a Teduray woman.

Following this, the *alangkat* stationed at uruk Bantëk was raided by the Philippine Constabulary, led by Sgt. Tranquilino Duran, another Tëduray member of the Constabulary. During raid, the *Kuyugon* of the *alangkat*, Bidëk Kroon, was struck by a bullet and died on the spot.

Subsequently, mass gatherings organized by the bliyan were prohibited by the Philippine Constabulary and the Commonwealth government, which labeled such assemblies as insurgent activities. For a time, rituals and glal naming ceremonies among the Tëduray and Lambangian were conducted in secret manner to avoid suspicion from the authorities. Many glal traditions were nearly forgotten until the early 1990s, when few young, dedicated Tëduray started to document the Tëgudon—the narrative of the customary laws—to initiate the restoration of the Kësëfanangguwit Timuay.

The alangkat narrative reveals rasay not as a single moment of crisis, but as the pervasive and multi-layered suffering that generated the movement and defined its entire arc. At its origin is the foundational rasay of sunggud—the violent trauma of kidnapping and enslavement that inflicted profound physical and emotional suffering (kefasangan) and fear (gilak) upon the community. This direct violence was compounded by a deeper, more insidious rasay: the threat of cultural and political erasure by the Commonwealth's integration policy. The potential loss of their customary laws (Tëgudon) and leadership titles represented a suffering of identity and a rupture in the ancestral order.

Furthermore, the alangkat's very struggle against this rasay generated its own forms of suffering. The drills, where kuyug (warriors) sometimes died, and the fatal raid at Uruk Bantëk that killed Bidëk Kroon, show the rasay inherent in armed defense—the sacrifice and death required for protection. After the crackdown, the suppression created a new, prolonged rasay: the suffering of cultural suffocation, where rituals had to be performed in secret and traditions were nearly forgotten. This state of dislocation and disorientation aligns with the concept of tadin—being lost. Thus, within this history, rasay is cyclical: it was the cause that mobilized the community, the shared experience that unified them, the costly price of their resistance, and the enduring consequence of their suppression. The alangkat was ultimately a collective response to rasay, an armed effort to prevent the community's total disintegration into sukna, or irreparable damage.

## Dulet: a disease with similarity to the current Covid-19 pandemic

The term dulet literally refers to something that easily transfers when in direct contact, like sticky materials such as gum or glue. At one time, an unknown disease struck the Tëduray and Lambangian territory and spread like wildfire through different villages. Because the disease was highly transmittable from one infected person to another, it was labeled as dulet (D. Aso, personal communication, April 4, 2020). Victims were not counted individually but by the number of villages affected, meaning countless lives were lost. This devastation was reason enough for survivors to consign those memories to oblivion. In fact, mere recalling of the name dulet is considered taboo, as it is seen as an invitation for the disease to return. Now, however, the Covid-19 pandemic—a disease with striking similarities to dulet—has provided a context for reviving this memory and engaging in public discussion about it.

The devastating effect of dulet on the Tëduray and Lambangian altered social norms as a means of coping with the epidemic. The most difficult yet necessary adjustment was avoiding or distancing oneself from someone in dire need of assistance to escape infection. This survival strategy stood in complete contradiction to the principle of tabang, the practice of extending free service to anyone in need.

However, the other principles as a response to the dulet crisis remained relevant and applicable. The forest, mountains, and rivers served as refugee sites during that calamity, perfectly meeting their needs for food, shelter, and medicine. This practice of temporary refuge in nature is generally called dëmales, where shelters were made from simple materials that would last only a week before relocating to another place, continuing until the home base was fully restored and safe to live in again. Food and medicines were gathered from the surroundings, but conscience dictated taking no more than what was needed for immediate consumption. The rest were reserved for the coming days and for other people in need. There was no mass collection or stock piling of supplies for food, medicine, or materials for shelters.

Regarding medication and healing processes, the primary approach focused on preventions. Key practices included cleanliness at home and, most especially, at the source of drinking water (head springs); observing the dëmales, a temporary family stay in with nature lasting a week or two; the installation of spiritual and cultural symbols inside and outside the house; and performing rituals. Healing for infected persons was handled by few bliyan (shaman) who were knowledgeable about other contagious disease like abas (measles/smallpox) and këmëlëng burur (leprosy), among others.

The prevention measures were focused on a process of cleansing and fine-tuning any possible disconnect in the relationships of humans to nature; humans to their fellow human beings; humans to the spirits of other creation; and human to the Creator. It is believed that any such disconnection in the relationship creates disorder and abnormal conditions within society.

During the Covid-19 pandemic, government imposed protocols greatly impacted Indigenous peoples' ways of life. For one, the decision-making processes have been affected. The need for a collective and consensus process is disrupted by the lockdowns that restrict mobility and prohibit mass gathering. Even the "new normal" in communication, such as online meetings and conferences, cannot satisfy the need for a collective and consensus decision-making among Indigenous peoples. For them, online communication is considered informal and reserved for emergency purposes only. Nonetheless, it is an acceptable mode of communication for discussing common issues.

The working condition and livelihood activities of Indigenous peoples were also affected by the Covid-19 protocols. The Covid-19 lockdowns, combined with a mild dry spell in early 2020 and armed clashes in some Non-Moro IP communities, created a very alarming situation. Informal and seasonal workers in semi-urban and urban areas, who rely heavily on their daily wages, bore the full burden of these hardships. Meanwhile, due to the mild dry spell, farmers delayed their planting activities, which resulted in a later harvest for the year. There were also times when livestock was banned from entering the trading centers, so farmers could not sell their products, such as pig, sheep, and cattle, among others.

The provision of relief assistance by the state and non-state actors became the "new normal" during the pandemic. However, it is noted that there was no unified system its distribution. Both the executive and legislative branches of government conducted humanitarian assistance programs, with the result that each branch sought its own beneficiaries. The same occurred with Civil Society Organizations (CSOs). Given this situation, the politization of services was inevitable.

The traditional food gathering can no longer sustain the need of the community, largely because of the damage and destruction of over existing natural resources by those who control them. The net effect on Indigenous peoples is that they lose food but also medicine and refuge in times of calamity.

It was within this context that the crisis required more than a narrow health response; it demanded a holistic approach. This included reviewing the medical practices of the bliyan; re-examine what went wrong in the relationships between people and their fellow human beings and the rest of creation; and taking the necessary remedial measures to restore normal conditions.

Within the narrative of the dulet, the rasay extended into the disruption of the natural and spiritual order. The crisis signaled a dangerous disconnect in the relationships between humans, nature, and the Creator, manifesting as disorder in society. Thus, the response was not merely medical but holistic—a kemarasayan (sacrifice) of normal life through dëmales (temporary refuge in nature) and ritual, aimed at cleansing and restoring balance. Ultimately, the rasay of the dulet was so potent it became taboo to even name, for speaking it was feared to invite the suffering back. The memory itself became a kind of lingering rasay, one only revisited now because the similar suffering of the COVID-19 pandemic provides a necessary context for its understanding.

### **Lënggob: drought that devastated the ingëd of the Tëduray and Lambangian**

Lënggob literally means “all over the territory” or “nothing is spared.” The word lënggob was later applied to the long drought that devastated the entire Tëduray and Lambangian territories, causing famine among all the people. The oral narrative states that the skies were filled with awëw (dust), and so it rained dust. There is no timeline to determine when this occurred, but based on the description of dust-filled skies, it likely happened during a distant volcanic eruption (current interpretation of the oral narrative). Like the dulet narrative, recalling the lënggob is also taboo because of its devastating effect. However, when it must be retold for very important reason, the customary practice is to “bow and place your right hand over your head and the left hand bellow your jaw” as a sign of respect, care, and devotion to the victims beseeching them and the Creator never to repeat the same misery for present and future generations.

The lënggob resulted, among other things, in the drying of the Mëhagtagaw river, where all edible plants were damaged and wild animals and fish perished. Consequently, people entered a state of mëilu, meaning no food could be found in the surrounding areas or even in neighbor villages.

The result was *layaf*, or hunger, and many people died. A particular well-known victim was a young lady who ate sand and gravel mixed with honey, which caused severe *tran* (constipated) and led to her death along the *Mëhagtagaw* river. From that time on, the downstream portion of the *Mëhagtagaw* was called the *Tran* river by the *Tëduray* and *Lambangian* in memory of that young *Tëduray* woman.

Many geographic places, especially rivers and springs, originated their names from events of the *lënggob*. Other than the *Tran* river, another legendary spring in the coastal area is named *Resa*, because during the *lënggob* it was the only available source of drinking water in the vicinity. To protect it from the falling dust, people placed bamboo slots, called *resa*, around the spring and covered them with *cogon* grass as a roof. Today, control over *Resa* has been taken by force from the *Paguilidan*, the original *Tëduray* inhabitants of the area, and is now held by the descendants of the *Balabaran-Sinsuat* clan.

Though the impact of the *lënggob* was devastating, it forced the *Tëduray* and *Lambangian* to move from place to place in search of a better living situation without completely abandoning their homeland. Consequently, they became scattered across the region, from the coastlines of the *Ilana* bay, along the major rivers, and into the mountains, forming what is now known today as *ingëd* of the *Tëduray* and *Lambangian*.

In the *lënggob* narrative, *rasay* is the profound and all-encompassing suffering born of absolute scarcity. It is the *kefasangan* of a land under a sky that rains only dust, where rivers and springs dry up, and every source of sustenance—plants, animals, and fish—perishes. This environmental collapse created a state of *mëilu*, a total absence of food, which in turn manifested as widespread *layaf* (hunger) that led to the deaths of many, its memory etched into the land itself, like the renaming of the *Tran* river after a young woman who died from eating gravel.

This *rasay* was devastating that it forced a fundamental *kemarasayan* (sacrifice): the displacement of communities from their homes. Though they did not fully abandon their origins, they were scattered across the territory, becoming refugees within their own *ingëd* in a desperate search for survival. The *rasay* of the *lënggob* is remembered not just as a historical famine, but as a foundational trauma that reshaped the geography, the social landscape, and the very spiritual covenant between the people and their land.

## Restoration Amidst Challenges Policy Critique and Recommendations

Based on the analysis of *rasay* from historical events (*alangkat*, *dulet*, *lënggob*) and its intensification in contemporary crises like the pandemic, it is clear that resilience alone is insufficient without structural empowerment. The enduring solutions to *layaf*, *druun*, and *lidu* lie not in reactive relief but in restoring the authority and capacity of Indigenous systems to steward their domains and destinies.

The core argument is that the well-intentioned laws created to protect Indigenous Peoples must move beyond paper to practice. The implementation of the law which states that it aims “to recognize, protect and promote the rights of indigenous cultural communities/indigenous peoples (ICCs/IPs)...” must be true to its letter and spirit. Currently, a significant gap persists between legal recognition and genuine, self-determined governance.

Therefore, it is recommended that the enactment of a law or policy measure that allocates a share of state revenue collected within the IPS domain to the IPS or the CADT holder. This process could be modeled on the Internal Revenue Allocation (IRA) of the Local Government Units or the allocation system for Indigenous Peoples Mandatory Representatives (IPMRs), following established criteria. Critically, these funds must only be strictly designated for the development and protection of the CADT/domain, thereby enabling the IPS to exercise a meaningful level of control and power over the ancestral domain.

### Peacekeeping and Conflict Management

It is imperative to formulate security and defense mechanisms in conflict-prone areas through collaboration between the defense sector (AFP/PNP) and Tribal leaders, with the role of Tribal Defense clearly defined. In cases where there an established peace mechanism exists between the Philippine government and rebel forces, an Indigenous people’s security agenda must be laid down for consideration.

The establishment of a Conflict Management Center manned by Tribal Justice Officers (e.g. *Këfëdëwan*) is recommended. Internal conflicts must be dealt with in accordance to customary conflict settlement processes.

For common crimes and political offense committed by an IP person, the formation of a legal team to assist the victim(s) is recommended. Specific cases can be referred to regular courts, pursued through the Alternative Dispute Resolution mechanism, or through customary process. The delineation must be clarified.

### **Establishment of Neutral Places/Comfort zone**

For the time being, there is a critical need for the establishment of the “neutral areas” or “comfort zones.” These spaces are where IP stakeholders facing security threats, particularly those affected by or suspected of political offenses, can be accommodated for conflict resolution. These zones can also serve as bases for projects to support the victims and facilitate the peace movement.

A neutral place is defined as an area free from identified camps of rebel forces and terrorist groups in the area. The Indigenous Political Structure and tribal defense structure, in cooperation with the barangay officials, should maintain primary control over the peace and order in the area. The formal defense sector may intervene only when requested or when needed.

### **During crisis and emergency**

The IPS must be involved in any interventions within their domains during an emergency, particularly especially if the disaster or calamity covers wide scope of the territory. This involvement is crucial for several reasons. First, it is part of genuine empowerment and the recognition of their self-determination. Second, it ensures that interventions are conducted with their free, prior, and informed consent. Third, it allows for direct involvement and participation based on their unique knowledge, skills, and capacities, which are essential for effective culturally appropriate response and recovery.

In conclusion, the persistent shadow of rasay—from the historical traumas of dulet and lënggob to the modern disruptions of pandemic and conflict—underscores a fundamental truth: resilience is rooted in sovereignty. The policy critiques and recommendations presented here are initial and not merely administrative adjustments but are essential remedies for rasay itself.

They aim to transform the source of suffering by restoring the power, resources, and rightful space for Indigenous peoples to steward their domains, uphold their Tëgudon, and fulfill their role as keepers of balance. Only through such genuine structural empowerment can the cycle of rasay be healed and the threat of sukna—irreparable fracture—be averted for generations to come.

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# HOW HIGH DOES THE SYCAMORE GROW?: CLIMATE COLONIALISM, VIOLENT HISTORIES, AND THE PATH OF RESISTANCE

Jameela Joy Reyes

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*“We are setting ablaze the old ways, lighting a prairie fire for global change, and challenging the systems which prioritize profit over our planet and our people. Our renewed mission places capitalism, colonialism, and militarism at the heart of the fight against the climate crisis and environmental injustice. With a vision deeply rooted in an Indigenous worldview, we refuse to back down.”*

Honor the Earth, 2024

*“In its capacity to colonise the deepest recesses of the human mind, climate must surely constitute one of the world’s most successful imperial projects.”*

Livingstone, 2015, p.937, as cited in Mahony & Endfield, 2018, p.1

## Introduction

The climate crisis is no longer a distant threat. It is an unfurling reality. Despite international commitments such as the Paris Agreement, which aims to limit global temperature rise to well below 2 degrees Celsius relative to pre-industrial times (with efforts to limit this further to 1.5 degrees), the planet’s temperature has increased by 1.28 degrees (NASA, 2024), with projections indicating an increase of at least 2.4 degrees Celsius even if emissions decline. (Lindsey & Dahlman, 2025)

Global efforts to address this crisis are growing in scope and urgency. However, beneath these initiatives lie a deeper, often acknowledged foundation: the enduring legacies of colonialism. The same logics of extraction, domination, and erasure that structured colonial empires continue to shape environmental exploitation and climate vulnerability today. To imagine a just and sustainable world, therefore, we must confront not only the symptoms of the climate crisis but also the colonial systems that produce and perpetuate it.

## Climate colonialism: same monster, new name

At the outset, it is critical to note that there is an inextricable link between colonialism and climate change. (Varanasi, 2022). The very philosophies and imperatives of colonialism – those of civilization, Christianity, and commerce (Kwiyani, 2023), and now also capitalism – are similar to the principles that have made climate change the global problem it is today.

