# PHILIPPINE NATURAL RESOURCES LAW JOURNAL

2024 Volume 14, Issue 1

# Philippine Natural Resources Law Journal

2024 Volume 14, Issue 1

Philippine Natural Resources Law Journal
2024 Volume 14, Issue 1



First printing, 2024.

Published by the
Legal Rights and Natural Resources Center
114 Maginhawa St., Teacher's Village East
Diliman, Quezon City
Philippines
Tel. No. (632) 899-8774.
Email address: lrckskfoeph@gmail.com
www.lrcksk.org
ISSN 0016-8282

Printed in the Philippines



The Philippine Natural Resources Law Journal is produced and published by the Legal Rights and Natural Resources Center. The views and opinions expressed in this journal are those of individual authors.

LRC is a scientific non-government organization that works with indigenous peoples and marginalized communities for the recognition and protection of their rights to land and environment. LRC is the Philippines chapter of the Friends of the Earth International.

For more information send an email to *lrckskfoeph@gmail.com.*
Visit our website *www.lrcksk.org*

# Philippine Natural Resources Law Journal

2024 Volume 14, Issue 1

## Table of Contents

# Editor's Note

As we mark the 37th anniversary of the Legal Rights and Natural Resources Center (LRC), we invite reflection on the state of indigenous peoples in the Philippines and the complex landscape of indigenous rights recognition within the Philippine legal system. When LRC was established in 1987, the Indigenous Peoples' Rights Act (IPRA) had not yet been passed. While indigenous peoples had asserted their rights based on native title and continue to do so, indigenous peoples' rights were largely unacknowledged within Philippine national policy frameworks. The eventual enactment of the IPRA in 1997 represented a watershed moment, formally embedding indigenous rights within Philippine law. Globally, the IPRA was heralded as one of the first and comprehensive indigenous rights law of its kind (Go 2012; Colchester & Ferrari 2007).

Since the passage of the IPRA, however, the condition of indigenous peoples in the Philippines remains precarious, reflecting both advances and persistent challenges in realizing their rights. At best, IPRA's recognition has been tenuous, and the implementation of its protections inconsistent.

The first individuals arrested under the Philippines' Anti-Terrorism Act were two Aeta farmers, accused of being members of a national insurgency group and allegedly involved in murder. Additionally, two female minors from their community were detained on charges of illegal possession of firearms and explosives (Amnesty International, 2021).

The United Nations High Commissioner for Human Rights' Report on the Situation of Human Rights in the Philippines (2020) highlights the killing of eight Lumad leaders by the military as an emblematic case of human rights violation. The Taboli Manobo men had opposed renewing an industrial coffee plantation agreement on their ancestral lands.

Between 2016 and 2019, state forces forcibly closed 178 Lumad schools, which are nongovernmental and community learning institutions located in geographically isolated areas meant to educate indigenous peoples (Sy, 2022). Shortly after these closures, the National Commission on Indigenous Peoples (NCIP) issued a resolution denouncing the term "Lumad," a self-identifier adopted by indigenous communities in Mindanao to assert their shared identity. The NCIP controversially linked the term to the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF) (Gatmaytan, 2021).



In another incident, nine members of the Tumandok community were killed, and 16 others were arrested during a joint military and police operation. Authorities claimed they were insurgent supporters possessing illegal firearms and explosives. The state asserted that resistance during the raid necessitated the use of force, while the community contends that the victims were asleep at the time of the operation. Notably, the Tumandok community had been vocal opponents of a proposed mega-dam project that threatened to displace them.

These recent incidents highlight an enduring pattern of state structures undermining indigenous rights in the Philippines, persisting more than a century after a notorious colonial Supreme Court ruling. The 1914 *Rubi vs. The Provincial Board of Mindoro* decision, which validated the involuntary displacement of the Mangyan tribe into *reducciones*, exemplifies the historical roots of this systemic devaluation.

What these five contemporary cases illustrate is the ongoing marginalization of indigenous ways of life, governance systems, and their right to self-determination. They reveal how state policies and legal frameworks often privilege dominant narratives, failing to incorporate indigenous worldviews.

Furthermore, these incidents underscore that indigenous land struggles are not isolated events but are part of a broader schema where economic interests and spatial control are deeply intertwined. They reflect a process of "accumulation by dispossession," wherein indigenous peoples are often subjugated as subalterns, and their territories are transformed into arenas for economic exploitation or state control. The pattern demonstrates a consistent privileging of external economic and political agendas over indigenous sovereignty and cultural integrity.

This edition of the Philippine Natural Resources Law Journal (PhilNaJur) examines the state of indigenous peoples in the Philippines as they are enmeshed in both historically embedded challenges and modern complexities. The authors reflect on indigenous struggles within an evolving socio-political landscape, revealing both the obstacles and possibilities that indigenous peoples face in their fight for self-determination, dignity, and cultural survival.

Gatmaytan opens with a reflective examination of the current state of indigenous peoples in the Philippines, providing an essential foundation for understanding the scope of indigenous rights and struggles in the country. He situates the lived experiences of indigenous groups within a broader context of systemic marginalization and highlights ongoing challenges of living in a rapidly changing world and needing to contend with the pressures of assimilation and the delicate process of cultural negotiation. He underscores a need for deeper reflection on indigenous peoples' movement in the Philippines and how this may better contend with the issues that beset indigenous peoples in our current time.

Following this is Bayot's paper, which serves as an invitation to consider the vantage of Fourth World approach as an important theoretical framework for examining indigenous rights in the Philippines. This approach is particularly timely, as indigenous peoples worldwide assert their right to self-determination in the face of increasing encroachment on their territories by state and corporate interests. Through the lens of the Fourth World framework, Bayot interrogates extractivism by examining epistemic violence and the role of law in commodifying land and nature She explores how these processes can undermine indigenous self-determination by imposing external value systems and limit autonomy. By framing indigenous peoples in the Philippines as distinct peoples within a modern state, she provides critical context for understanding their aspirations and enduring resilience amidst historical, structural and systemic challenges.

Concluding the collection, a jurisprudential review of recent court decisions analyzes how Philippine law has shaped indigenous land and resource rights. Hatta, Reyes and Taqueban examine key rulings that impact the IPRA and constitutional protections for indigenous communities, calling attention to how modern states can by fiat continue to deploy colonial logics. This review highlights the limitations of current laws in recognizing the complex socio-spatial relationships indigenous communities have with their lands and advocates for legal interpretations that meaningfully integrate indigenous perspectives on land and resource use. By mapping the legal landscape, it serves as a resource for understanding the challenges indigenous groups face in securing legal recognition and protection for their ancestral domains and rights.



Together, these papers call for a reconceptualization and meaningful recognition of indigenous rights that respects and supports the autonomy of indigenous peoples in the Philippines. They challenge the foundational assumptions of state control, economic development, and legal uniformity, positioning them within a broader critique of state power and epistemic hierarchy. They extend an invitation to reconsider indigenous experiences not as peripheral but as central to the reimagination of law and governance.

This collection emphasizes the need for an intersectional approach to capture the complexity of indigenous experiences and the multi-faceted nature of their rights.

For 37 years, the Legal Rights and Natural Resources Center (LRC) has remained steadfast in its mission of service and engaged scholarship. It is our enduring hope that the *Philippine National Journal of Jurisprudence (PhilNaJur)*, and particularly this edition, continues to contribute the discourse on indigenous autonomy, justice, and the evolving dynamics of indigenous-state relations in the Philippines.

EM Taqueban
December 7, 2024

## References

Colchester, M., & Ferrari, M. F. (2007). Making FPIC—Free, Prior and Informed Consent—Work: Challenges and Prospects for Indigenous Peoples. Forest Peoples Programme.

Gatmaytan, A. (2021, March 25). Analysis: Notes on the NCIP resolution on "Lumad." MindaNews. https://www.mindanews.com/mindaviews/2021/03/analysis-notes-on-the-ncip-resolution-on-lumad/

Go, J. (2012). The Philippine Indigenous Peoples' Rights Act and ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries: Comparative assessment of core provisions. Philippine Law Journal, 87, 362–384.

Sy, J. M. C. (2022). "It takes a movement to build schools": A historical and pedagogical sketch of the Lumad schools vis-à-vis the Lumad social movement. Philippine Studies: Historical and Ethnographic Viewpoints, 70(3), 423–464.

Human Rights Council. (2020, June 4). Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines: 44th session (p. 14). Retrieved from https://reliefweb.int/report/philippines/report-united-nations-high-commissioner-human-rights-situation-human-rights

# Reflections on the State of Indigenous Peoples[1]

**Augusto Jose Emmanuel B. Gatmaytan**

Historically, the State of Indigenous People's Address (SIPA) has been a critical response to the SONA or State of the Nation Address. The SONA is a yearly event where the President of the Philippines delivers a comprehensive report to the nation. The President outlines their achievements, ongoing initiatives, and future plans, ideally providing citizens with a clear understanding of the government's progress and direction. I have found, however, that the indigenous peoples and their issues are rarely addressed in the SONA. In the rare case that they were, the speech would draw on questionable data or flawed analysis, or deploy questionable policies or recommendations. As such, it is more a platform for state or elite propaganda than a venue for transparency and accountability. The SIPA is a rejection of state and elite representation of indigenous peoples.  It empowers indigenous peoples to articulate their unique experiences and advocate for policies that directly address their needs and priorities.

It is in this spirit of respectful attention to the experiences, knowledges, and voices of the indigenous peoples that I now offer some ideas that hopefully serve as a starting point for conversations or even debates among the representatives here, to help in synthesizing their collective understanding of the true state of the indigenous peoples of the Philippines.

The ideas I offer reflect the perspective of an aging indigenous rights advocate, one who has decades of personal and institutional experience working with indigenous peoples, but who has since adopted an increasingly academic approach to the history, issues, and future of indigenous peoples here in the Philippines and elsewhere. Over the years, I have found that there is a diversity of indigenous peoples—emphasis on the plural—not only in terms of their ethnic groups and cultures, but also in their political representations and understandings of their identity and interests. In the latter case, I have found myself working at odds with some 'indigenous peoples', such as when my colleagues and I were confronted by staunchly pro-mining indigenous leaders.

1 This paper was delivered as the opening lecture during the State of Indigenous Peoples Address (SIPA) gathering at Quezon City, July 2023.



## I. Economic Trends

Like any good social scientist, allow me to begin with the economics. Most indigenous peoples in the Philippines were historically associated with agriculture, mainly swidden but also terrace agriculture. Today, it appears that most indigenous peoples are still associated with farming. What has changed is the nature of farming.

From largely subsistence farming, where at least part of the main crop is consumed by a working household, farming has now become integrated into the larger regional, national, or global economy. There has been a general shift to cash or commodity production in farming. For instance, some terraces in Cordillera now produce exotic vegetables instead of rice. In Davao City, Manobo groups now cultivate bamboo for building trellises for other farmers' crops. Many indigenous groups have shifted away from their traditional practices of biodiverse gardening, focusing instead on the commercial production of corn and rice. At the same time, there has been a growing reliance on chemical inputs and external financing or loans to acquire these resources. So when COVID-19 hit, I was surprised by how so many indigenous farming communities were not able to feed themselves, with some relying on 'ayuda' or food supplies from beyond their villages to survive. Now more than ever, the indigenous household is no longer economically autonomous or self-sufficient; it is tied to larger flows of crops, capital, information, and technologies.

To a certain extent, because of indigenous communities' integration to the larger economy, the economic stresses or pressures on households or families have also increased. In particular, the ongoing reliance on loans for agricultural production frequently involves the use of land as collateral. This means crop failures and subsequent loan defaults can lead to the loss of a significant portion or even the entirety of a family's land.. I know of a group of Tagkaulo communities that have successfully obtained a Certificate of Ancestral Domain Title (CADT) for their ancestral territory. While this theoretically grants tenure security to all community members, many Tagkaulo families within the CADT area have experienced land loss due to market-related challenges. I suspect that a growing number of indigenous families are now similarly landless. To survive, many of them become farm workers, selling their productive labor to other farmers on a daily basis. They thus form a part of a growing rural proletariat.

At the same time, communities and families have been sending their children to the cities and towns, sometimes to study but ultimately to work. For those with limited education, many find themselves working in low-skilled jobs, such as construction, transportation, retail, or domestic work. In many cases, they form part of what is now called the 'precariat' or workers who are faced with constant insecurity in terms of employment or income. For those with schooling and ambition, they seek employment as a 'professional' in industry or public service. In either case, the hope is that they find a reliable source of income, part of which they can send back to their homes in the hinterlands. Remittances, in other words, are becoming a crucial part of the economic resources of many indigenous communities and families.

The growing presence of indigenous peoples in urban areas raises the question of their experience of, and responses to, urbanization—issues that can be grouped under the concept of 'indigenous urbanism'. To note just two possibilities: do they form small ethnic enclaves, or do they disperse into the wider city population? In Davao City, eleven ethnic groups are 'organized' under appointed 'deputy mayors' who represent them vis-à-vis the city government. This is one form of urbanism, whereby indigenous groups are provided a political place, and a stake, in the city; even as they are, at another level, integrated into the electoral machinery of the Duterte family.

Three things must be emphasized:

First, this growing reliance on remittances follows the larger pattern set by the Philippines itself, which sends its laborers abroad, so that they can send remittances back to their families in the country. The indigenous peoples are reproducing a set of economic strategies that non-minority groups and even the state itself have long since adopted.

Second, the difficulties and limitations of maintaining a farming household or community today have made some groups accept the risks that come with externally driven enterprises, such as mining. In Tampakan, for example, B'laan leaders acknowledge the ecological risks of mining but accept those risks because it helps the community to send their children to school. The belief is that education will equip them with the skills to obtain employment at mining companies or in urban centers, allowing them to either support their families back home or achieve economic independence from agriculture.



Third, it reflects the widespread belief that education is a key pathway out of poverty. This is evident in the growing trend of children not aspiring to return to farming or replace their elders, as parents often hope for a different future for their children, recognizing the challenges of agricultural livelihoods. I confess I am ambivalent about this trend, as I respect personal ambition, even as I am concerned with issues of cultural continuity. In such cases, there is a devaluation of farming and of the land itself. This may partly explain why, in some cases, indigenous lands and resources are no longer seen as a 'home' with personal symbolic and spiritual resonances, but as mere economic assets or commodities that, if need be, can be leased, sold, or liquidated.

It is unfortunate that we cannot offer economic alternatives. Handicraft production is often limited by unpredictable market interest, supply problems, competition with other indigenous communities, and lack of interest by younger generations. Many groups have weaving traditions that can be leveraged into a local or cottage industry, but many of their children are not attracted to the prospect of weaving as a livelihood. Not all communities are blessed with attractions, skills, and financing to enable them to venture into eco-tourism, setting aside questions about labor relations, as well as cultural representation and commoditization. The various versions of sustainable agriculture have their own risks or problems. I do not mean to attack any such projects; I do wish that they succeed. However, it is important to acknowledge that many indigenous communities or families are unable to adopt these livelihood strategies or find them impracticable or unappealing.

Ultimately, the point is that the relationship between many indigenous peoples and their land is undergoing significant transformations, sometimes gradually and other times rapidly and intensely. These changing relations with land must be accompanied by changes in how indigenous peoples organize themselves. This was driven home for me by a recent interview I had with two activists who opposed a mining company because it threatened their farming livelihoods. When they were wrongfully arrested on fabricated charges, community members rallied together and contributed their land titles to secure bail for their release. Fourteen years later, opposition had waned, partly due to the aging and the fatigue of the landholding farmers, the subdivision or sale of their land to support their children's education, or their departure from the community. In short, because they now relied less on the land, there was less incentive to protect it from the mining company as they did before.

If indigenous communities are becoming less defined by their collective relation to their land, and may even be divided by their differing positions vis-à-vis land and resources, how should organizing work adapt? Can the pursuit of an indigenous peoples movement be (re)launched and sustained without the political and economic anchor of ancestral lands and domains? If not land, what would politically unite indigenous peoples and communities today?

## II. Organizing in the Current Context

This talk of organizing and movements brings us to the question of the current political situation. Some of you will remember that by the late 1980s and into the 1990s, the Philippines had witnessed the evolution of what may be called an indigenous peoples movement, embodied in various organizational attempts to unify indigenous communities and organizations at local, regional, and national levels. By the 1990s, there were at least two formations with a fair claim to national representation of indigenous peoples, with at least two more in the process of developing the same stature. Today, organizing in that sense has declined, and we are left with local or regional organizations, or network- or issue-based alliances. One explanation is that, with the passage of the Indigenous People's Rights Act (IPRA) and its ancestral domain titling procedures, many communities that had been radicalized or mobilized by threats to their lands felt appeased, and focused thereafter on securing their respective territories. Land, in other words, was no longer a trans-local issue that cut across geographic and ethnic lines; it became a very local issue of boundaries and members. At the same time, the economic changes I already described were already unfolding, leading to changes in indigenous peoples' relationships to their lands and resources. How then should indigenous peoples organize their ranks now?

This question must be addressed in a context of continuing, perhaps intensifying, elite domination and control of local and national politics. I will not insult the audience with a replay of how elections in this country merely represent periodic intramural contests between and among a relatively small number of elite families and their interests. This is clear enough to anyone who has observed our elections.



I will note, however, the seeming decline in importance of electoral discourse, such that candidates no longer have to discuss or debate platforms, plans, or policies. They simply rely on financing and electoral machinery, temporary alliances, the deployment of populist tropes of nostalgia and law-and-order, as well as outright fantasies of supposed national glory and massive treasure hoards that will be shared with the populace. The current administration was built on a similar foundation. The point is that candidates' positions on national issues are no longer as important as they used to be in many of the public's reckoning of who to vote for.

Policy decisions, therefore, are often driven not by economic, environmental, social justice, or welfare considerations, but by the political interests of those in power at the municipal, provincial, or national levels and the negotiation of their competing agendas. As a result, the provisions of the law notwithstanding, people at the grassroots feel helpless, or at least vulnerable, to the will of those higher up the political ladder than themselves. Mining, for example, is often understood as an ultimately irresistible command from the national leadership, rather than a project people have a right to question or reject, if they so wish.

Indeed, elite interests continue to assert their interests aggressively. Opposition to externally driven projects like mining or plantations is often met with a coordinated response, making it feel like opponents are facing the entire nation. It appears that the military, political elite, and economic elite are learning from one another and employing increasingly sophisticated strategies to weaken or suppress any opposition. Threats and violence especially by the military or police are still used, though there may be a trend toward- relying on anonymous goons or assassins rather than military or police operations. Likewise, social media is used against the opposition. Elections to local governments and in local organizations, such as irrigators' associations and peoples' organizations, are now venues for attacking or displacing local leaders. I have encountered one case where an activist's bank account was tagged as suspect, limiting her access to her own funds. It is possible that many more such cases will emerge, as more banks bow to the dictates of national security. There is a marked trend toward 'lawfare' (i.e., the weaponization of the legal system), in this case, against community opposition.

In the case of the Manobo of the Andap Valley area, for example, there were not only multiple trumped-up charges filed against community leaders and vocal members, but permits and projects were withdrawn, and public services denied by various government agencies on legalistic or bureaucratic pretexts. Of course, red-tagging continues to be used.

It does not help that the National Commission on Indigenous Peoples (NCIP)—the principal government agency that is supposed to oversee indigenous peoples' rights and welfare—has become an extension of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC). NCIP has become weaponized for counter-insurgency, seeking to 'discipline' indigenous communities to accept government-approved political leaders and formations, and economic projects. They have even tried to control the language deployed in discussing indigenous issues by seeking to 'ban' the use of the word 'Lumad' as an invention of communist agents—a project that was foreshadowed by Orwell's novel, 1984. In return for their obedience and/or silence, communities can be rewarded through the NCIP's Barangay Development Program. This highlights the NCIP's role as less of an impartial, professional agency and more of a tool for the political, economic, and military elite. They determine who is considered a deserving citizen with rights and who is deemed disposable. Yesterday, these were communist and Moro rebels; more recently, these were drug dealers and pushers. Who else will be 'othered' in the name of elite-centered democracy and development in the future?

In closing, I would like to consider the situation of the Teduray, the Lambangian, and other indigenous peoples 'trapped' in the Bangsamoro Autonomous Region in Muslim Mindanao or BARMM. As indigenous peoples whose interests were sacrificed in order to secure peace with the Moro Islamic Liberation Front (MILF), their political situation is unique. For one thing, they have to rely on the NCIP to legalize their claim to their ancestral territory, which lies within the BARMM's area and jurisdiction (i.e., the BARMM is not entirely 'in Muslim Mindanao' but also 'in Teduray-Lambangian Mindanao'). This is in contrast to other communities, who instead seek to keep the NCIP at arm's length. For another thing, their struggle involves not just a question of territorial boundaries, as is the case for other indigenous communities, but also one of political jurisdiction, autonomous governance, and self-determination.



I have said this before, and I will say it again: If the right to self-determination of the Moro peoples is recognized by the Philippine state, through the establishment of 'their' autonomous region, then there is no reason to discriminate against the Teduray, the Lambangian, or, indeed, any other indigenous group. The only difference between the Moro and non-Moro groups is religion, so if the Moro are 'entitled' to an autonomous region, then so should these Lumad groups. Indigenous self-determination is crucial for the political and cultural survival of the Teduray and Lambangian, who form a 'second-order' minority encompassed by the Moro peoples, who form an economically, politically, and militarily more powerful first-order minority.

This raises several questions that I would like to discuss with you as representatives of your respective indigenous communities: Is self-determination still an important political aspiration for indigenous peoples or communities elsewhere in the Philippines? If so, why do you see it as relevant? What would it contribute to communities facing growing integration into regional and global economies, and into the political and administrative structures of the Philippine state? How do you imagine the realization or practice of self-determination in their respective territories now?

The answers to these questions bring us back to the earlier issue of how to organize indigenous communities in a rapidly changing political, economic, and cultural world. The world is evolving, our connections to the land and one another are shifting, and consequently, our organizational structures must adapt. The question and challenge is *how*.

# Confronting epistemic violence against Indigenous peoples: Towards a fourth world approach to resistance

**Armi Beatriz E. Bayot**

## I. Introduction: Extractivism and Epistemic Violence

It is claimed that the Philippines is among the most mineral-rich countries in the world,[1] with its so-called "untapped" mineral resources estimated to be worth up to one trillion US dollars.[2] With regard to commercially recoverable stocks of top mineral exports, the 2020 Mineral Accounts of the Philippines show that of the estimated volume of stocks of nickel, gold, copper, and chromite in the country, the monetary value of Class A[3] resources are as follows: PhP 136.6 billion for nickel, PhP 132.7 billion for gold, PhP 25.8 billion for copper, and PhP 1.1 billion for chromite.[4]

These impressive numbers raise important questions: To whom would these substantial sums accrue if these resources are eventually mined? And what are the costs of extracting this bounty - not only in terms of financial investment, but also in terms of what affected communities stand to lose in the face of the massive extractive activities that these figures will entail?

1 Philippine Board of Investments, 'The Philippines' Mineral Potential' (Philippines Board of Investments, 21 June 2011) <https://boi.gov.ph/sdm_downloads/mining-and-mineral-processing/> accessed 6 April 2022; Philippine Statistics Authority, 'Mineral Resources' (Philippine Statistics Authority, 2016) <https://psa.gov.ph/content/mineral-resources> accessed 6 April 2022

2 See for instance Patricia A. O. Bunye, 'Current trends in the Philippine mining and energy sectors' (Financier Worldwide, October 2018) <https://www.financierworldwide.com/current-trends-in-the-philippine-mining-and-energy-sectors#.Yk1p9i1Q1N3> accessed 6 April 2022; Andrew J. Masigan, 'The mining industry can save the economy' (BusinessWorld, 13 December 2020) <https://www.bworldonline.com/the-mining-industry-can-save-the-economy/> accessed 6 April 2022; Mining to the Philippines Trends and opportunities (Australian Trade and Investment Commission, 2022) <https://www.austrade.gov.au/australian/export/export-markets/countries/philippines/industries/mining> accessed 6 April 2022

3 Class A resources are commercially recoverable resources, distinguished from Class B (potentially commercially recoverable) and Class C (non-commercial and other known deposits), see Philippine Statistics Authority, '2020 Mineral Accounts of the Philippines' (Philippine Statistics Authority 2020) <https://psa.gov.ph/sites/default/files/Mineral%20Accounts%20of%20the%20Philippines.pdf> accessed 11 April 2022

4 Philippine Statistics Authority, '2020 Mineral Accounts of the Philippines' (Philippine Statistics Authority, July 2021) <https://psa.gov.ph/system/files/1.4_Infographics_Mineral%20Accounts%202013%20to%202020.pdf?width=950&height=700&iframe=true> accessed 6 April 2022



The truth is that once unearthed, these mineral resources would be exported and processed overseas and very little of their monetary value would be retained in the Philippines,[5] considering that Philippine mining law is designed to facilitate the large-scale extraction and export of natural resources and to protect foreign investment.[6] Meanwhile, the cost of mining to the Philippines is steep. The grave and irreparable environmental effects of mining are well-documented,[7] with the death of the Boac River from the Marcopper mining disaster among the starkest examples.[8] For indigenous peoples, the harms are particularly profound. In addition to causing environmental pressure on their ancestral lands and domains, the conduct of extractive activities has caused their displacement and dispossession and have resulted in disruptions to their political, economic, and cultural lives.[9]

The methods and consequences of mining in the Philippines exemplify the mechanics of extractivism. Extractivism, as understood here, is the accumulation of wealth through the large-scale removal of primary commodities (unprocessed or minimally processed materials) for export, thereby transferring wealth away from the where the materials were taken.[10] Extractivism is deeply implicated in the prevailing transnational capitalist system that integrates each state in a globalized economy controlled by actors and institutions from the Global North.[11]

5 Under the Philippine Mining Act of 1995 (Republic Act No. 7942) and Department of Environment and Natural Resources Administrative Order No. 2020-21, the bulk of proceeds from mining operations accrue to private contractors and their investors, with the Philippine government share consisting primarily of taxes, fees, and duties (with government shares in co-production and joint venture agreements subject to capital investment, among others), as well as a 5% royalty where the extractive activity is done within mineral reservations.

6 Section 26 of the Mining Act provides that, "A mineral agreement shall grant to the contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area," while Section 81 provides that, "The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive."