Colonialism, as defined in this article, is in its traditional (yet broad) sense. That is, that of domination, control, and exploitation, as related to power (Horvath, 1972). There are, of course, working definitions of colonialism in the western sense: the sense of imposing white rule on alien peoples inhabiting lands separated by saltwater from the imperial centre (Emerson, 1969, p. 46). Regardless of its broadest identification, however, colonialism has stemmed from the concept of international capitalism (Thornton, 1962, p. 337) and it is through this dual desire for economic exploitation and consolidation of power that colonialism has become so widespread, violent, and pervasive (Bhambra, 2020).

It is important, at this juncture, to distinguish colonialism – the historical and administrative project of subversion – from coloniality. Coloniality, according to Quijano (2007), is how these forms of domination are streamlined and introduced as the norm. This concept reminds us that even after colonisation “ends,” unequal power still shapes who controls knowledge, money, and definitions of success. It is the “darker” side of modernity: the structuring logic that normalises Eurocentric ways of knowing, organises global hierarchies of race and labour, and defines what counts as development or progress. Otherwise stated, coloniality is the continuation of colonial domination through cultural, epistemic, and economic structures.

When I refer to colonial legacies persisting, I mean coloniality: the deep, systemic continuation of colonial logics that shape who controls knowledge, resources, and the natural world.

The Philippine case illustrates how colonialism’s formal end did not dissolve its underlying logics; instead, these evolved into enduring forms of coloniality that continue to shape environmental governance, economic structures, and even climate responses today.

## *The colonial history of the Philippines*

When Magellan “discovered” the Philippines in 1521 under the flag and financial aid of Spain, the initial goals were of commerce and Christianity: that is, Spain wanted to find an alternative route to the Moluccas that would circumvent the Portuguese, and the Christian empire wanted to spread the faith to Asia, particularly China, through the Philippines (Pascual, 2023). For 333 years thereafter, these twin goals, and civilization, were the main drivers for Spain’s conquest in the country. While pre-colonial Philippine society was already self-governing, Spain thought it to be their responsibility to “civilise” the “savages,” and assimilate the Filipinos into a culture that the Spanish thought deemed superior – creating a “donor” culture and “host” culture binary (Horvath, p. 47).

It was this “othering” (Spivak, 1988) of the Filipinos, as separate from, and directly underneath, the Spanish that allowed the conquistadors to justify multiple forms of violence occurring at all levels. Spain dismantled existing systems of governance and interpersonal relations, pillaged the lands for minerals and other resources, silenced the pre-colonial Filipinos’ ways of becoming, including their spiritual beliefs and traditional practices, and created arbitrary, racist class systems to justify further oppression (Teodoro, 1999). The abundance of natural resources in the Philippines was particularly critical to Spain, and forest cover declined from approximately 90% of the total land area at the time of the first contact with Spain to approximately 70% by the turn of the 20th century (Kummer, 1992). Indigenous peoples, resistant to Spanish conquest, and victorious against Spain in some battles, were pushed towards the periphery, where they were able to retain their cultural identity and regain their stewardship over the land on which they established themselves. They have since remained in those domains.

Even after the Spanish left the country, the colonial extractivist legacies continued with the entry of both the United States and Japan; half a century after these countries’ occupation, the same legacies permeate contemporary society and underpin the issues we face today.

The centuries-long trajectory of conquest, extraction, and dispossession in the Philippines exemplifies how colonialism reconfigured both landscapes and life. These transformations were not merely historical. They set in motion the ecological degradation, economic dependency, and the social hierarchies that continue to define the country's vulnerability to climate change today. In this sense, the Philippine experience is part of a wider pattern: colonialism and climate change are not separate phenomena, but interlocking processes the consequences of which persist across time and space.

## **Colonialism and climate change: inextricably linked**

A spatio-temporal discussion of colonialism and climate change can show how the linkages of the two are multifaceted, spanning several dimensions. It is to be noted that while the interlinkages are listed below, they are not to be construed as individual dimensions, happening in silos, but rather are cumulative issues faced by people now as a result of both colonialism and climate change.

### **1. Resource Extraction**

Resource extraction is one of the pillars that allowed for the existence and pervasiveness of colonialism, and what gave colonial powers their strength. Many colonised territories had an abundance of resources that were mined and unearthed, leading to the degradation of forests, the displacement of peoples, and losses to biodiversity. It is this foundational and historical exploitation that has laid the groundwork for environmental challenges faced today, including climate change.

Fossil fuel use and proliferation, for instance, particularly the use of oil, coal, and gas, are colonial legacies that pervade today, which remain intimately connected to extracting the land. The uses of these fossil fuels during the colonial period were diverse, ranging from ensuring the ease of further conquests to the creation of weapons. Today, fossil fuels both run on and are one of the main causes of war (Schiffer, 2022), expansion, and heavy environmental degradation.

## 2. Land Use and Displacement

In order to settle into the colonies, colonisers needed space, and so demanded the same from indigenous inhabitants, whether forcefully or otherwise (though even non-forceful settling was violent, albeit not as explicitly – this was usually done in the context of what is now known as “manufacturing consent,” which includes promising education or livelihood opportunities in exchange for land) (Herman & Chomsky, 1995). Increasing numbers of settler-colonists meant the need for more land for agricultural and residential, and later, industrial requirements. To do this was easy: the colonists would subjugate the natives through assimilation or power, and those who refused would be pushed towards the margins. This disruption to the native relationship with the land and land management led to its degradation.

Today, land use conversion and displacement remain one of the biggest concerns when it comes to climate change. Indigenous peoples, in particular, remain highly vulnerable to displacement, and are the first to be removed from their ancestral lands and domains when lands are needed for various projects, under the guise of development. Large dams, plantations, logging, the proliferation of mines: all these contribute to and legitimise, if not justify, displacement, lending to what is now widely known among indigenous activists as “development aggression” (Asia Indigenous Peoples Pact, 2012).

## 3. Greenhouse Gas Emissions

Third, the spread of colonialism, and the concurrent rise of capitalism as a result of this expansion, propelled the world to enter and perpetuate a system of accumulation, waste, and emission (Guglielmo et al., 2021). These very same structures are the same structures that make the transition towards a climate just future difficult, as the imperatives of capitalism (as directly related to colonialism) demand the creation of more with less. Capitalism demands, as Jason Hickel argues, perpetual expansion, one that devastates the living world (2020).

Today, this is even more highlighted as the countries that have benefited the most from colonialism and the Industrial Revolution (in particular the United Kingdom and countries in the European Union, as well as North America), and who have, due to their early economic development, been called on to mitigate their greenhouse gas emissions (UNFCCC, n.d.-a), are also now calling out developing countries to lower their own emissions, stop resource extractivism, and commit to a less pollutive development pathway. This hypocrisy (entrenched in the diluted strength of the Paris Agreement as shown in the phraseology of “Common but Differentiated Responsibilities and Respective Capabilities”, a phrase originally about material responsibility of developed countries but which, in practice, has devolved into focusing on the specific needs and special circumstances of developing country Parties) (Yu, 2025) underscores the deeply entrenched power dynamics inherited from colonialism and perpetuated by capitalism, wherein the same countries that historically profited from exploitation and environmental degradation now impose emissions reduction targets and environmental regulations on developing nations, further exacerbating global inequalities and hindering efforts towards a climate just future.

These contradictions are especially stark when examining cumulative greenhouse gas emissions: as earlier noted, the historical emitters, those same colonial powers, bear the lion’s share of responsibility for the current climate crisis, yet continue to consume disproportionately more carbon space per capita. Meanwhile, developing nations, many of which continue to experience the structural consequences of colonial extraction, are now being asked to curb their emissions without equivalent financial or technological support, effectively bearing the brunt of a crisis they did not create.

### *Social and Political Marginalization and Highlighting of Inequalities*

In the same manner that colonialism marginalised individuals and groups for arbitrary, largely racist reasons, so does climate change marginalise (or at least further exacerbate the marginalisation of) groups that historically have been made vulnerable, including indigenous peoples, women, peasants, and persons with disabilities.

However, I argue that while the racialisation and hierarchisation in colonialism were arbitrary (dependent largely on financial resources and political power), climate change cemented this social stratification. That is, while colonial hierarchies were often imposed through ideological justifications (religion, pseudo-scientific racism, or the so-called “civilising mission”), climate change solidifies these inequalities by exposing already vulnerable groups to disproportionate risks, making these groups “double victims” of both historical and ecological violence.

Environmental risks, in the form of environmental exploitation and degradation, therefore, are borne by marginalised members of society, while the distribution of their benefits redounds to a privileged few (*Faber, 2008, p. 238*). In this way, climate change acts as a structural force that does not merely replicate colonial hierarchies but crystallises them. It transforms historical marginalisation into material vulnerability. Worse still, it provides justification for such exclusion.

Injustice, therefore, underpins both colonialism and climate change, and is, in fact, the thread that connects them both.

#### **4. Environmental resistance and resilience**

Where their causes converge, so should their solutions. The very same mechanisms that fought the traditional underpinnings of colonialism should also be the same weapons to be used for addressing climate change.

Resistance, in its broad and multifaceted forms - opposition, protests, defiance, divestment (Mangat et al., 2017), or strategic cooperation across sectors - has historically proven to be the most effective response to systemic injustice around the world (Abang 2025). It was neither benevolence nor moral awakening that dismantled colonial oppressive regimes; rather, it was sustained pressure from the colonised: mass uprisings, cultural revival (that continues to the present time), international solidarity, and institutional resistance, among others. In the same way, the climate crisis will not be resolved solely through technical fixes or top-down policy adjustments, through mercy or charity, especially when these remain constrained by the same logics of extraction and profit.

A just transition away from the fossil economy requires mobilising communities, reclaiming sovereignty over land and resources, and building alternative systems that are grounded in care and equity, not profit and capital. As with struggles surrounding decoloniality and, more importantly, anti-coloniality, this is a fight against entrenched power structures that will not concede easily as it has been normalised for centuries. The fight, therefore, demands collective action that centres the most affected and amplifies their collective voices, challenges exploitative paradigms, and reimagines global responsibility as a function of historical accountability.

## **Contemporary climate colonialism: green colonialism and internal colonialism**

Broader colonialism discussions aside, there is now a need to shift gears and look at emerging discourses that relate to – and are examples of – contemporary climate colonialism: green colonialism and internal colonialism, which, while related to each other, have specific distinctions. These will be discussed in seriatim.

### **Green colonialism**

The primary distinction between green colonialism and internal colonialism lies in their respective spatial configurations. Internal colonialism is characteristically confined within the territorial boundaries of a single state, typically manifesting through the domination and marginalization of peripheral or minority populations by the dominant socio-political centre. Green colonialism, by contrast, transcends these internal boundaries and operates on both global and local scales. At the international level, it is often observed when countries of the Global North enhance their ecological standards and quality of life by appropriating natural resources, labor, and ecological space from the Global South under the guise of environmental sustainability or climate mitigation (Earth.org, 2021), effectively reproducing the very same structures of colonialism, even if the intentions are supposedly (and perhaps arguably) good. Moreover, green colonialism is not limited to inter-state relations. It can manifest internally within nations as well.

This occurs when state-led environmental initiatives, such as renewable energy products or conservation programs, result in the dispossession or displacement of indigenous peoples from their ancestral lands. In such cases, despite ostensibly progressive environmental goals, these interventions reproduce colonial structures of domination, erasure, and control. In the Philippines, when communities do, for one reason or another, oppose these projects, they are criminalised, delegitimised, or labeled as insurgents (colloquially termed as “red-tagged”), instead of recognised as legitimate stakeholders. In that sense, green colonialism reveals itself not only in transnational extractive reactions but also in the internal dynamics of control, often justified by the rhetoric of development and sustainability.

In conservation, for instance, REDD (Reducing emissions from deforestation and forest degradation in developing countries) and its subsequent framework, REDD+, which are UN mechanisms (UNFCCC, n.d.-b) have been met with caution with local communities because of its potential to enable land-grabbing by outsiders and the worries that it might lead to the loss of local user rights to forests and forestland (Larson et al., 2013). While its main goal to halt deforestation is laudable, it also has been reported to lead to further marginalisation of local farming communities, and more recent decisions on REDD+ might lead to “more stringent monitoring and use restrictions imposed on peasant farming communities” (World Rainforest Movement, 2019, par. 10). Another concern with the REDD+ initiative is that it is myopic in the sense that it blames “deforestation on peasant farming and” restricts “shifting cultivation and other traditional forest use practises – while large-scale destruction driven by corporations continues unabated” (World Rainforest Movement, 2019, par. 11).

Nature-based solutions, as well, are met with growing skepticism, as its focus on technical expertise might leave indigenous knowledge once again out of the picture and its reliance on measurable outputs can repackage complex ecological relationships into marketable carbon units. As Lohmann (2001) argues, carbon markets and similar mechanisms represent “techno-fixes”, which are technocratic, market-driven approaches that attempt to solve systemic ecological problems through commodification rather than transformation. Such solutions, though framed as neutral and scientific, are deeply political: they reproduce colonial hierarchies by valuing nature only insofar as it can be traded, quantified, and offset, and by disembedding ecosystems from the relational worldviews that underpin indigenous stewardship.

I do not mean to say that these two examples (as well as other similar initiatives like carbon offsets (Arnold, 2013) immediately fall under green colonialism. Rather, they are predisposed to it, as they operate within the same logics of extraction and commodification that sustained colonial economies. When these initiatives neither take into account the priorities of indigenous peoples nor give them leadership and decision-making powers (Abbott, 2022), particularly over their own ancestral lands, they risk replicating the very structures of domination they claim to transcend.

Renewable energy, on the other hand, can also potentially pose a big problem, which could also replicate the oppressive legacies of colonialism, even as it is framed as a necessary and progressive response to the global transition away from fossil fuels. For instance, solar and wind farms require large tracts of land, and therefore many of these projects would have to be built over ancestral lands and domains, which are frequent targets for their implementation (Fairhead et al., 2012). This spatial demand means that indigenous peoples and local communities will have to contend not just with this intrusion into their land, but it is also often the case that these communities do not benefit from the energy generated by these renewable energy projects, even though it is on their patrimony that these operations are built. These further entrench patterns of dispossession and marginalisation. Beyond issues of distributive justice and energy access, other issues such as waste, storage, and ownership also come up, complementing usual concerns on the (non-) obtaining of indigenous peoples' Free, Prior, and Informed Consent (FPIC) as well as concerns on languaging, with technical jargon obfuscating clarity, thereby undermining meaningful participation and informed decision-making.

Green colonialism can therefore perpetuate existing inequalities and injustices by prioritizing "development" goals (of conservation or energy transition) over the rights, needs, and livelihoods of indigenous peoples and local communities. In this context, the green transition risks becoming another vector for accumulation by dispossession (Harvey, 2004), unless equity, transparency, and indigenous rights are placed at the centre of environmental policy and practice.

## Internal colonialism

Internal colonialism, on the other hand, refers to centre-periphery dynamics that occur within the territorial boundaries of a state and is best understood as an ongoing and dynamic process that is “continually made possible by xxx historical processes of coloniality” (Turner, 2018, p. 779). The concept, first articulated by Casanova (1965), was used to describe how postcolonial or formally independent states often reproduce colonial hierarchies within their own borders, where dominant groups, classes, ethnicities, and regions exploit populations and territories in the periphery. The oppression continues, though it does not arise directly from foreign control. Michael Hechter’s (1975) formulation further developed this framework, focusing on how “core” regions consolidate economic and political dominance over “peripheral” regions through uneven development.

In the context of the Philippines more specifically, this is the interaction between the conquering metropolitan elite and the native communities, and that the “former is promulgated by the colonial authorities as being vastly superior for the realization of universal ends.” Together, these theorists highlight that internal colonialism is not a relic of the colonial past but a structure that persists within modern nation-states.

Broadly, internal colonialism occurs when dominant regions or populations within a state exploit the resources, labour, or land of peripheral regions, causing persistent socio-economic and political imbalances as well as exacerbated inequalities. Postcolonial states often become agents of internal coloniality by adopting governance and development models inherited from colonial administrations – centralised, extractive, and borne of capitalist and market logics. This reproduces colonial patterns of dispossession under the guise of modernisation or national progress. Here, indigenous peoples and local communities are again the most affected, as they typically reside in areas abundant in natural resources yet lack sufficient political power or economic leverage to resist encroachment and intrusion.

A salient example of this, from the Philippines, is the Kaliwa Dam, a megadam project that will straddle the provinces of Rizal and Quezon (MWSS, n.d.), which is currently under construction, and is heavily opposed by civil society, led by the Dumagat-Remontado indigenous peoples. Aside from the traditionally colonialist (i.e. indigenous people are further relegated to the margins whose sovereignty is regarded as subordinate to central policies and priorities) and green colonialist (i.e. the usage of hydropower, a renewable energy source, is important in order to address the pressing challenges of the climate crisis) narratives underpinning the project, the water source is also constructed to meet the increasing demand of the people in Metro Manila, and some areas of Rizal and Quezon. This creates a situation where the lives and livelihoods of indigenous peoples and local communities are made vulnerable in order to supplement the needs of those living in urban centres and reinforces the pattern of indigenous communities bearing the burdens of sustaining urban consumption.

This is the same with wind turbines, which often require extensive buffer zones for safe operation (it is to be noted that increasingly these regulations on buffer zones are being contested (Murray, 2013)). Indigenous peoples and local communities are again pushed further into the periphery, often uprooted from their sources of subsistence, for renewable energy that will be generated, but will not be generated for their benefit.

In both cases, the logic of internal colonialism persists beneath the rhetoric of sustainability, positioning peripheral communities as expendable in the pursuit of national and urban development.

Broader Philippine regulations reflect this as well. The current (and at this time, only) Nationally Determined Contribution (NDC) of the Philippines, which aim is to reflect climate ambitions of countries as instructed by the Paris Agreement, is a 5-page document that features high-level pledges, with very little attention and reference made to historically marginalised communities such as farmers, fisherfolk, and indigenous peoples. This underscores how internal coloniality extends beyond discrete development projects to the very frameworks of climate governance, where centralised decision-making and technocratic planning often sideline those most affected by both climate impacts and state-led mitigation efforts.

It also speaks in the language of global compliance (such as mitigation targets) rather than in terms of local realities. The Philippine National Adaptation Plan (NAP) and the plans of the Department of Energy (DoE) similarly reflect the state's tendency to prioritise urban centres, where data are most available and interventions are more administratively feasible, thereby reinforcing spatial and social hierarchies that mirror colonial logics of governance. These frameworks treat rural and indigenous voices as beneficiaries or vulnerabilities rather than agents of climate governance and show that postcolonial climate governance itself can become an agent of internal colonialism: they can reproduce colonial patterns of control, dispossession, and marginalisation under the language of sustainability and international cooperation.

## **Theorising colonial continuities**

The logics of colonialism, whether external or internal, do not exist in isolation. They form part of broader systems of accumulation, control, and resistance that shape environmental governance in the present.

Several related concepts can further illuminate the dynamics of climate colonialism (green, internal, or both), offering deeper analytical insight into contemporary environmental challenges and potential pathways for resistance. Among these are David Harvey's notion of accumulation by dispossession (2004), the critique of development aggression, and the increasing deployment of counterinsurgency tactics to suppress opposition to both green and internal colonialism. While a detailed examination of these concepts lies beyond the scope of this paper, their relevance should nonetheless be acknowledged. Each provides a critical lens through which to understand how colonial structures persist and adapt within the context of climate change mitigation and environmental governance.

These frameworks also underscore the importance of situating environmental justice within broader historical and political struggles. In particular, they suggest that the strategies and modes of resistance that have historically been employed to dismantle colonial regimes remain vital in confronting the neocolonial logics embedded in contemporary climate policy and green development.

As such, any meaningful response to climate change must engage not only with environmental imperatives but also with the enduring legacies of colonial power and dispossession.

These enduring colonial logics are not only systems of domination but also sites of struggle and transformation. Throughout history, communities have resisted, reimagined, and rebuilt in the face of extractive and oppressive structures. Understanding these acts of resistance is fundamental to grasping the full contours of climate colonialism and its possible undoing.

## **Stories of Resistance**

In contemporary climate justice scholarship and activism, attention is increasingly turning not only to the immense challenges posed by the climate crisis but also to the narratives of resistance and collective hope that emerge from the margins. These stories remind us that while structures of coloniality persist, so too do the capacities to confront and transform it.

As climate impacts intensify globally, three core concepts have increasingly taken centre stage in international climate discourse: Loss and Damage, the Just Energy Transition, and the evolving and politically potent idea of reparations. While each of these frameworks addresses different facets of the climate crisis, they are unified by a broader commitment to justice, historical accountability, and systemic transformation.

While it is yet without a working definition in the United Nations Framework Convention on Climate Change (UNFCCC) discussions, loss and damage (L&D) is the term used to refer to those climate-related losses and damages that communities and countries can no longer adapt to as a result of several factors, including financial difficulties.

Originally proposed by the Association of Small Island States in the 1990s as a protection mechanism because of fears surrounding sea level rise, the term has now been put on the agenda of the international climate negotiations, and as of the 29th Conference of Parties (COP) in Dubai, United Arab Emirates, the L&D Fund has been created. Now, the work is towards ensuring not only that the Fund is filled with money that is new, additional, predictable, and accessible, but most especially, that the money is directed from where it is sourced to where it is needed most.

While only gaining traction, Loss and Damage is important as it is also a climate finance mechanism rooted in justice, it is also (while not explicitly mentioned) a recognition of climate impacts as a function of climate colonialism. It acknowledges that developed countries, many of which were former colonisers, have benefited tremendously from resource extraction and exploitation of the labour and wealth of the Global South, and through this advantage, have also emitted the most greenhouse gas emissions, leading to the intense heating of our global temperature.

It thus calls on these Global North countries to contribute financially and technically to these developing countries, while simultaneously ensuring that they are mitigating their own greenhouse gas emissions. L&D, in this context, serves as a demand for historical redress and redistribution, and insists on financing that is new, additional, predictable, and adequate to meet community needs (UNFCCC, 2022); its advocates further call for the strong participation of persons of colour, indigenous peoples, youth, peasants, and fisherfolk, among others, in the creation of plans and policies on L&D moving forward to ensure the creation and reimagining of a climate just world.

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<sup>1</sup> Highly illuminating are the works of Alexander Dunlap and Andrea Brock, especially by the German government on environmental activists opposing the RWE corporation in Hambach Forest

Just Energy Transition (JET), as well, has been increasingly important in the climate justice discourse. In the main, it calls for energy justice and the transition from a fossil fuel-reliant economy to one that is renewable, and in a manner that is fair, fast, and feminist. It recognises the difficulty (logistically as well as financially, among others) of transitioning to renewable energy and advocates the inclusion and leadership of indigenous peoples and local communities to challenge existing power dynamics that, if left unaddressed, could reproduce the very injustices that the transition seeks to address. Proposals are therefore put in place to make this transition more accessible, including holding countries and corporations accountable for shifting away from fossil fuels, retraining employees so that they are able to find work in a decarbonised economy, and creating policies to ensure that the reconceptualising of a sustainable future means that no one is left behind.

More importantly, it also raises crucial questions about sourcing and propelling the move away from the fossil fuel economy. One of the central critiques from JET is the threat of green colonialism: as Global North countries accelerate their renewable energy agendas, there is an escalating demand for critical minerals such as lithium, cobalt, and rare earth minerals, which are often located in indigenous and ancestral land.

The transition must not be limited to political or environmental but must also be systemic. Otherwise, it will perpetuate colonial patterns of exploitation, more insidious in this case: this time not for fossil fuel production, but for the materials that power such transition. Without a fundamental rethinking of the governance and ethics surrounding critical mineral extraction, the just transition could easily devolve into a new iteration of environmental justice. A transition, to be sure, but one that is certainly not just.

The future, therefore, of climate justice and energy justice hinges not only on the shift away from fossil fuel use but on who controls the new energy economy, whether its access is democratic, whether the same voices are silenced, and whether it serves the same patriarchal interests.

A third, and potentially groundbreaking framework when it comes to climate justice is the concept of reparations. While initially a concept used most commonly for slavery, reparations in the climate context refer to the material, financial, and symbolic forms of redress that historically high-emitting, industrialised nations owe to countries and communities that have contributed the least to climate change but are experiencing its most severe impacts. Reparations demand not only a redistribution of resources but an active acknowledgment of the long-standing exploitation and extractive systems that have enabled some countries to accumulate wealth and power at the expense of others. Reparations, which were given significant weight and moral authority by the Advisory Opinions of the Inter-American Court of Human Rights (2025) and the International Court of Justice (2025), were seen as a legal obligation that states had to fulfil. These shifted the idea of reparations from demands that have no place in governance discourse to one that is consistent with evolving standards of international law and human rights.

How these Opinions will be enforced, however, remains to be seen. Yet, even in their uncertainty, they open discursive and political space for formerly colonised nations such as the Philippines to articulate stronger claims for climate justice and historical accountability. From a textual reading of the country's existing policy frameworks, there is limited explicit engagement with the language of reparations or historical responsibility; instead, they tend to frame climate action primarily in technocratic and developmental terms, rather than as part of a broader colonial project.

Nonetheless, the recognition by the ICJ and the IACtHR that climate harm can constitute a violation of human rights and is a matter of historical responsibility could empower domestic advocates and policymakers to reframe national climate policies through a postcolonial lens moving forward. This could include stronger assertions of Global South solidarity, demands for climate finance as a matter of justice rather than aid, and the integration of indigenous and local knowledges into governance processes.

While the Philippines legislative policies and implementation record reflect enduring tendencies toward centralisation and developmentalism, these evolving legal norms present potential opportunities for decolonial policy imaginaries: ones that locate the climate crisis within longer trajectories of dispossession and seek to address them through justice-based approaches.

All these concepts fundamentally shift the responsibility of addressing climate change from individuals to corporations and States, fully cognisant of the fact that, as in moving away from the harsh realities of colonialism, only a systemic, institutional change across all sectors, and that includes everyone, can address the difficulties and challenges posed by the climate crisis.

## Conclusion

The climate crisis is largely a colonial legacy: it is a result of decisions made by a powerful few that have significantly affected the planet and its people, it is reinforced by injustice, and it is oppressive and often violent, in both explicit and implicit ways. Colonialism, with its focus on resource extraction, land exploitation, and unequal power dynamics, has contributed significantly to environmental degradation and climate change. The exploitation of natural resources, the displacement of indigenous peoples, and the imposition of unsustainable economic systems during the colonial era have laid the groundwork for the environmental challenges we face today. Therefore, understanding the climate crisis as a colonial legacy underscores the need to address historical injustices and power imbalances to effectively tackle the climate crisis and promote climate justice.

As we confront the urgent reality of the climate crisis, we must recognize that true climate justice demands reckoning with the colonial legacies that have brought us to this precipice. It requires dismantling systems of exploitation; centering, where possible, and amplifying, where needed, the voices of marginalised communities; and fostering a paradigm shift towards a more equitable and just future. Only by addressing the root causes of environmental injustice can we hope to achieve a world where the rights of both people and planet are honoured and upheld.

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# EXPLORING THE LEGAL LANDSCAPES PROTECTING THE INDIGENOUS KNOWLEDGE AND GENETIC RESOURCES IN THE PHILIPPINES

Daysheleen Anne Brillo

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## Introduction

Antibiotic resistance is one of the looming threats to modern society (WHO, 2021). In 2019, biological scientists from Baguio gave a glimmer of hope by announcing that four folkloric plants found in the Cordillera were effective against a type of antibiotic-resistant bacteria. The local communities in the area assisted the researchers by sharing their knowledge about the plants that they commonly used to treat illnesses. Out of thirteen plants that were selected, four of these were found to inhibit the said pathogen. The researchers described the unexplored potential for pharmaceuticals and commercial use of Cordillera's biodiversity and advocated for further studies to confirm and document folkloric medicinal knowledge (Elmido, et al., 2019, p. 45).

This biological finding is a milestone, not only for the scientific community but also for society at large. It revealed the teeming richness of Cordillera's biodiversity and the vast expanse of indigenous knowledge about medicinal plants that were passed on from one generation to another. Perhaps to solve the emerging problem of antibiotic resistance, one of the solutions is to look into nature's richness and tap the ancestral knowledge on how to use them.

The study published by the researchers from Baguio formalized and validated the ancestral knowledge of the indigenous communities in Cordillera. By utilizing the formal methods of modern science, they were able to confirm and provide a scientific basis for the medicinal uses of folkloric plants. This process of scientific validation distills indigenous knowledge and contributes to the shared knowledge of humanity.

However, several questions arise regarding the rights of these indigenous communities to this body of knowledge. Would they have intellectual property rights over this knowledge after it has been “validated” or “proven” by modern science; or would it form part of the public domain? Can indigenous communities demand a portion of the profits of a pharmaceutical company that benefited from the use of their medicinal plants? Would they even have the right to decline the research and sample collection conducted within their ancestral lands?

These questions are explored in this legal research. The paper surveys the legal framework protecting genetic resources indigenous knowledge in the domestic and international domains. It discusses the international instruments and Philippine laws protecting traditional medicinal knowledge and its associated genetic resources.

## **Traditional Knowledge (TK) and Genetic Resources (GR)**

The “**traditional knowledge**” (TK) possessed by indigenous communities is the result of their harmonious relationship with the environment and their experience in utilizing natural resources for various purposes, including healing practices. This body of knowledge was refined over time through observation, trial and error, and passed down through generations.

On the other hand, the collected folkloric plants refer to the “**genetic resources**” (GR) or “**biological resources**”. Genetic or biological resources include plant varieties, animal breeds, microorganisms, and other biotic components of an ecosystem.<sup>1</sup>

## Difficulty of Protecting TK and GRs: The “Kwasi Affair”

The legal protection of traditional knowledge and genetic resources often poses a challenge when placed within the context of the existing intellectual property legal framework. The established intellectual property regime is primarily built upon the principle of novelty and traceable ownership, which asserts that knowledge already existing in the public domain should not be protected and that benefits should be reaped by the identifiable knowledge owner.

In contrast, traditional knowledge finds its roots in the collective wisdom shared and passed down through generations. It embodies a communal heritage over knowledge rather than an individualized concept of ownership. Thus, the existing intellectual property framework may not adequately recognize the communal nature of traditional knowledge, making it challenging to protect or compensate communities for their contributions. This poses a risk of misappropriation, where traditional knowledge may be used for commercial purposes on the premise that it was public domain, without the informed consent or fair benefit-sharing with the communities who hold that knowledge.

To illustrate the complexities surrounding these ideological tensions, this section will discuss the “Kwasi affair” involving the *Quassia amara* plant. This controversy revolves around the patent applied by a French research institution for a malaria and cancer drug from *Quassia amara* after interviewing the local communities in its former colony (Bourdy, et al., 2017).

In 2003, researchers from the French National Research Institute for Sustainable Development, also known as the Institut de Recherche pour le Développement (IRD), undertook a series of interviews about the remedies for malaria in French Guiana. Notably, French Guiana is one of its former colonies and is now part of France’s overseas departments.