7 See for instance William Holden and R Daniel Jacobson, Mining and Natural Hazard Vulnerability in the Philippines: Digging to Development or Digging to Disaster? (Anthem Press 2012)

8 The Marcopper mining disaster is a stark reminder of the extent to which mining could negatively impact the environment. In 1996, millions of tons of mine tailings were released into the Boac River in Marinduque when the drainage tunnels of Marcopper Mining Corporation's open pit ruptured. Approximately 20,000 persons were evacuated due to the flooding caused by the waste spillage. The spillage has rendered the Boac River biologically dead. Studies indicate that the extent of the environmental damage makes remediation challenging, both from a technological and financial perspective – with the acid rock drainage reaching areas up to at least kilometers downstream; ibid 68-70

9 *See for instance* Sarah Bestang K Dekdeken, 'Indigenous World 2020: Philippines' (International Work Group for Indigenous Affairs, 11 May 2020) <https://www.iwgia.org/en/philippines/3608-iw-2020-philippines.html> accessed 6 April 2022

10 Alberto Acosta, 'Extractivism and Neoextractivism: Two Sides of the Same Curse' in M Lang and D Mokrani (eds), Beyond Development. Alternative Visions from Latin America (Transnational Institute 2013); Jingzhong Ye and others, 'The Incursions of Extractivism: Moving from Dispersed Places to Global Capitalism' (2020) 47 The Journal of Peasant Studies 155

11 Ye, et al. (n 10)

Extractivism as a mode of accumulation has its roots in the colonization and conquest of the Americas, Africa, and Asia. The continuities of extraction have resulted in massive transfers of value first from colonies to metropolitan centers and later from the Global South to the Global North.[12] Despite the massive amounts of wealth it helps produce, extractivism has been linked to widespread poverty and inequality in the resource-rich countries where it prevails, and, ultimately, the depletion and ruin of the natural resources on which it depends.[13]

The extractivist impulse stands in stark contrast to the way indigenous peoples relate to land and nature. Indigenous peoples' conception of land ownership (with lands held in common and in perpetuity as the material basis of political, cultural, and spiritual life) is incompatible with the values underlying extractivism, namely, private individual ownership, commodification of nature, and wealth accumulation. As Secwepemc Chief George Manuel wrote, the relationship between the colonizers and the state, on one hand, and indigenous peoples, on the other, has been a struggle between fundamentally incompatible ideas about land: land as commodity that "can be speculated, bought, sold, mortgaged, claimed by one state, surrendered or counter-claimed by another," and land described in terms of relationship: "The land is our Mother Earth."[14]

From centuries of colonial rule to the sovereign states of today, the epistemic dominance of global extractivist projects has rendered such indigenous perspectives virtually invisible in our collective imagination. These continuities of extractivism are attended by epistemic violence[15] against indigenous peoples - i.e., disempowering discourse perpetrated by colonial and state actors that works to constrain and limit indigenous peoples. This epistemic violence began with the transfer of colonizers' juristic concepts to the colonies through the imposition of laws and legal paradigms that enabled the commodification of land and nature, the onset of primitive accumulation, and the denial of indigenous peoples' property and sovereign claims to their lands.

12 Acosta (n 10); see also Anibal Quijano and Michael Ennis, 'Coloniality of Power, Eurocentrism, and Latin America' (2000) 1 Nepantla: Views from South 533

13 Acosta (n 10); Ye, et al. (n 10)

14 George Manuel and Michael Posluns, The Fourth World: An Indian Reality (University of Minnesota Press 2019) 6; See Introduction by Glen Sean Coulthard xi

15 The term is used here as conceptualised in Gayatri Chakravorty Spivak, '"Can the Subaltern Speak?"' in Rosalind C Morris (ed), Can the Subaltern Speak?: Reflections on the History of an Idea (Columbia University Press 2010)



In the Philippines, it is sustained through the continuous operation of laws and legal norms (including colonial-era enactments and international principles) that defeat indigenous peoples' historical claims to their lands and render their conceptions of land and nature irrelevant. Extractivism in the Philippines relies on these legal devices that enabled the exchange of land and natural resources as commodities while undermining indigenous knowledge systems regarding land and nature.

Employing perspectives from indigenous peoples' advocacy, particularly from writings associated with the Fourth World movement, as well as other critical approaches, particularly Spivak's conception of "epistemic violence," this article will examine how the law has been used to suppress indigenous peoples' perspectives and knowledge systems in the Philippines. In particular, the article will examine the role of law in 1) commodifying land and nature and 2) delimiting the exercise of self-determination, both of which are key mechanisms in the subordination of indigenous peoples and the facilitation of extractivism. It will then discuss epistemic violence on indigenous peoples as an ongoing consequence of their incorporation into the sovereign state, ending with a reflection on what it would take to begin to redress the epistemic violence that our laws continue to perpetrate against indigenous peoples.

## 1. The Fourth World: A Noun and a Verb

The use of the term "Fourth World" in this article signifies a critical approach towards state practices vis-à-vis indigenous peoples, particularly those that center state sovereignty and reemploy colonial logics. It is inspired by the advocacy and scholarship produced by the Fourth World movement, the goals of which, according to Nietschmann, is to correct the distortion that mainstream sovereign state-centered historical accounts have made regarding indigenous peoples' identities, geographies, and histories and, ultimately, to resist their continued oppression and exploitation.[16]

The Fourth World movement is one among many transnational pan-indigenous advocacies that began mobilizing in the 1970s and early 1980s for the political, economic, and cultural survival of indigenous peoples.[17]

16 Bernard Nietschmann, 'The Fourth World: Nations versus States' in George J Demko and William B Wood (eds), Reordering the World: Geopolitical Perspectives on the Twenty-first Century (Westview Press 1994)

17 Karen Engle, The Elusive Promise of Indigenous Development: Rights, Culture, Strategy (Duke University Press 2010) 47-66

The term “Fourth World” is often credited to Manuel’s 1974 book, *The Fourth World: An Indian Reality*.[18] While identifying with the anti-colonial sentiments of the newly decolonized or decolonizing Third World at the time, the Fourth World movement sought to distinguish the unique claims of indigenous peoples from those of newly independent states. Manuel said, “We are the fourth world, a forgotten world, the world of aboriginal peoples locked into independent states but without adequate voice or say in the decisions which affect our lives.”[19] Thus, Griggs noted that the Fourth World could be better described as “nations forcefully incorporated into states which maintain a distinct political culture but are internationally unrecognized.”[20] For the Fourth World movement, it was anomalous that when formal colonialism was ended and deemed unlawful by the UN General Assembly in the 1960s,[21] former colonies became independent and were recognized internationally, but indigenous peoples (whose claim to political independence predates even the very concept of the Westphalian state) remained incorporated within states.[22] For contemporary Fourth World scholars, it is also alarming how states, both among former colonizers and former colonies, seem to be reemploying the oppressive political and legal structures that former colonizers used against indigenous peoples.[23]

The Fourth World, therefore, acts simultaneously as a noun and a verb, according to Coulthard.[24] The Fourth World refers to a “disperse yet nonetheless recognizable demographic.”

18 Manuel and Posluns (n 14); Richard Griggs, ‘The Meaning of Nation and State in the Fourth World’ (1992) Occasional Paper #18 <http://www.nzdl.org/cgi-bin/library?e=d-00000-00---off-0ipc--00-0----0-10-0---0---0direct-10---4-------0-1l--11-en-50---20-about---00-0-1-00-0--4----0-0-11-10-0utfZz-8-10&cl-=CL1.5&d=HASHe0f6e4aaf0d3baeb51a527&x=1> accessed 6 April 2022

19 George Manuel, ‘Statement to the Mackenzie Valley Pipeline Inquiry, 1969’ This Magazine 10, no. 3 (1976) 17, cited in Manuel and Posluns (n 14) xi

20 Griggs (n 18) Many Fourth World scholars, such as Griggs, Ryser, and Nietschmann use the term “nation,” which Nietschmann defines as “a community of self-identifying people who have a common culture and a historically common territory, see Nietschmann (n 16)

21 In 1960, the UNGA adopted Resolution 1514 (XV) on the Declaration on the Granting of Independence to Colonial Countries and Peoples – with 80 states voting for, none against, and 9 abstentions. Among its key provisions, Resolution 1514 provided that “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

22 Franke Wilmer, The Indigenous Voice in World Politics: Since Time Immemorial (Sage 1993) 1-29; Engle (n 17)

23 See also Sabina Singh, ‘Sovereignty in the Third and Fourth World: A Comparative Discussion on Two Levels’ (2021) 21 Fourth World Journal 58; Yvonne P Sherwood, ‘Toward, With, and From a Fourth World’ (2016) 14 Fourth World Journal 15

24 Manuel and Posluns (n 14) xi



At the same time, much like the Third World movement, the Fourth World stands for an oppositional politics against colonialism and imperialism.[25] Because indigenous peoples have long been denied the right to their lands and territories by colonial and imperial rule, a key demand among indigenous peoples, including the Fourth World movement, is the right to exercise self-determination.[26] In the Canadian context, Manuel expressed this demand in the principle of “home rule” through some form of federalism or treaty relationship.[27] Claims to self-determination among indigenous activists around the world from the 1970s to the 1980s ranged from external self-determination (including statehood) to autonomy.[28] The right to exercise strong forms of self-determination, particularly with regard to control over their lands and territories, continues to animate indigenous peoples’ advocacy today.[29]

### 1.1 Key Relationships in Fourth World Theory

Fourth World Theory can be described as a common socio-cultural-political lexicon among indigenous advocates, which first came into use with the rise of transnational indigenous movements in the 1970s. Fourth World Theory articulates some of indigenous peoples’ common experiences, as well as common goals and aspirations.[30] In examining how state-perpetrated epistemic violence obscures indigenous perspectives and practices, this article will focus on two Fourth World concepts, described here as key relationships that are essential to reclaiming the place of indigenous peoples in the world - both of which are fundamental to their claims to self-determination.

25 ibid

26 Manuel and Posluns (n 14), Engle (n 17), Wilmer (n 22)

27 Manuel and Posluns (n 14) xii-xiii, 12, 217, 221

28 Karen Engle, ‘On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights’ (2011) 22 European Journal of International Law 141, 151-152; Engle (n 17) 68-99

29 Engle’s term ‘strong forms of self-determination’ is used here to signify “both external self-determination models and forms of self-determination that provide for significant autonomy for indigenous groups vis-à-vis the state,” as distinguished from the more broadly recognized human right to self-determination as described in the UNDRIP. See Engle (n 28) 142

30 Rudolph Carl Ryser and Dina Gilio-Whitaker, ‘Fourth World Theory and Methods of Inquiry’ in Patrick Ngulube (ed), The Handbook of Research on Theoretical Perspectives on Indigenous Knowledge Systems in Developing Countries (IGI Global 2017) 52-53

The first key relationship identified here is the relationship of humans to land and nature. Land is seen by indigenous peoples as place – not in the abstract, but as unique and concrete places that are linked to the unique and concrete identities of diverse indigenous peoples who claim such places as their lands and territories.[31] Thus, the self-determination claims of indigenous peoples cannot be separated from their lands because place and identity are so intertwined. Moreover, nature is viewed as life-giving resource and not commodity. The life-giving function of nature underscores the inseparability of humans and nature, and it militates against activities that burden and destroy the natural environment.[32]

This relationship has been described as the ontological basis of indigenous sovereignty.[33] According to Moreton-Robinson, indigenous sovereignties[34] should be understood in terms of "relativity,"[35] within which people experience the universe as alive and where everything in the natural world is in relationship with every other thing. With its origins in the notion of the supreme authority of an all-powerful deity transposed to the supreme authority of an all-powerful Crown and, ultimately, all-powerful state, state sovereignty requires possessive and extractive relations with an inert earth. Thus, Moreton-Robinson says that the ontological basis for indigenous sovereignties, which is in and of the earth, is antithetical to the ontological basis of state sovereignty.[36]

While the term "sovereignty" itself is a non-indigenous term, indigenous discourse has long used the word to articulate the basis of indigenous peoples' social and legal rights to political, economic, and cultural self-determination. Indigenous sovereignty has referred to multiple meanings within indigenous political and legal scholarship, including people who have never surrendered their lands, as well as opposition to illegal occupation; prior, inherent rights in territories;

31 Sherwood (n 23) 17-19

32 Sherwood (23) 17-21; Manuel and Posluns (n 14) 255-258; Ryser and Gilio-Whitaker (n 30) 54-55

33 Aileen Moreton-Robinson, 'Incommensurable Sovereignties' in Brendan Hokowithu and others (eds), Routledge Handbook of Critical Indigenous Studies (Routledge 2020)

34 The plural form is deliberate, as the sovereignties of indigenous peoples correspond to their diverse, place-based identities, see Sherwood (n 23) 17

35 Citing Deloria's definition: "(E)verything in the natural world has relationships with every other thing and the total set of relationships makes up the natural world as we experience it. This concept is simply the relativity concept as applied to a universe that people experience as alive and not as dead or inert." In Vine Deloria Jr, 'Relativity, relatedness, and reality' in Barbara Deloria and others (eds), Spirit and Reason: The Vine Deloria, Jr., Reader (Fulcrum 1990); see also Ryser and Gilio-Whitaker (n 30) 54-62, 68

36 Moreton-Robinson (n 33)



belonging to a particular indigenous people; holding tribal citizenship, a political and moral claim to inclusion within settler colonial states; recognition as first peoples; and treatment as sovereign nations. The common thread among these various conceptions of indigenous sovereignty is their opposition to the assumption of state sovereignty.[37]

Thus, the second key relationship identified here is fraught with conflict and violence -the relationship of indigenous peoples with states. According to Fourth World Theory, indigenous peoples are not just nations within states, but are also nations within the larger geopolitical processes of today. They exist simultaneously within and beyond the conceptual limits of the state and have existed far beyond and far earlier than the founding of the modern state system.[38] Thus, Fourth World advocates argue that the meaningful exercise of indigenous peoples' self-determination ought to include the freedom to negotiate their political relationships with states (and other non-state nations), with the end in view of putting an end both to their subordinate status in relation to states and to the invisibility of indigenous knowledge systems in prevailing laws and legal systems.[39]

**2. Epistemic Violence in Philippine Law**

Spivak uses the term "epistemic violence" to refer to the silencing of the subaltern, whom she describes as those who are "cut off from the lines of mobility in a colonized country" and for whom access to political, economic, and cultural power is foreclosed.[40] She explores epistemic violence through dual notions of "representation" in the engagement of dominant actors with the marginalized "Other." Dominant actors engage in representation of the subaltern in the political sense (vertreten) by claiming to stand in their shoes or to speak on their behalf as proxy. Dominant actors also re-present the subaltern in the theatrical or artistic sense, i.e., through the creation of a "portrait" meant to represent them (darstellen).