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<sup>1</sup> Article 2 of the CBD defines “Biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.” See also Genetic Resources. WIPO website. (n.d.). <https://www.wipo.int/tk/en/genetic/>

The IRD researchers interviewed 117 people that has orally consented to the interview and they posed questions on the traditional remedies used to cure malaria. The respondents were not targeted from a specific community, rather it was any person living in French Guiana who suffered from malaria. From the interviews, the IRD researchers figured that the locals commonly used a boiled concoction from the leaves of *Quassia amara* (*Q. amara*) to treat malaria and other illnesses. Thus, they narrowed it down on this plant and developed a process to extract and isolate *Simalikalactone E*, an active compound from the leaves of the plant, for which they applied for a patent in 2015.

In 2016, the *France Libertés* Foundation, a non-government organization filed a patent opposition to the patent filed by the IRD. Biopiracy accusations were also made during the debates for France's ratification of the Nagoya Protocol. The said protocol supplements the Convention on Biological Diversity and aimed to ensure that countries would provide legal and economic protection for traditional knowledge and genetic resources, as would be discussed in the next sections.

For context, the interview, research, and patent application related to *Q. amara* were all conducted prior to France's ratification of the Nagoya Protocol in August 2016. Thus, the researchers argued that there was a legal gap on how these interviews should have been conducted, how communities should have been acknowledged, and how the economic benefits should have been distributed.<sup>2</sup>

### **a. Lack of an Identifiable Owner of Traditional Knowledge: Who among the community owns the knowledge?**

In its official statement, the IRD provided context that the respondents were interviewed as patients, and not on behalf of any of their communities. The respondents also came from different populations including Brazilians, Creoles, Europeans, Galibis, Hmongs, Palikurs (Bourdy, et al., 2017, p. 291). The researchers initially considered if the Guianese partners should be considered for the patent application. However, they argued that the 117 respondents of the survey could not be considered as representatives of any ethnic group owning the traditional knowledge (2017, p. 292). They cited that the lack of a clear legal framework, and an institution or an administrative entity that could be declared as co-patent owners lead to their decision of filing it on behalf of the research institution alone.

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<sup>2</sup> Id.

With the ratification of the Nagoya Protocol in France, there has been clarity that the administrative authorities in French Guiana could be represent the local communities for potential sharing of economic benefits.

### **b. Who owns the knowledge after the scientific research: the researchers or the communities?**

The IRD, in response to the biopiracy claim, also defended its researchers by stating that they were responsible for isolating the molecule from *Q. amara* and conducting scientific research for six years to establish its anti-malarial properties. The IRD argued that this knowledge should not be attributed to the epidemiological survey conducted in French Guiana in 2003. The IRD also highlighted that patents require novelty and inventiveness.

However, despite their stance, the IRD expressed a willingness to share potential economic benefits with local communities in a “*strictly egalitarian basis*”. They were open to engaging in discussions with Guyanese communities regarding the distribution of these benefits.<sup>3</sup>

### **c. Difficulty in Delineating Public Domain and Traditional Knowledge: Is it knowledge of the community or public knowledge?**

A separate research conducted in 2021 argued that the *Quassia amara*'s historical usage is difficult to attribute to a particular indigenous community. Its usage has been prominent across different indigenous and non-indigenous groups. Tracing back the plant's usage and biogeography, the separate 2021 research concluded that *Q. amara* was spread during the early 18th century due to political and economic reasons (Odonne, et al., 2021).

Dubbed as the “kwasi affair”, the controversy sparked the discussions on how traditional knowledge and genetic resources should be compensated or protected to ensure equitable sharing of benefits between investors, researchers, and communities (2021, p. 2). The preceding sections would discuss the relevant domestic and international frameworks in context to the *Q. amara*'s case and as applied in the Philippine context.

# Rationale of Compensating Indigenous Communities

## a. The role of indigenous communities in responding to the climate crisis

While indigenous groups constitute 5% of the world's population, they serve as guardians of 80% of the Earth's biological diversity. These communities hold tremendous knowledge of harmonious coexistence and conservation of their ancestral lands (UNEP, 2017).

In the Philippines, ancestral domains overlap with 75% of the remaining forest cover, which amounts to approximately 5.42 million hectares out of a total of 7.23 million hectares of forests. As estimated in the 2023 State of Indigenous Peoples Address, these forests generate an annual value of PhP 20 trillion which encompasses various factors such as the social cost of carbon, oxygen provision, pollution control, health costs, ecotourism, water provision, soil conservation, and agroforestry provision (LRC, 2023).

Through their intimate relationship with their surroundings, they were able to pass down wisdom on how to utilize biological resources and protect them as well. During the Senate hearings for the drafting of the Indigenous Peoples Rights Act, Datu Migketaf Victorino Saway of the Lumad community eloquently shared the profound connection that indigenous peoples share with their ancestral lands: <sup>4</sup>

*For the indigenous peoples, the land covers a significant [role] spiritually, socially, politically[,] and economically. Spiritually [,] because the land is our church. ... Socially because the land is our school, [it] is our university of knowledge. It is where we get our education as indigenous peoples. Third, it is our area of governance because [it is] where we can implement our customary laws; ... **It is significant socially also because it is our health center; it is our pharmacy; it is our hospital,** and economically because it is our market, it is where we gather food. This is where we gather our viand, it is where we catch fish, it is where we catch deers and all that we can eat for survival.*

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<sup>3</sup> *Le point sur la procédure d'opposition au brevet portant sur la molécule Simalikalactone E.* [Update on the patent opposition procedure relating to the Simalikalactone E molecule] (2018, February 20). Retrieved March 31, 2024, from <https://www.ird.fr/le-point-sur-la-procedure-dopposition-au-brevet-portant-sur-la-molecule-simalikalactone-e>.

<sup>4</sup> Deliberations of the Indigenous Peoples Rights Act. Senate Committee on Cultural Communities, April 18, 1996, pp. 65-68.

*For the indigenous peoples, the land covers a significant [role] spiritually, socially, politically[,] and economically. Spiritually [,] because the land is our church. ... Socially because the land is our school, [it] is our university of knowledge. It is where we get our education as indigenous peoples. Third, it is our area of governance because [it is] where we can implement our customary laws; ... **It is significant socially also because it is our health center; it is our pharmacy; it is our hospital,** and economically because it is our market, it is where we gather food. This is where we gather our viand, it is where we catch fish, it is where we catch deers and all that we can eat for survival.*

*And it is also basically political because it is our shelter area, our defense area. It is where we run when there is war, it is where we hide our soldiers when there are enemies. It is the shelter, it is the place that was able to preserve us, because without those ancestral lands maybe we are now like the people in the cities who does not know their cultural histories, who does not know their cultural identities. Maybe we are totally colonized if not because of these cultural domains. ...*

*... Our culture covers the religious aspect and ... it is the brain of the personality of our culture. The oral literature of the history dedication is our mouth, our ears, our eyes, our nose - the custom law is our heart, because we implement our laws on the basis ... on human relations, that's why that is the heart of our – the personality of our culture.*

***The health practices [are] the total body** ... And our traditional economy is the stomach, is the intestine of our identity. Our defense systems, our baganis, our alimaongs are the hands and feet of our culture.*

*Now, relating this to the ancestral domain, this is very much related. If we will be deprived of this ancestral domain, spiritually, you are taking our minds from us ... then we will be people without brains. If ancestral lands will be deprived then our mouths will be closed, our ears will be closed and [we'll] become damn, deaf and useless member[s] of this community....*

Indigenous communities universally share a spiritual connection with their environment. They view the forests, rivers, mountains, and other natural elements as not merely resources to be exploited but living entities that are interconnected with their own existence. Their displacement from their lands would also mean severing these spiritual ties to their land and culture (Frost, 2024).

In the Glasgow Climate Pact, also known as COP 26, the international community acknowledged the role of indigenous peoples in addressing the climate crisis. However, on the ground, indigenous peoples often fall victim to human rights violations, as approximately 70,000 hectares of ancestral lands are embroiled in environmental conflicts directly caused by the mining industry.

Indigenous peoples have become guardians of pristine, old-growth forests untouched by large-scale or extractive land use. Consequently, compensating indigenous peoples for the use of their traditional knowledge and genetic resources presents an economic alternative for managing the land use of their ancestral domains. Notably, the Convention on Biological Diversity has incorporated the assignation of market values to biodiversity and forests (Bourdy, et al., 2017, p. 293). While this approach reflects a capitalist way to integrate indigenous values into our capitalist principles, it allows them to explore economic alternatives in utilizing their natural resources.

However, their ability to protect the planet is contingent upon their ability to remain on their ancestral lands. One way to prevent their potential displacement is by establishing a tangible valuation of the biodiversity present in their forest lands. By assigning an economic tangible value to their forests, it becomes more difficult for private interests to disregard or undermine the significance of these lands. This must however appreciate the consequence of deforestation extend beyond environmental degradation to include significant public health risk, accelerated climate change, and the disruption of watersheds, which leads to biodiversity loss and polluted inland and coaster waters. Ultimately, the challenge is how to value invaluable resources without reducing it to financializing of nature.

## **b. Fair and equitable sharing of their knowledge accumulated for centuries**

Similar to the “Kwasi affair”, the Baguio researchers acknowledged that the local communities in Cordillera “*unselfishly shared their knowledge*” about the medicinal plants found in their ancestral lands. Through interviews with these communities, the researchers were able to gain insights into the traditional knowledge and practices surrounding medicinal plants in the area. This information helped the researchers in narrowing down their selection to thirteen specific folkloric plants. By testing these selected plants in the laboratory, the researchers discovered that four of them were effective against a type of antibiotic-resistant bacteria. Without the contribution of the local communities and their traditional knowledge, the researchers would have faced significant challenges in identifying the initial selection of plants to test.

While traditional knowledge conflicts with the western concept of individual ownership, it also merits recognition and legal protection. Indigenous communities should be accorded with the right to control and benefit from the use of this knowledge. The economic benefits accord acknowledgement to the intellectual contribution of indigenous communities.

## **International Instruments Protecting Genetic Resources and Associated Traditional Knowledge**

International conventions are important in protecting the TK and GR of indigenous communities, as its extraction and utilization often occurs across borders. Within this context, the *Convention on Biological Diversity (CBD)* and the *Nagoya Protocol*, constitute a comprehensive and legally binding framework for the protection of indigenous communities’ traditional knowledge and genetic resources.

In 2002, the Bonn Guidelines was adopted to assist countries in the implementation of the CBD’s objective on fair and equitable sharing of benefits arising from the use of genetic resources. These principles of prior consent and control over traditional knowledge were also echoed in the non-binding UN Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007 by the UN General Assembly. These international instruments are discussed in this part:

## a. Convention on Biological Diversity

The Convention on Biological Diversity is an international treaty aimed to address the worldwide issue of rapid biodiversity loss. The CBD became effective in 1993 and has been ratified by most nations including the Philippines.<sup>5</sup> The main objectives of the CBD are centered in promoting the conservation and sustainable use of biodiversity, and the equitable sharing of benefits arising from genetic resources,<sup>6</sup> as recognized in the CBD's preamble:

*“Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.”*

Article 8 (j) of the CBD recognizes the associated traditional knowledge of indigenous communities. This provision encourages the equitable sharing of benefits arising from the utilization of their knowledge, as a recognition of their efforts for conservation. It also emphasizes the importance of acquiring the **approval and consent** of the holders of the traditional knowledge and encouraging the equitable sharing of benefits towards those communities, to quote:

*Further, Article 10 (c) of the CBD guides that countries should safeguard the usage of biological resources aligned with their traditional and sustainable use, viz:*

*“Each contracting party shall, as far as possible and as appropriate: ...  
(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.”*

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<sup>5</sup> List of parties. Convention on Biological Diversity. <https://www.cbd.int/information/parties.shtml>.

<sup>6</sup> Article 1 of the CBD.

Meanwhile, Article 15 of the CBD on Access to Genetic Resources requires that genetic resources must be extracted only with the prior informed consent (PIC) and on mutually agreed terms (MAT) of the country providing them subject to the countries' domestic laws, to wit:

*Article 15. Access to Genetic Resources*

*1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is **subject to national legislation**. ...*

*4. Access, where granted, shall be on **mutually agreed terms** and subject to the provisions of this Article. ...*

*5. Access to genetic resources shall be subject to **prior informed consent** of the Contracting Party providing such resources, unless otherwise determined by that Party.*

As previously mentioned, the CBD requires that the Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) **originate from the country itself, rather than from the local communities**. However, this approach can present challenges as the consent of the State may not fully represent the consent of the local communities, which may lead to the communities' disenfranchisement. This issue becomes evident in cases such as the Q. amara plant, where the French public research institution argued that the focal authority responsible for granting consent for the utilization of natural resources falls under the purview of the Ministry of Ecological Transition in France.<sup>7</sup>

This situation highlights the potential discord between the decision-making processes of the state and the interests and perspectives of local communities. When centralized authorities hold the power to express consent on behalf of communities, there is a risk of disconnect and possible marginalization of the communities themselves.

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<sup>7</sup> Le point sur la procédure d'opposition au brevet portant sur la molécule Simalikalactone E. [Update on the patent opposition procedure relating to the Simalikalactone E molecule] (2018, February 20). Retrieved March 31, 2024, from <https://www.ird.fr/le-point-sur-la-procedure-dopposition-au-brevet-portant-sur-la-molecule-simalikalactone-e>.

Nonetheless, while Article 15 of the CBD does not pertain to the consent of the indigenous community *per se*, the national laws of a country may further require the PIC of the involved indigenous community as part of its consent as stated in Article 15 par (1) and encouraged in Article 8 (j) of the CBD.

Through these provisions, the CBD provide a legal framework for countries to align their local laws with the global objectives of biodiversity protection and equitable benefit-sharing with indigenous communities. The CBD also provides international oversight on the implementation of countries of domestic laws to achieve its objectives.

### **b. The Nagoya Protocol on Access and Benefit-Sharing**

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (*Nagoya Protocol*) is a supplemental agreement to the CBD adopted in 2010. The Nagoya Protocol provides safeguards for the benefit sharing in the utilization of genetic resources belonging to indigenous communities, alongside the preservation of their associated traditional knowledge.<sup>8</sup> Specifically, it seeks to further implement the provisions of benefit-sharing outlined in Article 8 (j) on Traditional Knowledge and Article 15 on Access to Genetic Resources of the CBD.<sup>9</sup>

According to the Protocol's definition, the term "utilization of genetic resources" includes various activities such as research and development involving these resources, including biotechnology or the technical application to manufacture products.<sup>10</sup>

Article 5 of the Nagoya Protocol establishes the responsibility of countries to enact policies that will guarantee that indigenous communities receive fair and equitable benefits derived from the utilization of GR and the corresponding TK. It also emphasizes that these benefits should be anchored on mutually agreed terms, as quoted below:

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<sup>8</sup> Article 3, "Scope". Nagoya Protocol.

<sup>9</sup> About the Nagoya Protocol. (2015, June 9). Convention on Biological Diversity. [https:// www.cbd.int/abs/about/](https://www.cbd.int/abs/about/)

<sup>10</sup> Article 2, "Use of Terms". Nagoya Protocol.

*Article 5. Fair and Equitable Benefit-Sharing*

*2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the **utilization of genetic resources** that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms ...*

*5. Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the **utilization of traditional knowledge associated with genetic resources** are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms. (emphasis supplied)*

Additionally, Article 6 and 7 of the Nagoya Protocol underscores the requirement of acquiring the **prior informed consent** and **mutually accepted terms** of these communities before accessing both the genetic resources and their traditional knowledge. This requirement aligns with Article 15 of the CBD, which calls for the PIC and MAT of the country where the genetic resource will be extracted.

Furthermore, Article 12 of the Nagoya Protocol promotes the development of standardized contractual clauses and minimum criteria for the mutually agreed terms (MAT). This provision aims to ensure that indigenous communities are not disadvantaged in these agreements, and their interests are protected.

These provisions of the Nagoya Protocol provide a mechanism for the meaningful involvement of indigenous communities in the decision-making process pertaining to the access and benefits distribution derived from the utilization of genetic resources. It also acknowledges the importance of traditional knowledge and customary laws held by these communities and emphasizes their involvement and rights throughout the process.

### c. Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization

In 2002, the Bonn Guidelines was adopted as a voluntary framework to assist countries in implementing the objective of the CBD to fair and equitable sharing of benefits. It outlines the basic elements of prior informed consent and mutually agreed terms, particularly in relation to the commercialization of their traditional knowledge and genetic resources.<sup>11</sup>

The Bonn Guidelines further guides that the prior informed consent under Article 15 of the CBD may also encompass the **consent of the local and indigenous communities** where the resources will originate, if specified in the domestic law:

*26. The basic principles of a prior informed consent system should include:*

*(a) Legal certainty and clarity;*

*(b) Access to genetic resources should be facilitated at minimum cost;*

*(c) Restrictions on access to genetic resources should be transparent, based on legal grounds, and not run counter to the objectives of the Convention;*

*(d) Consent of the relevant competent national authority(ies) in the provider country. **The consent of relevant stakeholders, such as indigenous and local communities, as appropriate to the circumstances and subject to domestic law, should also be obtained.** (emphasis supplied)*

The Bonn Guidelines also outlines the responsibilities of users who have extracted genetic resources from the ancestral lands of indigenous communities. In addition to obtaining prior informed consent, users are required to address any inquiries from the community even after the extraction process. If the users intend to utilize the extracted genetic resource for another purpose, they are also obligated to seek consent once again. These other responsibilities are stated below:

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<sup>11</sup> Factsheet on the Bonn Guidelines. Convention on Biological Diversity. <https://www.cbd.int/doc/publications/cbd-bonn-gdls-en.pdf>

16. ... (b) *In the implementation of mutually agreed terms, users should:*

*(i) Seek informed consent prior to access to genetic resources, in conformity with Article 15, paragraph 5, of the Convention;*

*(ii) Respect customs, traditions, values and customary practices of indigenous and local communities,*

*(iii) Respond to requests for information from indigenous and local communities;...*

*(v) Ensure that uses of genetic resources for purposes other than those for which they were acquired, only take place after new prior informed consent and mutually agreed terms are given;*

*(vi) Maintain all relevant data regarding the genetic resources, especially documentary evidence of the prior informed consent and information concerning the origin and the use of genetic resources and the benefits arising from such use; ...*

*(ix) **Ensure the fair and equitable sharing of benefits, including technology transfer to providing countries, pursuant to Article 16 of the Convention arising from the commercialization or other use of genetic resources, in conformity with the mutually agreed terms they established with the indigenous and local communities or stakeholders involved; (emphasis supplied)***

Conversely, countries where companies or users of genetic resources are situated are encouraged to request the disclosure of the origin of traditional knowledge and discourage its utilization without obtaining the PIC of the country of origin, to quote:

16. ... (ii) Measures to **encourage the disclosure** of the country of origin of the genetic resources and of the **origin of traditional knowledge**, innovations and practices of indigenous and local communities in applications for intellectual property rights;

(iii) Measures aimed at **preventing the use of genetic resources obtained without the prior informed consent** of the Contracting Party providing such resources;

(iv) Cooperation between Contracting Parties to address alleged infringements of access and benefit-sharing agreements; (emphasis supplied)

Through this framework, the Bonn Guidelines seeks to outline the proper elements and procedure in acquiring the PIC of the community and country where the GR will be sourced. It also aims to assist both providers and users of genetic resources in negotiating the mutually accepted terms for their extraction and utilization.

#### **d. United Nations Declaration on the Rights of Indigenous Peoples**

The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international instrument that embodies that the individual and collective rights of indigenous peoples. While it is not legally binding, the UNDRIP had gained extensive international acceptance and provides a comprehensive framework of the rights of indigenous peoples.<sup>12</sup>

Article 31 of the UNDRIP expands the coverage to the protection of human genetic resources, which was not referred to in the CBD. Nonetheless, the UNDRIP echoes the principle of protecting the biological resources of indigenous peoples and the associated knowledge on the use of the plants and animals in their ancestral lands:

*1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, **including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. ....***

Along with this, Article 32 (2) of the UNDRIP reinforces the obligation of the State to consult and cooperate in good faith to acquire the free, prior and informed consent of the communities prior to the utilization of their natural resources:

*States shall **consult** and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free and informed consent prior** to the approval of any project affecting their lands or territories and **other resources**, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*

The UNDRIP reinforces the fundamental principles that indigenous communities possess the right to preserve and govern their traditional knowledge and genetic resources. Access to these resources should only occur with their free, prior, and informed consent, and must be facilitated through negotiations conducted in good faith.

## **Domestic Laws Protecting Indigenous Genetic Resources and Traditional Knowledge**

As described above, the CBD and the Nagoya Protocol allow countries to establish domestic laws that would govern the expression of their consent for access to and utilization of genetic resources as outlined in Article 15 par (1) of the CBD.

In line with these international obligations, the Philippines has submitted its *Interim National Report on the implementation of the Nagoya Protocol* as of 09 May 2018.<sup>13</sup> The report highlights several national legislations including a) the Republic Act 8371 (Indigenous Peoples Rights Act (IPRA) and b) Republic Act 9147 (Wildlife Resources Conservation and Protection Act). Additionally, the report identifies administrative issuances issued by various government agencies such as the National Commission on Indigenous Peoples (NCIP), the Intellectual Property Office of the Philippines (IPOPHL), the Department of Agriculture (DA), among others.

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<sup>12</sup> United Nations Declaration on The Rights of Indigenous Peoples | Division for Inclusive Social Development (DISD). United Nations. <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

Aside from the laws and administrative issuances cited in the *Interim Report*, this Part discusses other national policies of the Philippines in protecting the TK and GR of indigenous communities.

### **a. Protection of indigenous knowledge in the 1987 Constitution**

The 1987 Constitution represents the collective values shared by the country. It is a written document providing the guiding principles and state policies where all laws of the country must conform. The Philippine Constitution promotes and recognizes the rights of “indigenous cultural communities within the framework of national unity and development.”<sup>14</sup> Aside from recognizing the cultural autonomy of indigenous peoples, the Constitution also endeavored the state to support scientific research including indigenous scientific capabilities and acknowledged its potential in contributing to national development.<sup>15</sup>

In broad strokes, the protection of traditional knowledge may be grounded in the Constitution as part of the protection accorded to indigenous communities and intellectual property rights. However, an enabling law is necessary to give structure and delineate the specific rights of indigenous communities in consonance to these constitutional guarantees.

### **b. Republic Act No. 8371 (Indigenous Peoples Rights Act (IPRA))**

The Indigenous Peoples Rights Act of 1997 (IPRA) is a landmark legislation embodying the individual and collective rights of the indigenous communities in the Philippines. It implements the constitutional guarantees of promoting the rights of indigenous peoples to their ancestral domain and ensuring their economic, social, and cultural welfare.<sup>16</sup> The IPRA upholds their rights to cultural integrity, land and natural resources in their ancestral domains, self-determination, and social justice and human rights.

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<sup>13</sup> Access and Benefit-Sharing Clearing House, (2018, May 09) <https://absch.cbd.int/en/database/record?documentID=240066>

<sup>14</sup> Section 22, Article II and Section 17, Article XIV of the 1987 Constitution.

<sup>15</sup> Section 10, Article XIV of the 1987 Constitution.

<sup>16</sup> Section 5, Article XII of the 1987 Constitution.

The IPRA also operationalizes the concept of the free and prior informed consent or the (FPIC). The law requires that before any research or project can be carried out within indigenous communities' ancestral domains, their consent must be obtained through the FPIC process. This ensures that the communities have the opportunity to make informed decisions without any external pressures, as defined in Section 3 (g) of the IPRA:

*g) Free and Prior Informed Consent — as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;*

As part of their rights for cultural integrity, the IPRA mandates that access to genetic resources and its associated traditional knowledge must be acquired only with the FPIC of the community. By requiring the FPIC, the IPRA reinforces the importance of the communities' consent and participation in decisions regarding the utilization and conservation of genetic resources and associated traditional knowledge, to wit:

***Section 35. Access to Biological and Genetic Resources.*** - *Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs **only with a free and prior informed consent** of such communities, obtained in accordance with customary laws of the concerned community. (emphasis supplied)*

Aligned to the principle of benefit-sharing in the CBD and the Nagoya Protocol, Section 7 of the IPRA further establishes that indigenous communities have the right to negotiate for the terms and profit allocation from the utilization of natural resources found in their 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: ...*

*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; ... (emphasis supplied)*

The IPRA also introduced a revolutionary concept in recognizing community intellectual property rights. Traditional knowledge diverges from the conventional understanding of intellectual property rights, as it is based on shared wisdom that has been passed down through generations. Traditional knowledge may not meet the conventional criteria of intellectual property rights, such as novelty or specific work attribution.<sup>17</sup> In contrast to conventional intellectual property applications that focus on individual or identified creators, traditional knowledge is often rooted in the shared knowledge of a community. By recognizing community intellectual property rights, Section 32 and 34 Of the IPRA acknowledges the communities' ownership of their shared knowledge and emphasizes their right to maintain and control this pool of knowledge:

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<sup>17</sup> Section 21 of the Intellectual Property Code (R.A. No. 8293, as amended) requires that all patent application must be "new". Also, Section 172 of the Intellectual Property Code requires originality for a work to be covered by copyright. The patent and copyright protection must also have an identifiable author or group of creators.

**Section 32. Community Intellectual Rights.** — ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs. (emphasis supplied)

**Section 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies.** - ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, **indigenous knowledge systems and practices, knowledge of the properties of fauna and flora**, oral traditions, literature, designs, and visual and performing arts. (emphasis supplied)

These policies for the intellectual property protection of indigenous communities under IPRA are commendable. However, it runs pale in comparison to the provided moral and economic rights of intellectual property holders as outlined in the Intellectual Property Code. For instance, a copyright owner has the economic rights to derive monetary compensation from the use of their work and the moral right to demand attribution to their authored works. They may also object to any distortion that would prejudice the reputation of their work.<sup>18</sup> In contrast, the community intellectual rights of indigenous groups are often viewed as part of the public domain which are not eligible for intellectual property protection, as they are not deemed “novel” or “original”.

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<sup>18</sup> Section 177 and 193 of the Intellectual Property Code (R.A. No. 8293, as amended)

<sup>19</sup> Section 4 (k) and 38 of the IPRA.

<sup>20</sup> Section 44 (c), IPRA.

Aside from these legal guarantees, the IPRA also established the National Commission on Indigenous Peoples (NCIP) which serves as the principal government agency that advances the rights of indigenous communities through programs, plans and policies.<sup>19</sup> The IPRA empowered the NCIP to formulate and implement policies that would further improve the economic, social, and cultural welfare of the indigenous communities.<sup>20</sup>

In line with this authority, the NCIP has issued various administrative issuances which further outlined the intellectual property rights over traditional knowledge, the process of acquiring the FPIC of indigenous communities which include:

*i. The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes (NCIP Administrative Order No. 3, s. 2012)*

The NCIP issued the FPIC Guidelines of 2012 which provides the framework for obtaining the free prior and informed consent of indigenous communities, as defined in Section 3 (g) of the IPRA. The FPIC Guidelines outlines the procedures for large-scale activities including bioprospecting. The guidelines require the conduct of a Pre-FPIC Conference, two community assemblies, and a consensus-building period to allow the members of the indigenous community to reach their decision.<sup>21</sup> “Bioprospecting and related activities” are specifically identified as an extractive, intrusive, or large activity.<sup>22</sup>

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<sup>18</sup> Section 177 and 193 of the Intellectual Property Code (R.A. No. 8293, as amended)

<sup>19</sup> Section 4 (k) and 38 of the IPRA.

<sup>20</sup> Section 44 (c), IPRA.

<sup>21</sup> Section 21 to 23, FPIC Guidelines of 2012.

<sup>22</sup> Section 19 (e), FPIC Guidelines of 2012.

In contrast, academic research that is not intended for commercialization are governed by the *NCIP Administrative Order No, s. 2012* discussed below.<sup>23</sup>

*ii. The Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation Guidelines (NCIP Administrative Order No. 1, s. 2012)*

The *IKSP and CL Research and Documentation Guidelines (Research Guidelines)* govern the conduct of research and documentation on the traditional knowledge systems of indigenous peoples. It underscores the right of IPs to grant or deny the conduct of research on their traditional knowledge and genetic resources. Moreover, this consent must be obtained from the community as a whole, rather than the consent of an individual community member.<sup>24</sup>

The *Research Guidelines* also highlight the rights of indigenous peoples to have exclusive authority to determine the extent that their knowledge would be published and shared with the public.<sup>25</sup> In order to publish their research, the researcher must first provide a translation of the significant findings to the indigenous community involved. In turn, the community has the right to review and provide comments or corrections regarding factual data as stated in Section 8.17 of the *Research Guidelines*.

The community also has joint ownership rights over the research and documentations conducted by outsiders or non-members. Section 18 of the *Guidelines* underscores that the community has a copyright over the researchers, whether published or communicated through any medium.<sup>26</sup>

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<sup>23</sup> Section 24, FPIC Guidelines of 2012.

<sup>24</sup> Section 3 and 4, The Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation Guidelines

<sup>25</sup> Section 4 (f), The Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation Guidelines

<sup>26</sup> Section 18. The Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation Guidelines

Notably, Section 9 of the *Research Guidelines* also enumerates the benefits entitled to the community. These include receiving a copy of the final research output, obtaining royalties from the income generated by its use as specified in the memorandum of agreement (MOA), collecting user fees from commercial users of indigenous knowledge systems and unprotected materials, and exploring other non-monetary benefits that benefit the entire community.

*iii. Rules and Regulations on Intellectual Property Rights Application and Registration Protecting the Indigenous Knowledge Systems and Practices of the Indigenous Peoples and Indigenous Cultural Communities (Joint IPOPHL-NCIP Administrative Order No. 01, 2016)*

In October 2016, the NCIP and the Intellectual Property Office of the Philippines (IPOPHL) entered into an inter-government agreement to prevent the use of TK in intellectual property rights (IPR) applications.<sup>27</sup>

The Joint IPOPHL-NCIP Administrative Order No. 01, 2016 established a disclosure requirement of any use of Indigenous Knowledge Systems and Practices (IKSP) for all intellectual property applications, such as patents, plant varieties, and utility models. For copyrights, where registration is not applicable, the use of IKSP must be disclosed in public communications.<sup>28</sup>

Additionally, the Intellectual Property Office may refer the IPR applications to the NCIP to verify if any IKSP has been used, or if the FPIC of the community has been obtained. The IPOPHL may revoke registrations or deny applications of any IPRs, if they have used any IKSP without proper disclosure or without the FPIC of the community.<sup>29</sup>

This disclosure requirement of GR and TK during the intellectual property application ensures transparency and accountability in the utilization of these resources and knowledge, aligning with the objective of promoting responsible and ethical practices in IPR applications.

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<sup>27</sup> Rule 3, Joint IPOPHL-NCIP Administrative Order No. 01, 2016.

<sup>28</sup> Rule 6, Joint IPOPHL-NCIP Administrative Order No. 01, 2016.

<sup>29</sup> Rule 6, Joint IPOPHL-NCIP Administrative Order No. 01, 2016.