37 ibid 258

38 Ryser and Gilio-Whitaker (n 30) 52-55

39 Sherwood (n 23); Wilmer (n 22)

40 Spivak (n 15); Donna Landry and Gerald Maclean, 'Subaltern Talk: Interview with the Editors', The Spivak Reader: Selected Works of Gayatri Chakravorty Spivak (Routledge 1996); Carmen De Schryver, 'Deconstruction and Epistemic Injustice' (2021) 59 The Southern Journal of Philosophy 100, 103-107

The latter meaning includes the creation by dominant actors of conditions through which the subaltern could ostensibly speak, albeit with the construction by such actors of the modalities and limits (the "framing") of such speech. Thus, dominant actors can demand that the subaltern be "listened to," but through their language and through their forms of representation.[41] Spivak says that these two ways of representing the subaltern – proxy and portrait - are complicit with each other. For instance, a political representative represents their constituency in a "portrait sense" as well – thinking of them and representing them, for instance, as working class or black minority, and the constituency is both framed by and expected to perform this "re-presentation" of their identity.[42]

In the Philippine context, epistemic violence against indigenous peoples was set in motion by the colonial encounter. Having been incorporated, first, into the Spanish and American colonial systems, and later, into the Philippine sovereign state, indigenous peoples are trapped by representation (vertreten, political representation) by the state. Indigenous peoples are also trapped by re-presentation (darstellen, a reimaging) by the state through its law-making and policymaking on indigenous peoples and their lands. The creation of laws and legal instruments that impact on indigenous peoples is not only a manifestation of the state speaking on behalf of indigenous peoples, but it is also the means through which the state determines and constrains the ways that indigenous peoples "speak" and conduct their lives within the state's jurisdiction. These two notions of representation are mutually reinforcing, in that the subordinate status of indigenous peoples in relation to the state is reinforced by laws that perpetuate an unequal relationship between them. This stems from the paternalism, prejudice, and outright racism that characterized colonial-era laws and attitudes towards the colonized -particularly towards indigenous peoples.

The construction of the colonized as the 'Other' was an essential element of the colonial project. Anghie has written that the dynamic of difference between civilized and uncivilized is the animating distinction of imperialism, simultaneously compelling the colonizer to bring the uncivilized to civilization while instituting a strict hierarchy between them.[43]

41 Spivak (n 15); Gayatri Chakravorty Spivak and Sarah Harasym, The Post-Colonial Critic: Interviews, Strategies, Dialogues (Routledge 2014) 108; De Schryver (n 40)

42 Spivak and Harasym (n 41)

43 Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 Third World Quarterly 739



The dichotomy between colonizer and the colonized is closely linked with changing frameworks on the idea of "human progress," and Obregón Tarazona notes that from the 16th century to the 19th century, various dichotomies that categorize peoples, such as Christians/non-Christians, human/subhuman, progressive/backward, modern/primitive, and civilized/uncivilized, were used to describe where certain peoples could be found in hierarchies of progress.[44] These categories are at the heart of the "civilizing mission" and justified the taking of lands from those whom colonizers deemed civilizational inferior.

For instance, Vitoria argued in 1557 that the Spanish must establish a government in the so-called New World as trustees over uncivilized Indians who "are unfit to found or administer a lawful State up to the standard required by human and civil claims.[45] " Centuries later, Vattel would assert that the "failure" to cultivate land and make it productive not only reveals a moral failure on the part of certain people groups, but also justifies the taking of their land, saying that they have "no reason to complain, if other nations, more industrious and closely confined, come to take possession of a part of those lands."[46]

The Spanish and American colonizers regarded the persons they encountered in the Philippines as backwards and inferior in culture, morals, and industry, among others. Spanish and American missionaries regarded the inhabitants of the archipelago as children in need of guidance.[47] American soldiers referred to Filipinos using racial slurs such as "gugus" and "monkey men," while Bernard Moses, a member of the Philippine Commission, described Filipinos as being at "a state of civilization distinctly lower than that of the civilized peoples of the West."[48]

44 Liliana Obregón Tarazona, 'The Civilized and the Uncivilized' in Bardo Fassbender and Anne Peters (eds), The Oxford Handbook of the History of International Law (Oxford University Press 2012)

45 Francisco de Vitoria De Indis et De Ivre Belli Relectiones (Ernest Nys ed, John Pawley Bate tr, Carnegie Institute of Washington 1557/1917) cited in in Anghie (n 43)

46 Emer de Vattel, The Law of Nations or Principles of the Law of Nature Applied to the Conduct of Nations and Sovereigns (Charles G. Fenwick tr, Carnegie Institution of Washington 1916) cited in Antony Anghie, 'Vattel and Colonialism: Some Preliminary Observations' in Vincent Chetail and Peter Haggenmacher (eds), Vattel's International Law from a XXIst Century Perspective (Brill I Nijhoff 2011)

47 Owen J Lynch, Colonial Legacies in a Fragile Republic: A History of Philippine Land Law and State Formation with Emphasis on the Early U.S. Regime, 1898-1913 (University of the Philippines College of Law 2011) 217-246

48 ibid 222-228

While it became necessary for the Americans to obtain the cooperation of Hispanicized *ilustrados*[49] in the colonial project (ostensibly treating them as social, political, and economic equals), the existence of non-Hispanicized populations, generically labelled as non-Christian tribes, provided Americans with a justification for continued colonial administration of the islands. The Americans argued that non-Christian members of the native population must be guided by them towards Christianity and civilization. The Americans also weaponized the ilustrados' open hostility against these so-called non-Christian tribes, saying the elites could not be trusted to treat non-Christians in a "humane and principled way."[50]

The establishment of the Bureau of Non-Christian Tribes in 1901, which was tasked with "civilizing" indigenous peoples,[51] entrenched the notion that they were of a different sort from the "mainstream Filipino." Two Supreme Court cases are illustrative of the prevailing attitudes towards indigenous peoples during this time. In the 1919 case of Rubi et al. (Manguianes) v. The Provincial Board of Mindoro, the Supreme Court upheld the confinement of Manguianes at a reservation against their will, saying that the restraint on their liberties was justified by their low degree of civilization.[52] Later, in the 1939 case of People v. Cayat, the Supreme Court upheld the conviction of a Benguet native for imbibing non-indigenous alcohol, saying that the free use of highly intoxicating liquor by non-Christian tribes resulted in crime and lawlessness and impeded state efforts at their civilization.[53]

It is thought that the adoption of the 1987 Constitution, with its specific provisions on the protection of indigenous peoples, and the enactment of the Indigenous Peoples' Rights Act (IPRA) in 1997,[54] have put an end to the "unenlightened" treatment of indigenous peoples.[55]

49 The so-called Filipino educated class that emerged in the waning days of the Spanish colonial era in the late 19th century, many of whom were educated in Spain.

50 Lynch (n 47) 221-240

51 Philippine Commission, Act No. 253, An Act Creating a Bureau of Non- Christian Tribes for the Philippine Islands (2 October 1901)

52 G.R. No. L-14078, March 7, 1919

53 G.R. No. L-45987, May 5, 1939

54 Republic Act No. 8371

55 See for instance the decision in Sama v. People, G.R. No. 224469, January 5, 2021



However, the enduring legacy of colonial-era land laws and the pre-eminence of the state in the Philippine legal imaginary militate against this notion. The state continues to perpetrate epistemic violence against indigenous peoples through the perpetuation of laws that commodify land and nature, facilitate primitive accumulation, and delimit indigenous peoples' exercise of self-determination - all of which keep indigenous peoples under colonial conditions within the state, i.e., they maintain indigenous peoples' subordinate political position while keeping their lands under the authority of the state.

It bears noting that the legislative sponsors of the IPRA invoked the doctrine of parens patriae in its enactment. The parens patriae doctrine expresses the inherent power and authority of the sovereign state to provide protection to "persons suffering from serious disadvantage or handicap, which places them in a position of actual inequality in their relation or transaction with others."[56] The reference to parens patriae ("parent of the country"), which echoes the paternalistic relationship that indigenous peoples have had with the state since colonial rule, should not obscure the fact that, as the next sections will show, it is the state's own acts that have caused and sustain the disadvantaged position of indigenous peoples.

### 2.1 Commodifying Land and Nature

The Spanish colonial project in the archipelago set in motion two developments that would have profoundly negative long-term impacts on indigenous peoples' ability to control their lands as the material basis of their political, economic, and social life. The first is the imposition of land ownership and registration laws, which entrenched the idea of land as private, individual property (while simultaneously marginalizing customary, collective landholding) and recharacterized land as commodity. The second is the process of primitive accumulation through which land and natural resources - the means of production - are consolidated under the state. Both developments are essential to the eventual rise of extractivism in the Philippines.

56 See Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, 6 December 2000, Separate Opinion Justice Reynato Puno

Spanish jurists in the 15th and 16th century used various legal devices to justify colonial claims,[57] an example of which is Pope Alexander VI's papal bull of 1493 "through which the world was sliced in two like an orange" between Spain and Portugal.[58] By the time that Spain sought to establish a colony in the archipelago, however, Vitoria raised the argument that while the papal bull could authorize proselytization to Christianity, non-Christian local populations possessed both public authority and private rights over their lands under natural law, which must be honored.[59] Vitoria's views were influential on the Spanish Crown, and Spain adopted a policy of honoring local populations' property rights over their land even as it sought to establish sovereign rule over the archipelago.[60]

Despite the policy of honoring existing property rights, the introduction by the Spanish colonial government of the concept of "individual ownership" over land, as well as the practice of land registration, produced conditions that undermined the free exercise of property rights by many sectors in the Philippine colony. Colonial law only provided for the registration of individual land rights. Lands communally held by indigenous peoples could not be registered in their name collectively, as indigenous communities lacked the legal personality to hold lands collectively, and the idea of collective land ownership was, according to Lynch, "an abstraction" in Spanish law. The impossibility of registering communally owned land enabled the usurpation of indigenous territories by Spaniards and other claimants.[61] By 1894, the Spanish colonial government enacted the Maura Law, under which lands that remain unregistered by a certain date would "revert" to the state, thereby placing an arbitrary deadline on the legal recognition of the property rights of any claimant who lacked access to registration processes due to illiteracy, poverty, or distance to centers of government. The Maura Law's registration mandate and "reversion" provision entrenched the idea of individual property ownership, and it introduced the notion that unclaimed and unregistered lands are owned by the Spanish crown.[62]

57 Lorenzo Cotula, 'Land, Property and Sovereignty in International Law' (2017) 25 Cardozo Journal of International & Comparative Law 219, 229-232

58 Inter Caetera issued in 1493, see Lynch (n 47) 41

59 Lynch (n 47) 46-56; see also Antony Anghie, 'Francisco De Vitoria and the Colonial Origins of International Law' (1996) 5 Social & Legal Studies 321

60 The consent of local populations must be obtained to validate colonial claims, but if the Spanish were prevented from entering their domains for trade and proselytization, this was an act of war that could be met by force and eventual occupation see Lynch (n 47); Anghie (n 59)

61 Lynch (n 47) 134-138; 145-150

62 Lynch (n 47) 168-170



After the US acquired the Philippines from Spain through the 1898 Treaty of Paris, the American colonial government instituted its own land registration system. According to Philippine Commission Reports in 1900 and 1901, the "landowning class finds great difficulty in securing the capital which it so greatly needs" because the existing Spanish legal processes for recording and certifying titles were so cumbersome as to render the transfer of property rights difficult and insecure."[63] This led to the adoption of the Torrens system in the Philippines,[64] which makes the state the guarantor of the indefeasibility of titles to land as reflected on state-managed records - thus facilitating the use of land as a marketable commodity.[65] The Torrens system remains in place to this day.

In developing his system of land registration,[66] Robert Richard Torrens took his cue from the shipping trade, where the system of registration of British ships made the transfer of ships much more efficient in a system of trade that was becoming more and more globalized. Torrens sought this kind of ease of transferability for land as commodity, quoting J.S Mill in saying that making land as easily transferrable as stock was one of the greatest economical improvements which a country could obtain.[67]

Mapping, as a mode of knowledge production, reifies and legitimizes borders where there were none with the stroke of the cartographer's pen. Moreover, according to Blomley, maps based on the cadastral survey "help make possible the very idea of 'space' as an abstract category," and "If space can be imagined as abstract, perhaps, it begins to be possible to treat it as the reified and alienable 'object' of property."[68] The "abstract logic of the commodity form" as operationalized by the Torrens system and land registration laws in the Philippines thus facilitated the transfer of lands.

63 Lynch (n 47) 410

64 Act No. 496, also known as the Land Registration Law

65 Lynch (n 47) 412

66 in Southern Australia

67 Brenna Bhandar, Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership (Duke University Press 2018) 84-89

68 Ibid 93

Even those lands that are irreplaceable, non-fungible lands held in common by indigenous peoples could be as easily transferred as stock and would be just as interchangeable once they are captured in the Torrens system and registered under an individual owner. Indeed, the IPRA itself expressly provides in Section 56 that property rights already existing and/or vested upon its effectivity in 1997 shall be recognized and respected.[69]

The abstraction (and consequent divorce) of land from prior relations of ownership, as well as from historical memory and other ties, mirrors the logics of primitive accumulation,[70] as, indeed, the commodification of land is among the many processes that enable primitive accumulation.[71] In the context of Europe's transition from feudalism to capitalism, Marx conceptualized primitive accumulation as the "first cause" or the force that launches and perpetuates the capital-relation or the worker's separation from the ownership of the means of production. The capital-relation, as well as the process of capital accumulation more generally, is grounded in the "previous" or "original" forced conversion of independent peasant proprietors, who had lived and worked on the land, into wage-laborers who then sell their labor-power on the market. This conversion is enabled by the direct application of the state's coercive powers, and particularly through the coercive power of law. The large-scale "clearing of the commons" in 18th century England, for instance, was enabled and consolidated by law through parliamentary acts that gave legal cover to enclosures. [72]

Marx saw the same process of primitive accumulation happening through various means in other contexts, including territories under colonialism. Indeed, according to Özsu, Marx views the colonial context as the necessary completion of his analysis, for it was in the extra-European world (which, in the English legal imagination, was a blank slate for imperialist designs[73] ) that the full force of the coercive powers of state could be employed to generate primitive accumulation, concentrating the means of production in the colonial powers and the transglobal economic enterprises with which they are intertwined.[74]

69 Section 56. Existing Property Rights Regimes. - Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected

70 Bhandar (n 67) 98-101

71 David Harvey, The New Imperialism (Oxford University Press 2003) 145

72 Umut Özsu, 'Grabbing Land Legally: A Marxist Analysis' (2019) 32 Leiden Journal of International Law 215, 218-219, 223-224

73 See Bhandar (n 67)

74 Özsu (n 73) 219-220



According to Luxemburg, capitalism requires nothing less than continued and sustained expansion, transforming the non-capitalist world by the forced appropriation of the means of production, which, in the context of the colonies were "in the possession of social organizations that have no desire for commodity exchange or cannot, because of the entire social structure and the forms of ownership, offer for sale the productive forces in which capital is primarily interested. The most important of these productive forces is of course the land, its hidden mineral treasure, and its meadows, woods and water, and further the flocks of the primitive shepherd tribes." [75]

In the Philippine context, the legal device that divested local populations, including indigenous peoples, of their lands and consolidated the ownership of land and natural resources in the state is known as the Regalian Doctrine, which is widely accepted as the foundation of land and natural resources law in the Philippines. According to this doctrine, the Philippine state's claim of *dominium*, as well as *imperium*, over the entire archipelago dates from the moment Ferdinand Magellan erected a cross on Limasawa island in 1521 on behalf of Spain. The Philippine state is said to succeed to Spain's claim of sovereignty and ownership, and as a result, all lands and natural resources are owned by the Philippine state. [76]

The Regalian Doctrine's earliest manifestation is the 1904 case of *Valenton v. Murciano*,[77] decided under the US colonial administration. At issue in this case was who possessed a stronger claim to ownership of land: long-time occupiers or those who had been able to secure documentary evidence of their title from the government. In deciding the case in favor of the defendant Murciano, who possessed a government grant, the Supreme Court did not cite the 1894 Maura Law, but went back further in time and cited the *Recopilacion de Leyes de las Indias or the Laws of the Indies*, saying that all lands which have not been granted by the Crown belong to the Crown, and that there can be no valid claim of ownership absent proof of such a grant from the Crown. Despite Spanish colonial policy and practice to the contrary,[78] this case provided the basis for the belief, embodied in the Regalian Doctrine, that from the very beginning of Spanish colonial presence in the archipelago, no claim to land is valid without government grant, and that all lands not covered by such grants remain the property of the state.

75 Rosa Luxemburg, The Accumulation of Capital (Routledge 1913/2003) 350

76 Lynch (n 47) 130-132

77 G.R. No. 1413, March 30, 1904

78 Lynch (n 47) 134-138; 145-150

The *Valenton* decision is consistent with the US colonial administration's policy at the time, which was the refusal to recognize undocumented private property claims, particularly those of indigenous peoples, and thereby consolidating ownership and control of the archipelago's lands and resources in the US colonial government, which succeeded the Spanish colonial government in the Philippines.[79] Lynch argues that it was for this same reason that a latter case decided by the US Supreme Court upholding the private property rights of an Igorot, independent of state grant or registration, was ignored by the colonial government.[80] In the 1909 case of *Cariño v. Insular Government*,[81] the US Supreme Court ruled that the failure to register could not have deprived applicant Cariño of his "native title" and that "It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land." The colonial government's failure to abide by *Cariño*, as well as the Supreme Court's subsequent confused application of *Cariño* to Public Land Act cases,[82] contributed to the entrenchment of the confiscatory Regalian Doctrine and the legal system's collective disregard of the notions of "native title" and indigenous peoples' time immemorial claims to private ownership.

Thus, the prevailing thought in the Philippine legal tradition is that the Regalian Doctrine has become a constitutional principle and that it animates Article XII of the 1987 Constitution on "National Economy and Patrimony." Under Article XII, Section 2, all lands of the public domain (i.e., those lands not already held under private title) and all natural resources (waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources) are owned by the state, and private title to agricultural land is obtained only through government grant. It provides further that while agricultural lands may be alienated, all other natural resources may not be alienated - thereby concentrating control over natural resources in the state.

79 Lynch (n 47) 410-420

80 Lynch (n 47) 426-429

81 212 U.S. 449 (1909)

82 Dante B Gatmaytan, 'From Cariño to Central Mindanao University: The Troubled Track of the Right to Ancestral Domain' (2011) 36 The IBP Journal 38



Ozsu argues that while Marx wrote about primitive accumulation as the historical foundation of capitalism, Marx also wrote about it in an analytical sense - i.e., as a means of explaining its ongoing capacity to maintain the divorce between the producer and the means of production.[83] Thus primitive accumulation is the foundation of capitalism not just historically, but permanently.[84] Harvey thought that calling an ongoing process "primitive" was inappropriate, and thus he coined the term "accumulation by dispossession" to refer to the continuation and proliferation of the processes that give life to capitalism, such as (1) the commodification and privatization of land and the forceful expulsion of peasant populations; (2) the suppression of alternative (indigenous) forms of production and consumption; and (3) colonial, neocolonial, and imperial processes of appropriation of assets (including natural resources), among others.[85]

Mining laws that allow the large-scale extraction and appropriation of minerals as commodities by private corporations exemplify primitive accumulation in action today.[86] The constitution grants both ownership and full control over exploration, development, and utilization of natural resources to the state - allowing it to enter into contracts for the large-scale extraction and export of mineral products.[87] Under the Philippine Mining Act of 1995[88] and its implementing rules and regulations,[89] the bulk of proceeds from mining operations accrue to private contractors and their investors, with the Philippine government share consisting primarily of taxes, fees, and duties, as well as a 5% royalty where the extractive activity is done within mineral reservations.[90] Where mining impacts their ancestral domains, indigenous peoples are entitled to royalty payments of at least 1% of the gross output[91] and are usually paid not much more.[92]

83 Özsu (n 73) 221-223; See also Mark Neocleous, 'International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization' (2012) 23 European Journal of International Law 941

84 Neocleous (n 84) 958

85 Harvey (n 72) 145-149

86 See William Holden, Kathleen Nadeau and R Daniel Jacobson, 'Exemplifying Accumulation by Dispossession: Mining and Indigenous Peoples in the Philippines' (2011) 93 Geografiska Annaler: Series B, Human Geography 141

87 Article XII, Section 2

88 Republic Act No. 7942

89 Department of Environment and Natural Resources Administrative Order No. 2020-21

90 Republic Act No. 7942 Chapters XIV and XV and Department of Environment and Natural Resources Administrative Order No. 2020-21 Chapters XXI and XXII

91 Department of Environment and Natural Resources Administrative Order No. 2020-21 Section 16

92 Most mining corporations allotted no more than 1% prior to 2020, while some Memoranda of Agreement between indigenous peoples and mining corporations completed from 2020-2021 have raised the share to 1.2% and 1.5%, per Message from Marlon Bosantog, former National Commission on Indigenous Peoples Director for Legal Affairs, to author (24 February 2022)

Meanwhile, the mining industry in the Philippines makes a relatively small contribution to the national economy. The mining industry contributed less than 1% (0.6%) to the Gross Domestic Product in 2018.[93] In 2020, the mining industry contributed PhP 30.65 billion in national and local taxes, fees, and royalties, while the export of metallic and non-metallic minerals and mineral products for 2021 amounted to USD 6.14 billion.[94]

The processes of primitive accumulation by which ownership and control over natural resources is first consolidated in the state and full access to extracted "raw materials" is then acquired by private corporations[95] have resulted in the insecurity of indigenous peoples' possession of their ancestral lands and domains. The operation of mining corporations in and near indigenous peoples' territories have resulted in multiple instances of their displacement. In their analysis of the impact of the Philippine mining industry on indigenous peoples, Holden, Nadeau, and Jacobson list various ways through which the mining industry has been known to dispossess indigenous peoples of their lands, namely, through fraud in obtaining certifications of consent from indigenous peoples, physical displacement due to mining-related activities, destruction of their sacred sites, adverse and long-term environmental effects, and the militarization of the areas where mining projects are located - all manifestations of dispossession by accumulation.[96]

### 2.2 Delimiting the Exercise of Self-Determination

Before 1945, self-determination was regarded as a political principle embodying the idea that individuals and peoples possessed the prerogative to choose which state to belong to and to choose their own government. This conception of self-determination as a political principle was instrumental to the American War of Independence, the French Revolution, and the rise of European nations in the 19th century.[97]

93 Philippine Statistics Authority (n 4) 1

94 Mines and Geosciences Bureau, 'Minerals Industry at a Glance' (Mines and Geosciences Bureau, March 2022) <https://mgb.gov.ph/images/Mineral_Statistics/MFF_MARCH_2022.pdf> accessed 8 April 2022

95 Section 26 of the Mining Act provides that, "A mineral agreement shall grant to the contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area," while Section 81 provides that, "The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive."

96 Holden et al. (n 87)

97 Alina Kaczorowska, Public International Law (4th edn, Routledge 2010) 581-585



Through the enactment of the United Nations (UN) Charter[98] in 1945, self-determination was transformed from a political principle to a legal right as provided in Articles 1(2), 55 and 73, and Chapter XII. The meaning of self-determination under the UN Charter, however, is unclear because the right is mentioned in the context of "friendly relations among nations," possibly implying that it refers to the right of the people of a state to be free from external interference. [99]

The principle of self-determination would undergo an important conceptual development during the decolonization period. After World War II ended in 1945, various struggles for decolonization mobilized around the world, and these included wars of national liberation fought by independence movements against colonial powers, as well as decolonization efforts in both diplomatic and legal arenas.[100] For instance, the final communication of the Bandung Conference in 1955,[101] the first major meeting of heads of states of Asian and African states,[102] stated that "colonialism in all its manifestations was an evil that must be immediately terminated."[103] By 1960, enough former colonies had become independent and had become members of the UN General Assembly (UNGA) that they became the majority. In 1960, the UNGA adopted Resolution 1514 (XV) on the Declaration on the Granting of Independence to Colonial Countries and Peoples[104] – with 80 states voting for, none against, and 9 abstentions. Among its key provisions, Resolution 1514 provided that "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This development led to the recognition of the right of colonial peoples to external self-determination under international law, which includes the right to use force to achieve the fulfilment of this right.[105]

98 United Nations Charter of the United Nations (adopted 24 October 1945, 1 UNTS XVI)

99 Kaczorowska (n 98) 585-586; Under Article 1(3) common to the human rights covenants, i.e., the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR), the right to self-determination is recognised as a collective right, which according to Cassese belongs to the whole people of a state, i.e., the entire population, see Antonio Cassese, Self-determination of peoples: a legal reappraisal (CUP 1995) 52-55, 102

100 ibid 588-591

101 Held in Bandung, Indonesia

102 Most of which were newly independent

103 The Final Communiqué of the Asian-African Conference of the Non-Aligned Countries (24 April 1955)

104 Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960)

105 Kaczorowska (n 98) 580

Despite suffering under colonial rule, however, which constrained their exercise of indigenous sovereignty and resulted in widespread dispossession of indigenous territories, indigenous peoples remained within the authority of sovereign states even after the decolonization period. Ryser refers to this phenomenon as the "re-colonization" of indigenous nations.[106] For many indigenous peoples' advocates the question of indigenous peoples' self-determination remained the "unfinished business of decolonization."[107] A key concern of indigenous peoples' advocacies in the 1970s and early 1980s, therefore, was for indigenous peoples to be able to exercise control over their lands in a manner that is consistent with their place-based identities, spiritual traditions, and long-term survival, and these concerns were articulated during this period using the language of decolonization and self-determination. The claims for self-determination varied among different indigenous peoples' groups and included claims for autonomy and secession.[108]

Indigenous peoples' movements during this period used an international legal framework distinct from human rights. While indigenous peoples' rights are now commonly framed in terms of the international human rights paradigm, indigenous peoples' advocates during this period were skeptical of human rights. Apart from seeing undertones of the "civilizing mission" in human rights discourse, many indigenous peoples' advocates thought that human rights law failed to capture and address issues of a distinctive land base and collective political rights in favor of indigenous peoples.[109]

Nevertheless, in the 1980s and 1990s, indigenous peoples' advocates began to seek space within the human rights paradigm to incorporate a collective right to culture and the notion of "difference within equality." This was a compromise in response to the outcomes of their engagements with international and regional institutions that opposed their framing of indigenous rights in connection with political self-determination. Indigenous rights advocacy in the Inter-American System of Human Rights, the Human Rights Committee, and the International Labour Organization largely failed at gaining recognition for self-determination, but these bodies proved to be open to indigenous rights claims made under the rubric of the human right to culture.