### c. Republic Act No. 8423 (Traditional and Alternative Medicine Act of 1997)

The enactment of the Traditional and Alternative Medicine Act (TAMA) in 1997 was an important policy milestone in protecting indigenous medicinal knowledge. The law's primary objective was to develop and integrate the use of traditional medicine into the national healthcare system to enhance the health quality of Filipinos. Traditional medicine, as defined in TAMA, embraces the collective knowledge, skills, and practices related to healthcare that may not be validated by modern scientific methods but are recognized and utilized by communities for their well-being.<sup>30</sup>

Under TAMA's policy declaration, indigenous communities have the right to demand a share in profits and require acknowledgment as the source of knowledge when outsiders use it for commercial purposes. Additionally, TAMA recognized the need for indigenous communities to have a "legally workable basis" on the ownership of their traditional medicine knowledge, as quoted here:

***Section 2. Declaration of Policy...** It shall also be the policy of the State to seek a **legally workable** basis by which indigenous societies would own their knowledge of traditional medicine. When such knowledge is used by outsiders, the indigenous societies can require the permitted users to acknowledge its source and can demand a share of any financial return that may come from its authorized commercial use.*

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<sup>30</sup> Section 4 (b), TAMA.

Section 3 (e) of the TAMA also aimed to establish policies protecting indigenous genetic resources from “unwarranted exploitation” resulting from the commercialization of medicinal plants. Further, Section 4 of the TAMA also defined intellectual property rights of indigenous communities, which included traditional medicines and stated the entitlement of indigenous communities to compensation for the use of their cultural knowledge and products, including traditional medicines. However, despite including “intellectual property rights” in the definition of terms, TAMA lacks specific provisions detailing the enforceable intellectual property rights of indigenous communities in traditional medicine. Unlike the remedies and protections afforded to patent holders under the Intellectual Property Code, TAMA does not provide clear parameters or remedies for communities to enforce these rights. Nowhere else in the TAMA was the term “intellectual property rights” mentioned aside from the definition of terms.

TAMA also left an open-ended policy on the issue of ownership of indigenous communities over traditional medicinal knowledge. It simply calls for the State to seek a legally feasible basis for indigenous communities to own their medicinal knowledge. Despite the laudable objectives of the TAMA, the important aspect of establishing a “legally workable basis” for the ownership of indigenous communities was not accompanied by concrete provisions and the establishment of a dedicated government agency for implementation. While TAMA sought to promote and integrate traditional medicine into the national healthcare system, it fell short in providing clear guidelines and mechanisms for protecting the ownership rights of indigenous communities over their traditional medicinal knowledge. The absence of specific provisions addressing this important aspect left a gap in the TAMA.

The Philippine Institute of Traditional and Alternative Health Care (PITAHC) was established by TAMA as an agency attached to the Department of Health (DOH). Its mandate primarily focuses on the research of traditional medicine and its integration into the national healthcare system.<sup>31</sup> Notably, PITAHC does not possess the authority to promulgate policies or establish a legal framework for protecting the ownership of indigenous communities. Presently, there are no administrative guidelines providing a mechanism for indigenous communities to seek compensation for the unauthorized use of their medicinal knowledge under TAMA.

#### d. Republic Act 9147 (Wildlife Resources Conservation and Protection Act)

The Wildlife Resources Conservation and Protection Act of 2001 (Wildlife Act) was legislated pursuant to the international obligations of the Philippines to promote biological diversity, and protect the wildlife and their habitats.<sup>32</sup> The law defines “bioprospecting” as the act of collecting of genetic resources solely for its potential commercialization.<sup>33</sup> In accordance with the principles of IPRA, Section 14 emphasizes that before granting the required permit, the DENR or the DA must ensure that the applicant has obtained the prior informed consent from the indigenous communities where the genetic resource will be sourced:

*SECTION 14. Bioprospecting. ... The Secretary or the authorized representative, in consultation with the concerned agencies, before granting the necessary permit, shall require that **prior informed consent** be obtained by the applicant from the concerned **indigenous cultural communities**, local communities, management board under Republic Act No. 7586 or private individual or entity. The applicant shall disclose fully the intent and scope of the bioprospecting activity in a **language and process understandable to the community**. The prior informed consent from the indigenous peoples shall be obtained in accordance with existing laws. The action on the bioprospecting proposal by concerned bodies shall be made within a reasonable period. ...*

By including these provisions, the Wildlife Act ensures the significance of respecting the consent and knowledge of indigenous communities while regulating activities related to the utilization of genetic resources.

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<sup>31</sup> Sections 5 and 6, TAMA.

<sup>32</sup> Section 2, Wildlife Resources Conservation and Protection Act.

<sup>33</sup> Section 5 (a), Wildlife Resources Conservation and Protection Act.

*I. Guidelines for Bioprospecting Activities in the Philippines (Joint DENR, DA, PCSD and NCIP Administrative Order No. 01, Series of 2005)*

The Wildlife Act is jointly enforced by various government agencies including the Department of Environment and Natural Resources (DENR) and the Department of Agriculture (DA), and the Palawan Council for Sustainable Development (PCSD).<sup>34</sup> Pursuant to this law, these agencies and the NCIP, issued a *Bioprospecting Guidelines* that establishes the procedure for acquiring permits for bioprospecting.

The *Bioprospecting Guidelines* promotes the objectives of the CBD by ensuring that before accessing GRs for bioprospecting or commercial purposes, a resource user must obtain a Bioprospecting Undertaking which include the prior consent of the resource providers.<sup>35</sup> Further, the *Bioprospecting Guidelines* also ensures that there is an equitable sharing of benefits between these resource providers and the national government.<sup>36</sup> The resource user must negotiate among the local and indigenous communities on the payment of royalties, up-front fees, and other non-monetary benefits.<sup>37</sup> These non-monetary benefits may include technology transfer or the development of healthcare infrastructure for the communities.<sup>38</sup>

Section 10.2. of the *Bioprospecting Guidelines* also reiterates that access to GRs does not imply automatic grant on the associated traditional knowledge on these resources. Therefore, an application for a bioprospecting permit must explicitly state the intention to access TK, alongside the GR.<sup>39</sup>

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<sup>34</sup> Section 4, Wildlife Resources Conservation and Protection Act.

<sup>35</sup> Section 8, Guidelines for Bioprospecting Activities in the Philippines.

<sup>36</sup> Section 1, Guidelines for Bioprospecting Activities in the Philippines.

<sup>37</sup> Section 14.3. and Section 16, Guidelines for Bioprospecting Activities in the Philippines.

<sup>38</sup> Section 17, Guidelines for Bioprospecting Activities in the Philippines.

<sup>39</sup> Section 10. 2., the Bioprospecting Guidelines

### **e. Republic Act 10055 (Philippine Technology Transfer Act of 2009)**

Under the Philippine Technology Transfer Act of 2009, academic and research institutions that have received government funding are obligated to disclose any genetic or biodiversity resource, as well as traditional knowledge, that they have utilized in their application for intellectual property protection.<sup>40</sup> Notably, the scope of this law is currently limited to academic and research institutions with public funding. Expanding the disclosure requirement to all patent and utility model applications, particularly those submitted by commercial corporations, would be laudable to ensure broader compliance and responsible utilization of these resources and knowledge.

## **Strengthening the TK and GR Protection in the Philippines**

### **a. Enactment of a national legislation that will specifically protect indigenous knowledge and access to genetic resources**

Applying the guarantees in the IPRA, the Cordilleran communities that were interviewed have joint copyright on the published works finding medicinal benefits of their plants. Further, should these folkloric plants be commercialized in the future, they will be entitled to royalties and user fees for the use of these folkloric plants as mandated in the *Bioprospecting Guidelines* and Section 14 of the Wildlife Act.

The Intellectual Property Code includes various economic and moral rights, such as the right to claim profits from an infringer. It also offers remedies including injunctions and the right to demand for damages.<sup>41</sup> In contrast, the IPRA primarily provides the “right to restitution” for community intellectual rights.<sup>42</sup> While the right to restitution and the concept of full ownership could potentially encompass the right to recover profits and damages, it would be beneficial if the specific rights granted to traditional knowledge (TK) were more aligned with those granted to conventional intellectual property rights (IPR).

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<sup>40</sup> Section 8, Philippine Technology Transfer Act of 2009.

<sup>41</sup> Section 216 of the Intellectual Property Code (R.A. No. 8293, as amended).

<sup>42</sup> Section 32, IPRA.

For instance, the IP Code grants moral rights, including the right to attribution and the perpetual right to integrity.<sup>43</sup> On the other hand, IPRA states that indigenous peoples have control over their cultural and intellectual rights but does not provide them with the right to withhold or stop the publication of a work, as granted to authors under the IP Code.

### **b. Expansion of Disclosure Requirement of the use of TK and GR in other intellectual property application**

The Joint Administrative Order No. 01, 2016 between IPOPHL and NCIP is a commendable effort in establishing a disclosure requirement for the utilization of TK in intellectual property rights applications. It further provides that the IPOPHL may deny any application or cancel the registration for failure to follow this disclosure requirement.<sup>44</sup> Similarly, the Philippine Technology Transfer Act of 2009 requires the disclosure of the use of TK and GR for technology transfers of academic and research institutions that received government funding.<sup>45</sup>

The inclusion of disclosure requirements for genetic resources and traditional knowledge in the intellectual property application process guarantees transparency and accountability in utilizing these resources and knowledge. However, while the Joint Administrative Order (JAO) is laudable, it may be more effective to have an explicit national legislation that establishes violation or misappropriation of TK as a ground for denying an IPR application or cancelling a registered IPR.

### **c. First Access and Benefit Sharing in the Philippines: the Banaba Tree**

In October 2023, the first Access and Benefit Sharing signed was signed between the Ayta Community and the Herbanext Laboratories, Inc. The project will use the banaba tree which has historical and cultural significance for the Ayta community in Zambales. Notably, this agreement represents the first Access and Benefit Sharing initiative under the Nagoya Protocol in the Philippines.

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<sup>43</sup> Section 177 of the Intellectual Property Code (R.A. No. 8293, as amended).

<sup>44</sup> Rule 6, Joint IPOPHL-NCIP Administrative Order No. 01, 2016.

<sup>45</sup> Section 8, Philippine Technology Transfer Act of 2009.

This project received joint support from various government agencies, including the DENR and the NCIP. The NCIP was also vital in facilitating the process of obtaining the Ayta's free, prior, and informed consent. This lends to the assumption that the project was conducted in a culturally sensitive manner. The project has the potential to demonstrate the feasibility of establishing agreements between pharmaceutical companies and indigenous communities.

By honoring the traditional knowledge and genetic resources of indigenous peoples through a culturally respectful and consent-driven process, meaningful projects can be pursued for the benefit of all stakeholders involved (UNDP, 2023).<sup>46</sup> The long-term effects of the agreement on the community and the flora, however, warrant further study to ensure that the project delivers tangible benefits and establishes robust legal and cultural protections for the community.

As of 2025, the Ayta community has expressed general satisfaction with the agreement, though some issues remain unresolved. For example, questions arose regarding the ownership of drying facilities. While the company donated a dryer, no structure was provided to house it. The company has, however, indicated its willingness to train community members in operating the machine.

Despite these minor challenges, the establishment of a formal Access and Benefit Sharing agreement remains a step forward. The structured sharing of benefits ensures that the Ayta community gains recognition and tangible advantages from their traditional knowledge and resources. This approach is far more equitable than a scenario in which a corporation extracts value without giving back, and it demonstrates how respectful, consent based partnerships can create lasting benefits for both indigenous communities and industry stakeholders.

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<sup>45</sup> Maporac Ayta Community and Herbanext Laboratories, Inc. at the forefront of pioneering access and benefit sharing in the Philippines. United Nations Development Programme. (2023, October 3). <https://www.undp.org/philippines/press-releases/maporac-ayta-community-and-herbanext-laboratories-inc-forefront-pioneering-access-and-benefit-sharing-philippines>

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# ABANDONING THE NEOLIBERALIST CONSTITUTIONAL NARRATIVES TO ACHIEVE CLIMATE JUSTICE

Ryan Jay I. Roset

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*For every constitution there is an epic.*

- Rober Cover, 1983

This article is concerned with narratives that pervade the workings of the fundamental law and are accepted as self-evidently good. These narratives often are not apparent in the legal text. But it is in the unseen from which these narratives precisely derive their power, for they define and inform laws, and how they are interpreted, while eluding any legal challenge. Indeed, a legal text (as with most laws) may even be the most virtuous in its articulation, but the narratives informing its interpretation can lead to oppression. To a student of the law—not necessarily a law student—it thus is vital to unravel these narratives, for they serve as blind spots in legal interpretation and meaning-making.

In this process of unravelling, it is important to interrogate decisions of the Supreme Court—the great branch constitutionally ordained as the grand interpreter of the law. The jurisprudence examined, however, shall not be limited to the interpretation of the constitutional text, because narratives inhabit and inform the whole legal system. The process, too, is not a straightforward one inasmuch as the article is not concerned about judicial doctrines, but rather on the subtext that led to such judicial interpretation. It is important as well to interrogate history inasmuch as the law itself is a political, social, and historical document.

The focal point of the article is the social justice and development guarantees of the 1987 constitution. The article begins by expounding on narratives and their role in the interpretation and meaning-making of the constitution. The second part deals largely with how the narratives on social justice and development have evolved from the American occupation until the present constitution. In particular, this article argues that neoliberalism has transcended its political and economic moorings, and has come to define the narratives of the Court's decisions, based on an idealized imagination. In other words, neoliberalism has ceased to become an economic framework but an overarching political and legal rationality, which has charted the ways in which legal institutions such as the Supreme Court help construct and protect existing structural inequalities.

Finally, this article argues that, unless there exists a paradigmatic shift in what is accepted as a priori good, the guarantees of social justice and development so jealously protected under the 1987 constitution, shall remain an unfinished project. This issue becomes more acute in light of the of the fact that social justice is inherently an environmental and ecological issue.

### **A. The Power of Narratives in Constitutional Meaning-Making**

The constitution is the supreme law of a state; it establishes the formal rules that direct and constrain government powers, and demarcates the relationships between government institutions, and protection of individual rights (Boyd, 2011). It sets the fundamental principles that together describe the organizational framework of the state and the nature, the scope of, and the limitation on the exercise of state authority (Boyd, 2011).

In spite of defining the architecture of the legal universe (French, 2011), the language of the fundamental law is rarely certain; it does not prescribe in a detailed way how its provisions are to be interpreted and applied (French, 2011, p. 30). Rather, the constitutional text is often couched in broad and ambiguous language. This strategic ambiguity, which leaves room for implications, is due to compromises in the drafting process; constitutions are typically the handiwork of many individuals, and the language that manifests in the final document reflects the bargains made in the adoption of the constitutional text (Tan, 2022). These spaces for implications also become the situs of divining meaning, where the words and nuances become the space where meanings are contested, and history is made.

While the judiciary carries out its interpretive duties with interpretive tools, the process of constitutional interpretation remains multi-dimensional (French, 2011, p. 33). While judges start their interpretation from the constitutional text, they “must of necessity look outside the Constitution itself for guidance, as must all who are authorized by the Constitution to interpret it and duty-bound to adhere to its provisions” (Scalia, et al., 2018). This is considered as the meta-level meaning-making, and refers to the a priori position adopted by judges even before any specific constitutional provision, text, or phrase is engaged with or arises for interpretation (Tan, 2022, p. 1961).