106 Ryser and Gilio-Whitaker (n 30)

107 Wilmer (n 22)

108 Engle (n 28) 151-152; Engle (n 17) 46-99

109 ibid, ibid



The pragmatic turn resulted in the recognition of indigenous peoples' cultural rights within various instruments and through various mechanisms.[110] Engle said that human rights seem less threatening to states and international institutions than self-determination as it did not challenge states' territorial integrity or claim to authority within its borders.[111] According to Engle, however, these successes largely displaced or deferred many of the fundamental issues that impelled indigenous peoples' advocacy in the first place, including indigenous peoples' self-determination claims.[112]

Ultimately, these developments led to the framing of self-determination as a form of collective human rights under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),[113] to which the Philippines is a signatory. The UNDRIP took over two decades to negotiate and complete, and among the major issues during the negotiations was the application of common Article 1 of the human rights conventions on self-determination to indigenous peoples,[114] as seen in Article 3 of the 1993 draft, which reads: "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." Many states were concerned that self-determination might include the right to statehood, and Engle says that efforts to limit self-determination through the addition of other language delayed the completion of the UNDRIP for many years.[115]

The addition of a provision precluding external self-determination eventually concluded the matter within the negotiations. It has been argued that this was not a major concession because indigenous peoples "were not really concerned that the right to self-determination would include a right to secession" in the text of the UNDRIP. This assertion, however, directly contradicts the history of indigenous movements.

110 Engle (n 28) 152-157; Engle (n 17) 67-137

111 Engle (28)

112 Engle (28) 142

113 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), UNGA Resolu¬tion 61/295, UN Doc. A/RES/47/1 (2007), adopted on 13 September 2007.

114 The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR)

115 Engle (n 28) 143-150

While not all indigenous peoples sought secession for themselves, the movement was united for many years that indigenous peoples must have the right and freedom to negotiate their own political relationship with states, up to and including secession, and thus, a strong assertion on self-determination (including external self-determination) had long been a priority among indigenous activists. The transformation of self-determination to a form of collective human rights premised on the right to culture sidelined the political aspirations of indigenous peoples as sovereign peoples. [116]

That indigenous advocates involved in negotiations were willing to concede the point on strong forms self-determination in the UNDRIP could be attributed to the considerable state resistance, rather than a broad and unqualified agreement among indigenous peoples generally that self-determination was no longer important. Thus, Engle argues that while the UNDRIP is a landmark instrument for including explicit reference to the right to self-determination, collective rights, and the interconnectedness of heritage, land, and development for indigenous peoples, its vision of self-determination nevertheless falls short of the aspirations of the indigenous movements that led to its completion.[117]

The UNDRIP's constriction of self-determination is consistent with the Philippines' own state-centric domestic approach.[118] The IPRA mentions "self-determination" in the provision on self-government,[119] but it is otherwise not defined. Considering that the IPRA exists within a legal land regime animated by the Regalian Doctrine, which provides that the state owns and controls the exploration, utilization, and development of all natural resources, the IPRA's potential for enabling strong expressions of self-determination, particularly with regard to control over ancestral lands and domains,[120] seems limited.

116 ibid 147-148

117 Engle (28)

118 The IPRA was enacted in 1997, 20 years before the UNDRIP was adopted by the UN General Assembly.

119 SECTION 13. Self-Governance. — The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

120 Ancestral domains defines all areas generally belong to indigenous peoples comprising lands, inland waters, coastal areas, and natural resources, held under a claim of ownership, occupied or possessed by them, by themselves or their ancestors, communally or individually since time immemorial, See Republic Act No. 8371, Section 3(a)



In an apparent effort to reintroduce the Cariño ruling to the mainstream Philippine legal tradition,[121] the IPRA includes a provision upholding "native title" on the basis of which claims to ancestral domains and lands could be recognized by the state through the issuance of certificates of ancestral domain title (CADT) or certificates of ancestral land title (CALT). Native title refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by indigenous peoples, have never been public lands, and are thus indisputably presumed to have been held that way since before the Spanish Conquest.[122] This provision is meant to push back against the confiscatory logic of the Regalian Doctrine and to provide legislative confirmation that indigenous peoples never lost their rights over their lands despite the subsequent imposition of colonial land laws.

Nevertheless, questions regarding access and control over natural resources found in ancestral lands and domains persist because of the split decision in the 2000 case of *Cruz v. Secretary of Environment and Natural Resources*.[123] At issue was whether several provisions of the IPRA and its implementing rules and regulations should be declared unconstitutional for granting comprehensive rights over ancestral lands and domains to indigenous peoples, thereby amounting to an unlawful deprivation of the state's ownership over the lands of the public domain, as well as the minerals and other natural resources found within these lands. The IPRA was argued to be in violation of Article XII, Section 2 of the Constitution containing the constitutional principle of the Regalian Doctrine. The Supreme Court *En Banc* votes ended up in a tie even after two rounds of deliberations, resulting in the dismissal of the case and with the IPRA deemed constitutional on a technicality.[124]

Because the case ended in a split vote, the decision was promulgated without a majority opinion laying down reasons for upholding the IPRA's constitutionality. So fundamental is the Regalian Doctrine in Philippine land law, however, that even the Justices who voted in favor of dismissing the petition did not support interpreting the IPRA as upholding indigenous peoples' ownership rights over natural resources.

121 Gatmaytan (n 83)

122 See Republic Act No. 8371, Section 3(l)

123 G.R. No. 135385, December 6, 2000

124 Per Rule 12, Section 2(a) of the Internal Rules of the Supreme Court

In his separate opinion, Justice Puno said that the rights granted to indigenous peoples under the IPRA merely give them priority rights over natural resources, but not ownership rights. The grant of priority rights implies that there is a superior entity (i.e., the state) that owns these resources, and this entity has the power to grant preferential rights over the resources to whosoever it chooses - an odd position to take considering that Justice Puno affirms the concept of native title as pre-dating the Spanish conquest and, necessarily, pre-dating the Philippine state as well. In any event, he goes further and says the IPRA does not require the state to automatically give priority to indigenous peoples, and that the IPRA does not grant indigenous peoples the exclusive right to themselves undertake large-scale development of natural resources within their domain, considering the state's monopoly of this prerogative under the Regalian Doctrine.[125] Justice Kapunan, in his opinion, argued that the recognition that ancestral domains include natural resources does not convert the character of these natural resources to the private property of indigenous peoples.[126]

On the other hand, Justice Panganiban, who voted to declare the IPRA unconstitutional squarely placed the preeminence of the Regalian Doctrine over the historical claims of indigenous peoples. In his separate opinion, he said that the IPRA violates the Constitution insofar as "it recognizes or, worse, grants rights of ownership over 'lands of the public domain, waters, (…) and other natural resources' which, under Section 2, Article XII of the Constitution, 'are owned by the State' and 'shall not be alienated.'" He said that he rejects "the contention that 'ancestral lands and ancestral domains are not public lands and have never been owned by the State.'"[127]

Because there is no direct support for it in any of the separate opinions, *Cruz v. Secretary of Environment and Natural Resources* created more doubts on IPRA's provisions on indigenous peoples' right to the natural resources found in their ancestral domains and lands. Meanwhile, the application of the IPRA has to contend with the Constitution and the Mining Act of 1995, both of which provide in their text that ownership and control of natural resources pertain to the state.

125 G.R. No. 135385, 6 December 2000, Separate Opinion Justice Reynato Puno

126 G.R. No. 135385, 6 December 2000, Separate Opinion Justice Santiago Kapunan

127 G.R. No. 135385, 6 December 2000, Separate Opinion Justice Artemio V. Panganiban



### 3. Epistemic Violence and Epistemic Injustice

Epistemic violence is itself an ongoing danger to the survival and continuity of indigenous peoples, as it marginalizes and even threatens to erase indigenous perspectives and practices, but it is also instrumental to the perpetration of other forms of violence such as dispossession, displacement, and takings in the service of extractivist projects. Extractivism relies on the commodification of nature – valuing nature primarily for its exchange potential in the form of raw materials, stocks, or crops. Extractivism also requires monopoly control over specific natural resources to enable their intensive extraction, which often results in complete depletion or exhaustion.[128] On the other hand, the sort of constrained self-determination that the UNDRIP and Philippine law supports concentrates political and economic power in the state. At the same time, it prevents indigenous peoples from mounting a resistance to extractivist projects grounded on native title and indigenous sovereignty - projects that the state may have already approved[129] in exercise of its state sovereignty. The laws and legal instruments that enabled land and nature commodification, primitive accumulation, and the constriction of indigenous peoples' aspirations for meaningful self-determination have all contributed to the rise of extractivism in the Philippines, which continues to threaten indigenous peoples peaceful possession of their lands.

The epistemic violence against indigenous peoples continues through the operation of all laws and legal instruments that negate indigenous peoples' experiences and knowledge systems, but particularly through those that negate their place-based identities and close relationship to land and nature. Even legislative attempts to protect and uphold the rights and well-being of indigenous peoples, such as the IPRA, fall short of honoring indigenous peoples' longstanding political, social, and cultural existence, which pre-exists the very idea of the Westphalian state. This is because these laws must contend with state-centric prerogatives embedded in the multiple fields of law that can claim some degree of application to indigenous peoples because of their membership in the Philippine state – a membership that is a legacy of colonial rule.

128 Acosta (n 10), Ye, et al. (n 10)

129 See for instance Armi Beatriz E Bayot, 'Free, Prior, and Informed Consent in the Philippines: A Fourth World Critique' in Isabel Feichtner, Markus Krajewski and Ricarda Roesch (eds), Human Rights in the Extractive Industries: Transparency, Participation, Resistance (Springer International Publishing 2019)

The 2021 case of *Sama v. People*[130] illustrates the fraught position of indigenous peoples within the Philippine legal system. In this case, members of the Iraya-Mangyan indigenous people cut down a tree within their ancestral domain (for the construction of a communal toilet) "without any authority," as required by Section 77 of the Revised Forestry Code. The regional trial court found the Iraya-Mangyan members guilty of violating the law, but their conviction was eventually overturned by the Supreme Court. The Court repeatedly declared throughout the decision that, with the enactment of constitutional and legislative protections for indigenous peoples, the prevailing legal policy of the state towards indigenous peoples is one of "ever growing respect, recognition, protection, and preservation" of "their rights to cultural heritage and ancestral domains and lands." The Court, nevertheless, stopped short of ruling that the petitioners' use of resources within their ancestral domain does not fall under the act prohibited under the Revised Forestry Code.

The Court ruled that one of the elements of the crime charged, cutting the tree "without any authority," i.e., state authority, had not been proven beyond reasonable doubt. The Court said that there was "reasonable doubt" as to whether the petitioners had the right to cut the tree in question, with multiple considerations such as: whether the "authority" required by the law could possibly include the operation of the IPRA itself, the scope of indigenous peoples' rights under the IPRA and the Constitution, administrative regulations seeking to reconcile the Regalian Doctrine, the civil law conception of land ownership, and indigenous peoples' sui generis ownership of their ancestral domains, international legal instruments such as the UNDRIP, and relevant case law. It was "the confusion arising from the novelty of the content, reach, and limitation of the exercise" of indigenous peoples' rights to their cultural integrity and to their ancestral domains and lands "that justifie(d) their acquittal for their otherwise prohibited act."

Spivak concludes in "Can the Subaltern Speak?" that no, the subaltern cannot speak. By speaking, Spivak refers to the transaction between the speaker and the listener and not merely the act of uttering, such that "even when the subaltern makes an effort to the death to speak, she is not able to be heard, and speaking and hearing complete the speech act."[131] Epistemic violence silences the subaltern.

130 G.R. No. 224469, January 5, 2021

131 Landry and Maclean (n 40) 289-290



That petitioners' act of cutting down a single tree within their ancestral domain for a community purpose – an act that would have been performed peacefully and without incident by petitioners' ancestors centuries ago – was deemed a criminal act at the trial court is a stark reminder that indigenous peoples' knowledge systems and world views still remain largely invisible in the Philippine legal system and is a striking illustration of what it means for indigenous peoples to be "nations forcefully incorporated into states."[132] The significance of the tree cutting was defined not by the speakers' intention and own knowledge system, but was circumscribed by a value and knowledge system that the speakers had no part in creating. In this state of affairs, indigenous peoples cannot speak.

Described another way, the trial court decision exemplified the epistemic forms of injustice that indigenous peoples suffer in our legal system. Tsosie defines epistemic injustice as that form of injustice that arises when one's knowledge and experiences are divorced from what is considered general or shared knowledge.[133] Epistemic injustice against indigenous peoples occurs when the language and underlying philosophy of the prevailing law fails to take into consideration their unique experiences, world views, and concerns.[134] Epistemic injustice towards indigenous peoples is a feature of Philippine laws considering that significant areas of indigenous peoples' experience are obscured from (what are deemed as) authoritative legal narratives because of their epistemic marginalization. This can be attributed in part to the fact that indigenous peoples are not acknowledged as having the same epistemic authority as the dominant group, which exclusively uses its own understanding and assumptions to create dominant political, legal, and social frameworks, to the exclusion of other groups such as indigenous peoples.[135]

132 Griggs (n 18)

133 Rebecca Tsosie, 'Indigenous Peoples, Anthropology, and the Legacy of Epistemic Injustice' in Ian James Kidd, José Medina, and Gaile Pohlhaus (eds), The Routledge Handbook of Epistemic Injustice (Routledge 2017) 359-362, drawing from Miranda Fricker's framework for epistemic injustice Miranda Fricker, Epistemic Injustice: Power and the Ethics of Knowing (Oxford University Press 2007)

134 This specific form of epistemic injustice is called hermeneutical injustice in Tsosie and Fricker's framework

135 See Tsosie (n 134)

The petitioners in the case of *Sama* suffered epistemic injustice when, in the interpretation and implementation of the law in question, their unique lived experiences, perspectives, and needs did not figure into the considerations of the prosecutorial service and the lower courts. Indeed, the fact that the law gave the prosecutorial service and the lower courts no normative resources (in the form of applicable case law, administrative orders, etc.) that clearly authorized, or even mandated, them to consider petitioners' knowledge systems in determining the propriety of prosecution shows how deep and profound the epistemic injustice goes. Thus, while the Supreme Court's decision of overturning the trial court's decision works to correct the injustice of the conviction, it falls short of addressing the more serious issue of epistemic injustice against indigenous peoples in our legal system.