This a priori position, however, does not exist in a vacuum; rather, they are inhabited by the narratives that locate it, give it power, and meaning (Cover, 1985). The embodied legal text therefore is inextricably linked to the narratives that create and re-create it. And while the articulate text may be ostensibly just, the narratives that give it meaning may not, which then leads to legal but not necessarily virtuous outcomes.

If only to further elaborate, it may be worth visiting the case of *People v. Cayat*,<sup>1</sup> which upheld the constitutionality of Act 1639, a penal law, which restricted the access of the so-called non-Christian tribes to intoxicating liquor, other than the so-called native wines. In spite of the constitutional guarantee of equal protection,<sup>2</sup> the Court upheld the validity of the assailed asymmetrical regulation because the natives of the Philippine Islands are of “low grade of civilization,”<sup>3</sup> usually living in tribal relationship apart from settled communities. The Court further said that Act 1639 was designed to ensure peace and order in and among the non-Christian tribes because “the free use of highly intoxicating liquors by the non-Christian tribes have often resulted in lawlessness and crimes, thereby hampering the efforts of the government to raise their standard of life and civilization.”<sup>4</sup> The Court in *Cayat*, speaking unanimously through the eminent Justice Moran, ludicrously opined:

As early as 1551, the Spanish Government had assumed an unvarying solicitous attitude toward these inhabitants, and in the different laws of the Indies, their concentration in so-called “reducciones” (communities) have 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 “the moral and material advantages” of community life and the “protection and vigilance afforded them by the same laws.”<sup>5</sup>

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<sup>1</sup> G.R. No. L-45987, May 5, 1939

<sup>2</sup> See 1935 Constitution, Article III, Section 1(1.)

<sup>3</sup> *Cayat*, supra 11.

<sup>4</sup> *Ibid*.

<sup>5</sup> See *Cayat*, citing Decree of the Governor-General of the Philippines, Jan. 14, 1887.

Of course, that was not the first time the Court grappled with the issue of the constitutionality of asymmetrical regulation on non-Christian tribes. Twenty (20) years prior, the Court in *Rubi v. Mindoro*<sup>6</sup> and speaking through Justice Malcolm, upheld the policy of forced relocation of Mangyans to reducciones under the pretext of the messianic civilizing mission of a non-Christian tribes so that *they may forget the blunders of their ancient rites and ceremonies*. Ironically, this forced assimilation was justified by “sacred duty conscience and humanity’ ‘to civilize these less fortunate people living in the ‘obscurity of ignorance’” inasmuch as a great malady requires an equally drastic remedy.

In both these cases, the Americans copied and adapted Spanish notion of the barbaric native, which was further buttressed by the jurisprudential development of *Buck v. Bell*,<sup>8</sup> wherein the United States Supreme Court conveniently upheld a eugenics policy on Indians because “[t]hree generations of imbeciles are enough.” In so doing, these narratives institutionalized inequality between colonizer and colonized, which was petrified into legal text through judicial meaning-making.

Viewed with the benefit of a modern lens, *Cayat and Rubi*, certainly have not aged well. Although they may, from a legal-reasoning perspective, be correct (*Cayat* remains good law, ubiquitously assigned as mandatory reading for constitutional law students insofar as it laid down the rules on equal protection law and substantial distinction), the narratives that informed the judicial rhapsodizing, which lie behind the legal text—but no less powerful—have long since been abandoned.

Notably, these narratives operate as blind spots insofar as judicial interpretation is concerned. They validated the colonial project of civilizing the barbarian ways of living in the image and likeness of the imperial west. While its application as enshrined in *Cayat and Rubi* were used in the context of the constitutional question, it is not limited to these cases, largely because the narratives that inhabit the laws and constitutional interpretation are all-pervading and likewise shape, wittingly or unwittingly, policy formulation, interpretation, and enforcement.

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<sup>6</sup> G.R. No. L-14078, March 7, 1919.

<sup>7</sup> Policy moving scattered indigenous Filipinos into centralized towns (pueblos or cabeceras) near churches to facilitate easier governance, taxation, and Christianization (evangelization) through a system called Doctrina. This system reorganized communities under church bells, introduced Spanish names, daily mass, and European customs, fundamentally changing social structures and establishing territorial control, though it also faced resistance and sometimes led to exploitation and stigma for those who resisted

<sup>8</sup> 274 U.S. 200 (1927)

Be that as it may, Cayat and Rubi illustrate the power of narratives and how they inform legal text. In large part too, Cayat and Rubi are emblematic of a traditionally colonial perception of development, wherein barbaric natives are, through coercive means, to be elevated to the image and likeness of the divine colonial empires.

## **B. Historical Development of the Constitutional Guarantee of Social Justice**

Having presented the power of narratives as contested spaces insofar as judicial interpretation is concerned, it may be well to interrogate the narratives which have shaped the Court's approach to interpreting social justice and development.

Social justice first entered the constitutional lexicon under the 1935 Constitution. Prior to the enactment of the 1935 Constitution, the legal system firmly believed in the sacredness of *laissez faire*, which frowns upon any form of economic interventionism on transactions between individuals, employer and the employee have equality of right, *and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land,*<sup>9</sup>

The 1935 Constitution abandoned this blind reliance on *laissez-faire* by recognizing that structural power asymmetries undermine any ostensible equality between contracting parties, which justified economic intervention. This notwithstanding, the early appreciation of social justice focused more capital and wealth distribution, and the protection from capitalist exploitation of labor. This was apparent in the Section 6 of Article XIII of the 1935 Constitution, which directs that the State "*shall afford protection to labour, especially to working women and minors, and shall regulate the relations between the landowner and tenant, and between labor and capital in industry and in agriculture.*"

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<sup>9</sup> People v. Pomar, G.R. No. 22008, November 3, 1924.

The rhetoric for capital distribution is most apparent in the case of *J.M. Tuason v. Land Tenure Administration*,<sup>10</sup> where the Court emphatically rejected the doctrine of *laissez faire*. The Court went further to mention that the 1935 Constitution embodies nationalistic and socialist traits; although this does not extend as far as the “destruction or annihilation” of the rights to property, it justifies the exercise of eminent domain and police power even if the exercise thereof would cover terrain previously thought of as beyond state control, to promote social justice and the general welfare.<sup>11</sup>

Notably, the Court in *J.M. Tuason*<sup>12</sup> was well aware that inequity and inequality are social issues affecting a myriad of matters, such as security, and that public tranquility can be achieved through the State’s distribution of property. The Court noted that:

“There has been an impairment of public tranquility, and to be sure a continuous impairment of it, because of the existence of these conflicts. In our folklore the oppression and exploitation of the tenants are vividly referred to; their sufferings at the hand of the landlords are emotionally pictured in our drama; and even in the native movies and talkies of today, this theme of economic slavery has been touched upon. In official documents these same conflicts are narrated and exhaustively explained as a threat to social order and stability.” x x x The national hero and his family were persecuted because of these same conflicts in Calamba, and Rizal himself met a martyr’s death because of his exposal of the cause of the tenant class, because he would not close his eyes to oppression and persecution with his own people as victims.” Delegate Cuaderno closed with this appeal: “If we are to be true to our trust, if it is our purpose in drafting our constitution to insure domestic tranquility and to provide for the well-being of our people, we cannot, we must not fail to prohibit the ownership of large estates, to make it the duty of the government to break up existing large estates, and to provide for their acquisition by purchase or through expropriation and sale to their occupants, as has been provided in the Constitutions of Mexico and Jugoslavia.”<sup>13</sup> “

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<sup>10</sup> G.R. No. L-21064, February 18, 1970,

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> G.R. No. L-21064, February 18, 1970,

Crucially, the words “environment” or “ecology” are not even to be found under the 1935 constitutional text, which is a reflection of that period’s general sentiment i.e., that the environment was to be used purely as a commodity for industry. It was precisely because of this perspective that the post war Philippines’ forest cover was reduced to 50% (Bankoff, 2007) alongside an increase in exports of mineral, forest, and other agricultural products (Sicat, 1967).

Property distribution as the means to achieve social justice was retained under the 1973 Constitution under its Article II, Section 6, “which states that the State shall promote social justice to ensure the dignity, welfare, and security of all the people; towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.” Alongside that social justice precept, the 1973 Constitution included provisions aimed at state-led economic development, industrialization, and nationalization of resources.

The 1973 Constitution’s development imaginary was a nationalistic approach to the economy, which strengthened the role of the State in distributing property and managing industrial growth, which unsurprisingly echoed the then dominant Keynesian developmentalist orthodoxy (Bello, 2009). This may be culled from the following provisions scattered throughout the 1973 Constitution: the creation of the National Economic and Development Authority (NEDA), headed by the Prime Minister, to formulate “continuing, coordinated, and fully integrated social and economic plans and programs;<sup>14</sup> State operation, and ownership of industries;<sup>15</sup> and nationalization and Filipinization of specific investment areas, particularly in natural resources and public utilities.<sup>16</sup> This directive led to the expanded role of government in the economy through the creation, and control of numerous Government-Owned or Controlled Corporations (GOCCs), and even the takeover of private enterprise.

Alongside this Filipinisation and industrialization strategy was the continued commodification of the environment, which reached its zenith with the reduction of Philippine forest cover to 23% by the late 1980s (Maohong, 2012)—undertaken through large scale clearing of public lands, and massive logging, which were facilitated through the infamous Timber License Agreements.

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<sup>14</sup> 1973 Constitution, Article XIV, Section 1.

<sup>15</sup> 1973 Constitution, Article XIV, Section 6

<sup>16</sup> 1973 Constitution, Article XIV, Section 9

Unfortunately, these goals, were not achieved during the Marcos regime, which notoriously suffered from pervasive and systemic crony capitalism. The regime also took over corporations, and monopolized and profited from key business sectors (IBON, 2016), under the pretext of a nationalization strategy. Far from achieving the equitable distribution of wealth through industrialization, the Marcos regime co-opted the constitutional mandate to justify seizure and appropriation of private enterprise for private benefits and the plundering of government coffers and other resources for their personal gain.<sup>17</sup>

### C. The Concept of Development Under the 1987 Constitution

The 1987 Constitution departed from the text of the 1973 Constitution by specifically recognizing the indispensable role of the private sector, encouraging private enterprise, and providing incentives for needed investments.<sup>18</sup> Moreover, the 1987 Constitution specifically articulated that *the goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.*<sup>19</sup> Admittedly these are the goals of every national economy, but the order is significant. On this note, Commissioner Villegas opined:

“The usual order, however, is reversed; economic growth is mentioned last, with equity being given prominence as the first objective of national economic development. The goal of reducing inequality is reiterated in an explicit statement of the emerging concept in social philosophy: the preferential option or love for the poor [later reworded to “underprivileged”]...”

In mentioning equity first, the 1987 Constitution sought to emphasize that social justice shall be the overarching priority in the development agenda. The equity goal was also articulated rather revolutionarily, as extending beyond the distribution of income and wealth, which meant abandoning the myopic understanding under the previous constitutions. So important is social justice under the 1987 Constitution that it mandates that social justice shall be incorporated in all phases of national development.

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<sup>17</sup> Ibid.

<sup>18</sup> 1987 Constitution, Article II, Section 20.

<sup>19</sup> 1987 Constitution, Article XII, Section 1.

The elevation of social justice is buttressed by the fact that under the 1987 Constitutional, Congress must give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.<sup>20</sup> Not only did social justice cease to be merely a property distribution issue under the 1987 Constitution; it was anointed as a compass by which the nation should obtain its economic and developmental bearings. As Fr. Bernas opined:

The route to achieving social justice is presented as consisting of two principal tracks: the first, x x x there must be regulation of the acquisition, ownership, use, and disposition of property and its increments, and second, x x x Congress should create economic opportunities based on freedom of initiative and self-reliance. The ideas of freedom of initiative and self-reliance x x x should not be allowed to impede the creation of a just social structure through regulation. (Bernas, 2003)

## D. Neoliberalist Imagination of the Constitution and the Downfall of Social Justice

### i. Neoliberalism as an Economic and Political Ideology in the Philippines

Neoliberalism is a perspective that champions the market as the prime regulator of economic activity, and which seeks to limit state intervention in economic life (Bello, 2009), thereby echoing the long-abandoned doctrine of *laissez faire*. Although the term neoliberalism is absent in the constitutional text, the political developments in the 1980s made it convenient for neoliberalist ideology to soil the social and legal imaginary, and thereby achieve the status of self-evidentiary acceptance.

This principally economic ideology first found its way in the Philippine policy environment in the early 1980s in the form of the World Bank's structural adjustment program. By the late 1980s, neoliberal economics commenced its rapid ideological ascendancy when several high-powered progressive intellectuals and technocrats, who had been greatly influenced by the Reagan and Thatcher free-market experiments, gained access to the policy landscape (Bello, 2009).

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<sup>20</sup> 1987 Constitution, Article XIII, Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments

These progressives, informed by the miseries of the martial law regime, pathologized nationalization as a vehicle for crony capitalism, and unsurprisingly the cause of the country's economic woes (Bello, 2009). In other words, Keynesian developmentalism, which promoted the role of the state, was unceremoniously dismissed due to its personification in the Marcos dictatorship and its embodiment of corruption. It was under this factual and political milieu that led to a general belief arose that there was no other credible alternative to neoliberalism (Bello, 2009). Neoliberalism therefore triumphed not by the merit of its principles but by default.

To be sure, neoliberalism as a concept is not synonymous with capitalism itself. Capitalism is the broad economic system of private ownership and markets, while neoliberalism is a specific political-economic ideology that seeks to maximize capitalism by promoting minimal government intervention, deregulation, privatization, and free trade to let free markets drive growth, often at the expense of social welfare, and contrasts with other forms of capitalism (like Keynesianism) that support more state management for stability. Neoliberalism sees the state's role as protecting private property and enforcing contracts, not managing the economy or providing extensive social safety nets, which other forms of capitalism might support.

## ii. Neoliberalism as a Legal Imaginary

By the 1990s, neoliberalism ceased to be purely an economic and political ideology and has come to influence the logics of other realms (Winslow, et al., 2018). How did an economic and political ideology insert itself seemingly seamlessly despite inherent social justice contradictions? It was largely through the incremental application of neoliberalist logic in legal reasoning. Foremost among these cases is *Tatad v. Secretary of Energy*,<sup>21</sup> which addressed the constitutionality of Republic Act No. 8180, a law aimed to deregulate the downstream oil industry to foster a truly competitive market. In *Tatad*,<sup>22</sup> the Court ruled that Republic Act No. 8180 was unconstitutional because the provisions on tariff differentials discouraged fair competition. The Court further noted that:

x x x Beyond doubt, the Constitution committed us to the free enterprise system but it is a system impressed with its own distinctness. Thus, while the Constitution embraced free enterprise as an economic creed, it did not prohibit per se the operation of monopolies which can, however, be regulated in the public interest.

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<sup>21</sup> G.R. No. 124360, November 5, 1997

<sup>22</sup> Ibid.

Thus too, our free enterprise system is not based on a market of pure and unadulterated competition where the State pursues a strict hands-off policy and follows the let-the-devil devour the hindmost rule. Combinations in restraint of trade and unfair competitions are absolutely proscribed and the proscription is directed both against the State as well as the private sector. This distinct free enterprise system is dictated by the need to achieve the goals of our national economy as defined by section 1, Article XII of the Constitution which are: more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged. It also calls for the State to protect Filipino enterprises against unfair competition and trade practices

x x x through competition producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Competition among producers allows consumers to bid for goods and services, and thus matches their desires with society's opportunity costs." He adds with appropriateness that there is a reliance upon "the operation of the 'market' system (free enterprise) to decide what shall be produced, how resources shall be allocated in the production process, and to whom the various products will be distributed. The market system relies on the consumer to decide what and how much shall be produced, and on competition, among producers to determine who will manufacture it."

Again, we underline in scarlet that the fundamental principle espoused by section 19, Article XII of the Constitution is competition for it alone can release the creative forces of the market. But the competition that can unleash these creative forces is competition that is fighting yet is fair.

*Tatad's*<sup>23</sup> rhetoric therefore reeks of neoliberal worship by elevating the market as the sole pathway to achieve distribution of wealth; in other words, it is by establishing a competitive market that the goals of raising the quality of life for all, especially the underprivileged, shall be achieved. In the absence of an express provisions, *Tatad* adopted a neoliberalist narrative: that a free-market *economy* is an autonomous system—in principle-self-correcting, efficient, and largely serving the common good.<sup>24</sup> To be sure, there is nothing wrong in *Tatad's* is positive portion, but the rhetoric resorted to by the Court elevated neoliberalist ideals as self-evident truths, and reduced the role of the State in ensuring the fairness and competitiveness of the market. Astonishingly, it made liberal use of market and market-like logic and discipline in its legal reasoning.

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<sup>23</sup> Ibid

<sup>24</sup> Ibid.

The same neoliberalist narrative was adopted by the Court in the case of *La Bugal-B'laan Tribal Association, Inc. v. Ramos*,<sup>25</sup> where the Court averted a constitutional reading that would, ostensibly, strangle economic growth *x x x because the Constitution must be read to attract foreign investments and expertise, as well as to secure for our people and our posterity the blessings of prosperity and peace.*<sup>26</sup>

*La Bugal-B'laan* achieved this by firstly, enfeebling the constitutional directive for the State to exercise full control and supervision over the exploration, development, and utilization of the country's natural resources, into mere oversight. Using corporate logic as the jumping off point, *La Bugal-B'laan* argued that the idea of full control should be interpreted to be similar to that which is exercised by the board of directors of a private corporation, that is, the performance of managerial, operational, financial, marketing and other functions may be delegated to subordinate officers or given to contractual entities, but the board retains full residual control of the business.<sup>27</sup> *La Bugal-B'laan* further buttressed this judicial castration by warning that limiting foreign participation in the exploration, development, and utilization of natural resources would bring about a momentous sea change in the economic and developmental policies and the fundamentally capitalist, free-enterprise philosophy of our government. *La Bugal-B'laan* further dismissed as absurd any interpretation that culls the pro-investment environment, as it would result in a radical shift being undertaken by our government, to the great prejudice of the mining sector in particular and our economy in general.

In so doing, it blindly accepted a neoliberalist narrative that extractive investments themselves automatically generate good for the economy, in spite of their insignificant contribution to the GDP, the well-documented phenomenon of resource curse, the damage to the environment, and the social costs to the people who are immediately and adversely affected by mining operations;<sup>29</sup> all of these things did not matter because insofar as *La Bugal-B'laan* is concerned, the dominant narrative was that investment (local and foreign) is critically needed to fuel the engine of economic growth and move this country out of the rut of poverty.<sup>30</sup> As a result, the market became the sacred ground upon which freedom, justice, and liberty should be civically constructed, and mediated (Winslow, et al., 2009, p. 209).

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<sup>25</sup> G.R. No. 127882, December 1, 2004.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, Carpio-Morales dissenting.

<sup>30</sup> *Ibid.*

So much was *La Bugal-B'laan's* blind belief in the neoliberalist narrative that it went to great lengths to justify a questionable pro-investment policy. In particular, *La Bugal-B'laan* outrageously endorsed a provision that allows a foreign contractor to mortgage mineral resources it does not own—a revolting practice that, as the dissent correctly reasoned, was long prohibited under the Civil Code. Astonishingly, *La Bugal-B'laan* justified said investor accommodation not by legal arguments but by invoking banking and business practice. Rather than regulating business practices, therefore, it was business practice which was imported as legal logic and narrative, to refashion the legal landscape.

In particular, *La Bugal-B'laan* rhapsodized:

“However, the mortgaging of minerals by the contractor does not necessarily signify that the contractor is unable to provide all financing required for the project, or that it does not have the financial capability to undertake large-scale operations. Mortgaging of mineral products, just like the assignment (by way of security) of manufactured goods and goods in inventory, and the assignment of receivables, is an ordinary requirement of banks, even in the case of clients with more than sufficient financial resources. And nowadays, even the richest and best managed corporations make use of bank credit facilities -- it does not necessarily signify that they do not have the financial resources or are unable to provide the financing on their own; it is just a manner of maximizing the use of their funds.<sup>31</sup>”

*La Bugal-B'laan* trivialized the fact that that the State is likewise an investor in extractive endeavors as the owner of minerals, which suffers the brunt of the negative externalities in these activities. *La Bugal-B'laan* brushed aside as well the reality that mining extracts non-renewable resources that would deprive future generations of their use. *La Bugal's* generous resort to neoliberalist logic of business practice reversed the fundamental constitutional directive; rather than the foreign contractor guaranteeing financial or technical capacity to the State, it was the State that now assumed obligation of guarantying to foreign lenders the foreign contractor's technical or financial capacity. Operationally, a foreign contractor would be incentivized to expand its operations, at the cheapest cost, even beyond its initial capacity because in any case, the State assures external funding infusion through the minerals. Translated into its practical effect, there was less incentive on the part of the foreign contractor to operate efficiently and ecologically, and minimize environmental harm, because additional funding is assured, by offering as security the minerals the State owned.

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<sup>31</sup> Ibid

*La Bugal's* clear import was loud and clear, *all business entities in general, have to recoup their investments and costs because this is absolutely indispensable for business survival, economic growth, and poverty alleviation.* Any interpretation that leads to the cutting back on investments necessarily sacrifice the pace of development and utilization; it sacrifices the amount of profits that can be made from the mining operations and the prospective contributions to the general welfare of the people.<sup>32</sup> Business survival ensures the soundness of the economy, which is critical and contributory to the general welfare of the people. To this end, therefore, the State must extend accommodation to business and investment, and foreign investors could rest assured that the full apparatus of the government would step in to insist the investment could still be recovered (Graeber, 2009).

To Graeber (2009), such accommodation departs from the logic of the previously dominant economic orthodoxy, which presumes that businesses assume a certain risk for any economic endeavor. The conclusion that can be drawn from this interpretation is also very disconcerting: while the poor are to be held accountable for poor economic decisions (real or imagined), the rich must never be (Graeber, 2009, p. 84). The neoliberalist mandate is that businesses must, at all costs, be allowed to recover their investments, because they pave the gilded road to achieve social justice and equity.

This interpretation forsakes the 1987 constitutional directive of prioritizing social justice and equity, above economic growth. Remarkably, the petitioners in *La Bugal* attempted to debunk the Court's neoliberalist narrative by citing various studies showing that mining brings with it serious economic problems, including increased regional inequality, unemployment, poverty, environmental degradation, social disruption, conflict, and uneven sharing of benefits with local communities that bear the negative social and environmental impact.<sup>33</sup> These, however, were unceremoniously cast aside because *[t]his Court declares what the Constitution and the laws say*, which is just a fancy way of saying that Constitution is neoliberal. Incongruously, while the Court in *La Bugal* borrowed generously from the logic of investment and finance, to justify its interpretation of an "essentially contested" text (Article XII), it failed to accord the same level of accommodation when presented with credible evidence debunking its *a priori* suppositions. In so doing, the Court unwittingly assimilated into the legal realm the discourses of the market, where the only "rational" choice is maximizing profit, and there the marketplace is the final and best arbiter of how wealth should be distributed (Winslow, et al., 2009, p. 209). In the same way that Cayat blindly accepted the narrative of the native barbarian, *La Bugal* thoughtlessly yielded to neoliberalist precepts.

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<sup>32</sup> Ibid.

<sup>33</sup> *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, supra.

The evils behind this blind adoration for market become more apparent when democratic demands, such as social justice, conflict with market interests. Take for instance case of *United Overseas Bank (UOB) v. Eduplan*,<sup>34</sup> where the enfeebled Court, intoxicated with neoliberalist ideal of market protection, was neutered into striking down a void contract.

The case of UOB involved a condominium dispute between a condominium developer, JOS Managing Builders (JOS), and EDUPLAN Philippines, Inc. (EDUPLAN). EDUPLAN purchased a unit in JOS's condominium project. JOS however, surreptitiously mortgaged the land on which the condominium project was being erected to UOB for additional capital infusion without regulatory approval.<sup>35</sup> Later on, JOS, defaulted on the loan, prompting UOB to successfully foreclose the mortgage, with the latter being the highest bidder. Inasmuch as the title to the land was already in UOB's custody, JOS could no longer issue the appropriate Condominium Certificate of Title to EDUPLAN, prompting EDUPLAN to impugn the validity of the entire mortgage for violating a Section 18 of P.D. 957, which states that *No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority.*

Surprisingly, rather than invalidating the whole mortgage, the UOB, limited the nullity of the mortgage contract to the interest of the complaining buyer (EDUPLAN) because the *subject of this litigation is limited only to the lot that the respondent bought; he has no personality or standing to bring suit on the whole property, as his actionable interest is only over the subject lot.*<sup>36</sup> This kind of ruling, of course, a the dissent pointed out, is the *unscrupulous subdivision developer's dream* because he can now divide the opposition to his fraudulent scheme into individual lot owners, many of whom can ill-afford to devote time and resources to the formal assertion of their rights.

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<sup>34</sup> G.R. No. 182133, June 23, 2015.

<sup>35</sup> Section 18. Mortgages. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto;

<sup>36</sup> UOB *supra*, see Brion dissent.

In so doing, UOB practically “gave effect” to a patently void agreement with respect to buyers who fail to seek legal intervention to assail the validity of the real estate mortgage. This kind of declaration goes against the concept of void agreements that, by law and by its nature, should produce no civil effects, and undermines social justice principles that obligate the State to remedy inequalities and care for the most marginalized.

If only to elaborate, UOB’s conclusion would prejudice buyers who do not have the resources to engage their own counsel to defend their rights; at the very least, it would prejudice them to the extent of the time, money, efforts, and resources they need to protect their rights to the lots or units they have already paid for. UOB practically undermined the legislative intention of P.D. 957, which is to protect buyers from fraudulent manipulations perpetrated by unscrupulous subdivision and condominium developers who only rely on leveraging their capital assets and revenues from pre-selling to sustain the project to resuscitate it.

UOB therefore reeks of regulatory capture and demonstrates how the Court can readily abandon social justice precepts in the interest of the market and investment. Rather than upholding P.D. 957’s legislative intent, which elevates the interest of protecting unit or lot buyers over economic considerations,<sup>37</sup> the law has been co-opted precisely protect questionable business practices. In refusing to strike down the whole mortgage, UOB miserably failed to take action to address inequalities in how people access justice. As a result, the Court in UOB functioned to entrench existing divisions of wealth and reaffirm hierarchies of power. As the dissent<sup>38</sup> correctly opined,

“An unscrupulous condominium developer without any substantial financial capacity to complete a project could obtain a developer’s loan from any financial institution by mortgaging certain parcels of land, emboldened by the knowledge that the courts would leave them where they are until each of the condominium buyers initiate an action to question the nullity of the mortgage. From a business standpoint, said practice is worth the risk for the labyrinth of legalities often serve as a protective mantle for unsound business practices.”

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<sup>37</sup> UOB supra, see Leonen dissent.

<sup>38</sup> Ibid, see Brion dissent.

UOB thus demonstrates how readily the Court can abandon social justice precepts as the guardian of the underprivileged to protect the market and investment. A legal regime intended to balance power and promote equity has given way to one that ignores the vast differences in power between businesses and the ordinary working man. The very institution anointed with the constitutional duty to protect and uphold the rights of the underprivileged has been co-opted to precisely maintain this structural inequality.

**iii. Climate Justice Requires a Rejection of Neoliberalist Primacy and appreciation social justice from a Climate Lens**

The evils of this neoliberal conquest of the Court’s narratives will become more critical in light of climate change. As late as 3 July 2025, the International Court of Justice released its Advisory Opinion on Climate Change, wherein it said

“72. x x x it is scientifically established that the increase in concentration of GHGs in the atmosphere is primarily due to human activities, whether as a result of GHG emissions, including by the burning of fossil fuels, or as a result of the weakening or destruction of carbon reservoirs and sinks, such as forests and the ocean, which store or remove GHGs from the atmosphere.

73. The consequences of climate change are severe and far-reaching; they affect both natural ecosystems and human populations. Rising temperatures are causing the melting of ice sheets and glaciers, leading to sea level rise and threatening coastal communities with unprecedented flooding. Extreme weather events, such as hurricanes, droughts and heatwaves, are becoming more frequent and intense, devastating agriculture, displacing populations and exacerbating water shortages. Furthermore, the disruption of natural habitats is pushing certain species toward extinction and leading to irreversible loss of biodiversity. Human life and health are also at risk, with an increased incidence of heat-related illnesses and the spread of climate-related diseases. These consequences underscore the urgent and existential threat posed by climate change.”

The effect, however, is asymmetrical due to structural inequalities such as those based on gender and socioeconomic status, which directly affect access to resources to adapt and cope with abrupt changes (UNDP, 2023). The UNDP report includes increased risks of adverse impacts such as threats to health, food security, access to water, energy, and sanitation, and livelihoods—all of which are considered as basic human rights. Indigenous Peoples, who protect 80 percent of the world’s biodiversity, are likewise facing increasing threats and risks to their lives, livelihoods, culture, and traditional knowledge.

Worse, those who are least responsible for the Climate Crisis are being hit the hardest, including those who are least responsible for emissions, such as indigenous communities. Such is the multiplier effect of climate change that between 2010 and 2020, human mortality from floods, droughts, and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability.

Against this backdrop, the demand for transition minerals, driven by the global energy transition, is expected to increase. Nickel, for instance, is a key component in batteries for electric vehicles (EVs) and renewable energy storage, making it indispensable for achieving net-zero emissions targets (L.J., 2025). Investors seek to cash in on this opportunity, and the Philippines, with its largely untapped reserves of copper, gold, nickel, zinc, and silver, stands to experience immense pressure to extract these minerals (Carter, 2024).

Faced with this wicked threat of existential proportions and in the context of the constitutional mandate to give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities,<sup>39</sup> it behooves the State to directly address climate injustice and climate change. Any other interpretation translates to the devitalizing of the constitutional directive to give highest priority to address inequities and defeat the social justice precepts of the Constitution. Otherwise stated, and in view of the multifaceted effects of the climate crisis on societies, it is only by achieving climate justice that social justice may meaningfully be achieved as well.

The methodology, however, is crucial because a solution led by neoliberalist market-elevation would inevitably drive environmental degradation for short-term profit. As *UOB and La' Bugal* demonstrate, the judicial vision of society that emerges from a neoliberalist narratives is oblivious to the massive inequity and unjust power relations; general policy concerns about social justice are virtually expelled from the judicial narrative. Consequently, social justice is an unrealizable ideal under such neoliberal jurisprudence because short-term profit would always trump social justice.

To be sure, this present article does not, in any way suggest the abandonment of capitalism. Rather, this article advocates to place social justice as the focal point of any development agenda because, fundamentally, while the 1987 constitution promotes the ideas of freedom of initiative and self-reliance x x x these should not be allowed to impede the creation of a just social structure.

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39 Article XIII, Section 1

“Markets are not free; they are riven throughout with power disparities which are, themselves, products of law and policy” (Purdy, et al., n.d.). The law is a system, and interrogating the system against the directive of the Constitution’s text, the Court should ask not whether the layers of bureaucracy were followed, but whether the labyrinth of legalities produces the kind of widely shared political and economic power that is fundamental to the achievement of social justice.

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