### 3.1 From Subordination to "Voluntary Partnership"

The case of *Sama* illustrates that despite the constitutional and statutory guarantee of indigenous peoples' rights, the Philippine legal system falls short of providing the political and legal space for indigenous peoples to exercise strong forms of self-determination and to preserve and protect their material and spiritual relationship with land. Because the state exercises sovereign authority over indigenous peoples as members of the broader constituency, their rights are subject to state prerogatives such as *jura regalia* (particularly state ownership and control over natural resources) and police power.[136] Similar considerations seriously limit the power of self-determination as a human right. While human rights is framed as a matter of state obligation, state obligations often compete with other state prerogatives and other norms of international law, including state sovereignty over natural resources and state's rights to development.[137] The fulfillment of indigenous peoples' rights is, therefore, reliant on the very same state that has historically caused their marginalization.

Indigenous peoples' subordinate status in relation to the state must be understood in the context of the state's integration into the global neoliberal economy, which requires it to continue managing land and natural resources in terms of commodity, profit, and wealth accumulation.

136 G.R. No. 224469, January 5, 2021

137 See for instance Bayot (n 130)



These capitalist values are fundamentally incompatible with indigenous conceptions of land and natural resources as the source of their place-based identities and with which they maintain strong spiritual ties. In the context of neoliberalism, the state increasingly prioritizes economic internationalization and the protection of foreign investments, and protects indigenous peoples only insofar as their protection is compatible with capital interests.[138] This is evident in the way that the legal regulatory regime has facilitated the mining industry in the Philippines despite the paltry returns to the national economy, its negative environment impact, and the displacement and dispossession of indigenous peoples.

The struggle for indigenous lands is, thus, nothing less than the struggle for indigenous existence, as Tauli-Corpuz wrote, "The struggle for the defense of the ancestral domain, which is participated in by whole communities, is itself a defense of this earthbased spirituality. It is a defense of the whole philosophy, religion and lifestyle which is sustainable and viable. It is a defense of the indigenous people's spiritual relationship or partnership with the land."[139]

Indigenous sovereignty is independent of the state, i.e., the validity of indigenous sovereignty is not dependent on the very colonial structures that profit from indigenous peoples' subalternity. Indigenous sovereignty also persists despite the state structures that seek to suppress it. As Moreton-Robinson said, "… I asked the question: if Indigenous sovereignty does not exist, why does it require refusing by state sovereignty? … We have gone to war, we have refused, and we have used political and legal mechanisms to challenge the legitimacy of Canada, Australia, the United States, New Zealand, Hawai'i states and their sovereign claims to exclusive possession of our lands. We do this because every day our sovereignties exist and are operating despite these claims. As resilient existents, our sovereignties continue ontologically and materially; as humans we are the embodiment of our lands."[140]

138 See for instance Kristin Ciupa, 'The Promise of Rights: International Indigenous Rights in the Neoliberal Era' in Honor Brabazon (ed), Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project (Routledge 2021)

139 Victoria Tauli-Corpuz, 'Reclaiming earth-based spirituality: indigenous women in the Cordillera' in R R Ruether (ed), Women Healing Earth: Third World Women on Ecology, Feminism, and Religion (Maryknoll NY 1996) cited in Holden et al. (n 87)

140 Moreton-Robinson (n 33) 258

The Fourth World seeks a relationship with states and other non-nation states that honors indigenous peoples' long-standing identities and their right to control their lands and territories not from the position of subordination within the state system, but from a position of political autonomy and, in the words of Manuel, "voluntary partnership:"

"The Fourth World is not, after all, a Final Solution. It is not even a destination. It is the right to travel freely, not only on our road but in our own vehicles. Unilateral dependence can never be ended by forced integration. Real integration can only be achieved through a voluntary partnership, and a partnership cannot be based on a tenant-landlord relationship. The way to end the condition of unilateral dependence and begin the long march to the Fourth World is through home rule." [141]

The recognition of indigenous peoples as politically independent nations (not necessarily states) might seem at odds with the current international state system and is, in fact, not included in current legal conceptions of the right of indigenous peoples to self-determination – particularly the definition and parameters included in the UNDRIP. Nevertheless, Manuel argued that the seeming anachronism of certain arrangements and concepts has not stopped various states and governments from retaining old traditions and finding ways to incorporate them in the modern world. Manuel points to the example of England's many traditions pertaining to its Parliament and the monarchy that, at first blush, do not belong to modern times, but have been deemed to be so fundamental to English identity that the laws and legal systems have not only accommodated these arrangements, but made them a central consideration in many of their political structures. [142]

Creating the political space for indigenous peoples' meaningful exercise of self-determination is, therefore, a matter of acknowledging indigenous peoples' rightful place in Philippine history and political life. Subjecting indigenous peoples to state authority, without taking into account their indigenous sovereignty, is a reemployment of the oppressive political and legal structures of colonialism. As long as the relationship between states and indigenous peoples is one of authority and subordination, epistemic violence will persist against indigenous peoples.

141 Manuel and Posluns (n 14) 217

142 Ibid 214-216



## II. Conclusion. Resisting Epistemic Violence: Lessons from Fourth World Advocacy

Fourth World scholarship and advocacy remind us that colonial practices persist within sovereign states against indigenous peoples, perpetuating epistemic violence against indigenous peoples and their knowledge systems. Epistemic violence is perpetuated in the ways in which the Philippine legal system keeps indigenous peoples under colonial conditions – constraining their rights and prerogatives over their lands, denying their indigenous sovereignty, and prescribing the limits of their place-based identities within a sovereign state. The nature of the epistemic violence is structural, and the only way to end it would be structural change – not the mere amendment of discrete laws. Legal reforms that do not challenge the power that the state exercises against indigenous peoples cannot even begin to address this deep-seated and far-reaching epistemic violence.

Fourth World scholars have been engaging with these issues for many decades, and lawyers who seek to engage the law with the end in view of resisting epistemic violence and, ultimately, contributing to the reform of indigenous peoples' relationship with states, would do well to learn from Fourth World thinking on engaging the sovereign state system. Thus, potential Fourth World approaches to law could consider the following: First, these legal approaches must center indigenous peoples - their views, scholarship, and the various ways they seek to exercise self-determination (which are diverse, much in the same way that their place-based identities are diverse).[143] Considering that epistemic violence is the silencing (and, ultimately, the creation) of the subaltern, any challenge to epistemic violence must not itself reproduce the silencing of indigenous peoples. Care must also be taken when employing other critical theories and approaches "in service" of indigenous peoples' claims in that indigenous peoples' unique issues and concerns must not be flattened and conflated with those of other groups who also experience some measure of exclusion or marginalization.[144]

141 See for instance Sherwood (n 23); Moreton-Robinson (n 33)

142 For a sensitive approach to Fourth World concerns within Third World Approaches to International Law (TWAIL), for instance, see Amar Bhatia, 'The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World' (2012) 13 Oregon Review of International Law 131

Second, these legal approaches must be alert to how foundational concepts in international and domestic law (such as sovereignty) as well as entire fields of law (such as human rights and indigenous peoples' rights) are complicit in the very subordination and oppression against which indigenous peoples continue to struggle. Finally, Fourth World approaches to law must respect, recognize, and learn from Fourth World knowledge systems, particularly regarding indigenous peoples' place-based identities and relationship with nature, in resisting the imbalances of power present in our laws and legal systems and in reimagining political and legal relationships that are more just and humane.

Considering that epistemic violence against indigenous peoples is a function of the pre-eminence of state sovereignty in our legal imaginary, effective and meaningful ways of redressing it would require nothing less than a comprehensive change in our legal approach towards the co-existing, sovereign indigenous peoples in the Philippines.



# Legal Landscapes: The Shaping of Indigenous Land and Resource Rights in the Philippines, 2009-2023 [1]

**Yasmin O. Hatta**
**Jameela Joy Reyes**
**Efenita M. Taqueban**

## I. Introduction

When the Indigenous Peoples' Rights Act (IPRA) was yet a nascent idea, there was a small but engaged segment of the Philippine legal community which recognized the need to refocus the national legal system toward indigenous juristic features (Lynch, 1983).[2] This advancement stemmed from a renewed appreciation for the boon and utility of indigenous Philippine culture, as well as a desire for meaningful national independence and self-determination (1983: 458). It also emanated from the realization that the current national legal system lacked a strong foundation in native principles. This drove a national system that was culturally disruptive and often contributed to the systematic devastation of indigenous legal systems and cultures (1983: 459). Arguably, this sentiment led to the initial drafts and support for something like the IPRA. More than two decades after its enactment, the IPRA remains the most comprehensive legislation to date in articulating and respecting indigenous juristic features, though it still faces challenges in fully protecting these systems.

This survey provides a comprehensive overview of the existing legal framework governing indigenous peoples' rights in the Philippines. It traces the historical evolution of these rights, including territorial rights, as recognized in Philippine national laws. Additionally, it analyzes how these legal provisions have been interpreted through a review of relevant jurisprudence, particularly case digests related to the IPRA. A dedicated section focuses on cases originating from Baguio City, Benguet, and Mountain Province, providing a more in-depth analysis of legal developments in these regions.

1 A version of this paper has been published with the Forest Peoples Programme in March 2024.

2 Lynch, O. J. (1983). The Philippine indigenous law collection: An introduction and preliminary biography. Philippine Law Journal, 58, 457–471.

## II. Legal Framework: Statutory Recognition of Indigenous Rights to Land and Resources

### A. The 1987 Philippine Constitution and the indigenous right to self-determination

Under the current Philippine state legal system, laws, policies, and jurisprudence that uphold the respect for indigenous rights to land and resources derive their legal mandate from the 1987 Philippine Constitution. The Constitution expresses the state policy to recognize, promote, and protect the rights of indigenous cultural communities (ICCs) within the framework of national unity and development. It also recognizes the right of indigenous peoples to participation through party-list representation. It commits to protect the rights of ICCs to their ancestral lands and to the practice and application of customary laws in property rights, property relations including ownership, and the extent of ancestral domains. The respect for the rights to ancestral lands, ancestral domains, and the practice of customary laws is linked to ensuring the economic, social, and cultural well-being of ICCs. The State also commits to protect and promote the right of citizens to quality education, and for indigenous learning systems. It also commits to recognize, respect, and protect the right to preserve and develop their culture, traditions, and institutions. These rights shall inform the formulation of national plans and policies, and a consultative body may be created. The Philippine state also commits to create autonomous regions in Muslim Mindanao and the Cordilleras within the framework of the 1987 Constitution, national sovereignty, and the territorial integrity of the Philippine state.

It is important to note that the struggle for the recognition of indigenous rights to land and resources is inextricably linked to a struggle to assert indigenous territorial autonomy. The constitutional commitments enshrined in the 1987 Constitution recognize territorial autonomy but fall short of recognizing indigenous peoples' right to self-determination. Territorial autonomy is expressed in the commitment to create autonomous regions in Muslim Mindanao and the Cordilleras, while cultural autonomy is expressed in the other provisions enumerated above.



The full recognition of the right to self-determination over these territories is seen by the Constitution as compatible only to the extent that this self-determination will not result in a separation from the Philippine state. A right to self-determination is short of exercising the right to secession, as these territories would remain within the framework of the territorial integrity of the Philippine state.

The state commitment to recognize indigenous rights over land and resources collectively seen as territories was operationalized through the passage of the IPRA in 1997, as well as the Philippine's adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[3] in 2007. The IPRA[4] expressly states the state recognition of the inherent right to self-determination and the fundamental rights under other internationally recognized human rights of indigenous peoples:

> *Section 13. Self-Governance. - The* ***State recognizes the inherent right of ICCs/IPs to self-governance and self-determination*** *and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/Ips to freely pursue their economic, social and cultural development.*
>
> *Section 14. Support for Autonomous Regions. - The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordillera to use the form and content of their ways of life as may be compatible with the* ***fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.***

3 Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A. (pp 18–27). https://www2.ohchr.org/english/bodies/hrcouncil/docs/a.61.53.pdf (accessed on February 24, 2023).

4 An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission On Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes, Rep. Act No. 8371, (October 29, 1997). https://www.officialgazette.gov.ph/1997/10/29/republic-act-no-8371/ (accessed on February 24, 2023).

The UNDRIP Articles 3 and 4 state:

> *Article 3 - **Indigenous peoples have the right to self-determination.** By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
>
> *Article 4 - Indigenous peoples, **in exercising their right to self-determination, have the right to autonomy** or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*

When the representative of the Philippine state voted to approve this, an explanation was made to define the limits of this right, as understood by the Philippine government. Representing the Philippines, National Commission on Indigenous Peoples (NCIP) Chairperson Atty. Eugenio A. Insigne explained that:

> *"Expression of support was premised on the understanding that the right to self-determination shall not be construed as encouraging any action that would dismember or impair the territorial integrity or political unity of a sovereign or independent State. It was also based on the understanding that land ownership and natural resources was vested in the State."*[5]

The 1987 Constitutional provisions respecting indigenous rights and the bills that would soon give birth to the IPRA were meant to address the centuries-old historical injustice suffered by indigenous peoples from the colonial government and the subsequent independent Republic. This historical injustice includes the violent dispossession of indigenous territories to discriminatory treatment of indigenous peoples. The Philippine state was not immune to the atrocities committed by colonizers against indigenous peoples; yet, it also played a significant role in perpetuating this insidious scheme.

5 United Nations. (2007, September 13). General Assembly adopts Declaration on Rights of Indigenous Peoples; 'Major step forward' towards human rights for all, says President. https://www.un.org/press/en/2007/ga10612.doc.htm (accessed on March 5, 2023).



When the constitutionality of the IPRA was challenged by former Supreme Court Chief Justice Isagani Cruz,[6] the Supreme Court of the Philippines had the opportunity to engage in a legal discourse on the rights of indigenous peoples. The separate opinions of Justice Kapunan and Justice Puno in the case document highlighted the State's role in the marginalization of indigenous peoples, and the historic attempt of the 1987 Philippine Constitution to lay the foundations for the correction of these injustices.

The 1935 Constitution did not have any policy on non-Christian tribes. Instead, the main objective was addressing national patrimony issues, attempting to ensure that the national patrimony would be exploited by Filipinos and not Americans. The introduction and reliance on the Regalian Doctrine to preserve the national patrimony vis-à-vis American colonial masters, unfortunately, worked against longstanding assertions of the unsubjugated indigenous tribes.

In 1973, for the first time in close to 500 years, the highest law of the Philippine islands recognized unsubjugated tribes as cultural communities, veering away from the derogatory nature of the term 'non-Christian' tribes. Sec 11, Article XV of the 1973 Constitution stated: *"The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of State policies."*

*But it was in the 1987 Philippine Constitution that the rights of indigenous peoples were made more explicit. As stated in the Separate Opinion of Justice Kapunan:*

*The framers of the 1987 Constitution, looking back to the long destitution of our less fortunate brothers, fittingly saw the historic opportunity to actualize the ideals of people empowerment and social justice, and to reach out particularly to the marginalized sectors of society, including the indigenous peoples. They incorporated in the fundamental law several provisions recognizing and protecting the rights and interests of the indigenous peoples, to wit:*

> *Sec. 22. The State recognizes and promotes the rights of indigenous peoples within the framework of national unity and development.*

6 Cruz vs. Sec. of Environment and Natural Resources GR 135385, December 6, 2000, 400 Phil 904. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/36882 (accessed on March 5, 2023)

*Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural wellbeing. The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domains.*

*Sec. 1. The Congress shall give the 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.*

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

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

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

The IPRA was enacted precisely to implement the foregoing constitutional provisions. It provides, among others, that the State shall recognize and promote the rights of indigenous peoples within the framework of national unity and development, protect their rights over the ancestral lands and ancestral domains, and recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domains. Moreover, the IPRA enumerates the civil and political rights of the indigenous peoples, spells out their social and cultural rights, acknowledges a general concept of indigenous property right and recognizes title thereto, and creates the NCIP as an independent agency under the Office of the President.

In the Sponsorship Speeches of Senator Juan M. Flavier for Senate Bill 1728 and Representative Gregorio Andolana for House Bill 9125, they emphasized the purpose of both the 1987 Constitution and the new law. Justice Puno's Separate Opinion in the case of Cruz vs. Secretary of Environment and Natural Resources GR 135385 reproduced the relevant section of Senator Flavier's sponsorship speech:

> *"The Indigenous Cultural Communities, including the Bangsa Moro, have long suffered from the dominance and neglect of government controlled by the majority. Massive migration of their Christian brothers to their homeland shrunk their territory and many of the tribal Filipinos were pushed to the hinterlands. Resisting the intrusion, dispossessed of their ancestral land and with the massive exploitation of their natural resources by the elite among the migrant population, they became marginalized. And the government has been an indispensable party to this insidious conspiracy against the Indigenous Cultural Communities (ICCs). It organized and supported the resettlement of people to their ancestral land, which was massive during the Commonwealth and early years of the Philippine Republic. Pursuant to the Regalian Doctrine first introduced to our system by Spain through the Royal Decree of 13 February 1894 or the Maura Law, the government passed laws to legitimize the wholesale landgrabbing and provide for easy titling or grant of lands to migrant homesteaders within the traditional areas of the ICCs."*

Justice Puno's Separate Opinion likewise quoted the Sponsorship Speech of Representative Andolana:

> *"This Representation, as early as in the 8th Congress, filed a bill of similar implications that would promote, recognize the rights of indigenous cultural communities within the framework of national unity and development. Apart from this, Mr. Speaker, is our obligation, the government's obligation to assure and ascertain that these rights shall be well preserved and the cultural traditions as well as the indigenous laws that remained long before this Republic was established shall be preserved and promoted. There is a need, Mr. Speaker, to look into these matters seriously and early approval of the substitute bill shall bring into reality the aspirations, the hope and the dreams of more than 12 million Filipinos that they be considered in the mainstream of the Philippine society as we fashion for the year 2000."*

**B. Correcting historical injustice in policies and jurisprudence**

The Philippine state's recognition of indigenous rights to land and resources within indigenous territories can be traced to the recognition that these territories never became part of lands under the Spanish crown and, consequently, was not the subject of acquisition and transfer to American colonists with the signing of the Treaty of Paris.

In the case of Cariño v. Insular Government, the US Supreme Court, in reviewing the case elevated to it by way of writ of error, rendered a decision that, in effect, confirmed that indigenous tribes did exist, that these indigenous tribes had ancient possession of territories, and that their anti-colonists demeanor prevented them from ever coming under Spanish rule.

Unfortunately, despite the Cariño decision, the Philippine state and the American colonists discriminated against indigenous peoples, violently dispossessed them of their indigenous territory, and institutionalized the discrimination by way of policies and jurisprudence. This unequal treatment resulted in the dispossession of indigenous peoples' territory, economic and political marginalization, and making many ICCs become part of the poorest sectors of Philippine society despite the vastness of the resources within their indigenous territories.



American colonists looked down on indigenous peoples and looked at them as 'wild', 'savage', 'uncivilized', 'pagans', and 'incapable of self-rule'. In describing indigenous peoples as uncivilized and incapable of self-rule and self-governance, American colonists laid the justification for dispossession of land and resources.

In 1903, the Census of the Philippine Islands[7] produced by the American colonial government described indigenous peoples as:

> *For purposes of this report the wild peoples of the Philippines may be divided into four classes: Those who are essentially savage and nomadic in their habits, such as the head-hunters of Luzon and certain of the Moros; those who are peaceful and sedentary, such as many of the Igorots; those who are peaceful, nomadic, and timid, such as the Negritos, the Mangyans of Mindoro, and the pagans of Mindanao, who, on the appearance of strangers, flee to the fastnesses of the forests and jungles, and cannot be approached; and, finally, those who compose the outlaw element from the Christian towns, and are known as Monteses, Remontados, Vagos, Nomadas, Pulijanes, and Babulanes.*
>
> *In addition to the Christian or civilized inhabitants, there are savage races inhabiting the foot of the mountains or their sides, forming settlements distinct from the Christian ones. These races are divided into 'Kalingas' and 'Aetas'… The Kalingas, which in the Ibanag dialect means enemies, engage in the cultivation of tobacco, corn, rice, and sweet potatoes, and also in the hunting of deer and wild boars and wild carabaos.*
>
> *In Tagalog, Bicol and Visaya, manguian signifies 'savage', 'mountaineer', 'pagan negroes'. It may be that the use of this word is applicable to a great number of Filipinos but nevertheless it has been applied only to certain inhabitants of Mindoro. In primitive times, without doubt, this name was even then given to those of that island who today bear it.*

7 United States Bureau of Census (1903). Census of the Philippine Islands. https://www.psa.gov.ph/system/files/main-publication/1903%2520CPH%2520vol1.pdf (accessed on March 23, 2023).

> *By instinct the Moro is warlike and exhibits cruelty toward his enemies, as is usually customary with savages. Ready and eager to shed blood, independent and jealous in nature, he makes war on slight provocation. He is not open and fair in fight, and frequently resorts to cowardly means of attack.*

In 1904, Attorney General Lebbeus R. Wiflley for the Philippine Islands[8] quoted Governor General Taft:

> *Governor Taft, testifying before the Senate Committee on the Philippines in 1902, pointed out the obstacles, which lie in the way of adopting the jury system in the Islands. He said:*
>
> > *"Ninety per cent, of the people are so ignorant that they could not sit on the jury, to begin with, and understand anything that would be adduced. Then I am bound to say that the difficulty of selecting judges who are above reproach makes it certain that the selection of juries would lead to nothing but corruption and injustice, and we inserted this provision with respect to assessors for the purpose of educating the people up to a possibility of justice. The difficulty with the Filipino mind to-day in the administering of a public trust or the decision of a question between parties is his inability to bring himself to the point of looking impartially at a question between parties."*

In the account of Governor General Henry C. Ide of the Philippines published in 1907, he relayed how American officials viewed the Filipinos, particularly the unsubjugated tribes.

In Rubi vs. The Provincial Board of Mindoro, the Supreme Court, speaking through Justice Malcolm, upheld the involuntary displacement of the Manguian tribe in Mindoro into reducciones as not violative of Constitutional provisions on equal protection of the law.[9]

8 Wilfley, L. R. (1904). The New Philippine Judiciary. The North American Review, 178(570), 730–41. http://www.jstor.org/stable/25119567 .

9 Rubi, et al. vs. The Provincial Board of Mindoro, GR L-14078, March 7, 1919. https://lawphil.net/judjuris/juri1939/may1939/gr_l-45987_1939.html (accessed on March 23, 2023).



*Rubi and other Manguians applied for habeas corpus and asserted that they were illegally being deprived of their liberty by the provincial officials of Mindoro province by being forced to stay in the Tigbao, Mindoro reservation against their will, and that Dabalos, another Manguian, was imprisoned in Calapan for running away from the reservation.*

*The Supreme Court held that: Our attempt at giving a brief history of the Philippines with reference to the so-called non-Christians has been in vain, if we fail to realize that a consistent governmental policy has been effective in the Philippines from early days to the present. The idea to unify the people of the Philippines so that they may approach the highest conception of nationality. If all are to be equal before the law, all must be approximately equal in intelligence. If the Philippines is to be a rich and powerful country, Mindoro must be populated, and its fertile regions must be developed. The public policy of the Government of the Philippine Islands is shaped with a view to benefit the Filipino people as a whole. The Manguianes, in order to fulfill this governmental policy,* **must be confined for a time, as we have said, for their own good and the good of the country.**

This view of 'non-Christian' unsubjugated tribes continued for the most part of the American colonial period. In People vs. Cayat,[10] the Supreme Court of the Philippines expressed that both the Spanish Government and the American Government have been vexed with bringing about civilization and material prosperity for the non-Christian tribes and to bring them out of the obscurity of ignorance.

> *In this case, Cayat, a native of Baguio, Benguet, Mountain Province was fined five pesos (P5) for possessing one bottle of A-1-1 gin, which is not a native wine, which the members of such tribes have been accustomed to, thus violating Act No. 1639.*

10 People v. Cayat, GR L 45987, May 5, 1939. https://lawphil.net/judjuris/juri1939/may1939/gr_l-45987_1939.html (accessed on March 23, 2023).

*Act 1639 considers unlawful for "any native of the Philippine Islands who is a member of a non-Christian tribe within the meaning of the Act Numbered Thirteen Hundred and Ninety-Seven, to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors, which the members of such tribes have been accustomed themselves to make prior to the passage of this Act, except as provided in section one hereof; and it shall be the duty of any police officer or other duly authorized agent of the Insular or any provincial, municipal or township government to seize and forthwith destroy any such liquors found unlawfully in the possession of any member of a non-Christian tribe."*

*Cayat appealed this to the Supreme Court and asserted that "that provision of the law empowering any police officer or other duly authorized agent of the government to seize and forthwith destroy any prohibited liquors found unlawfully in the possession of any member of the non-Christian tribes is violative of the due process of law provided in the Constitution."*

*The Court clarified that the prohibition "to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors which the members of such tribes have been accustomed themselves to make prior to the passage of this Act.," is unquestionably designed to insure peace and order in and among the non-Christian tribes. It has been the sad experience of the past, as the observations of the lower court disclose, that 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.*



## II. Post Colonial Formative Cases on Indigenous Peoples Rights

### A. Post IPRA

This survey identified five formative jurisprudence related to indigenous peoples' rights after the passage of the IPRA in 1997. These are:

- 
- Cruz v. Secretary of DENR, G.R. No. 135385, 6 December 2000
- Unduran v. Aberasturi, G.R. No. 181284, 20 October 2015
- Lim v. Gamosa, G.R. No. 193964, 2 December 2015
- Ha Datu Tawahig v. Lapinid, G.R. No. 221139, 20 March 2019
  Daco v. Cabajar, G.R. No. 222611, 15 November 2021

#### Cruz v. Secretary of DENR (2000)[11]

Even before the first anniversary of the IPRA's passage into law, its constitutionality was challenged by no less than a former Justice of the high court. The case was filed on the grounds of (1) violating the Regalian Doctrine, (2) violating the due process clause of the Constitution, and (3) infringing upon the President's power of control over executive departments. The High Court was divided, with seven justices of the Supreme Court voting to dismiss the petition and seven justices voting to grant the petition. Not obtaining enough votes even after a second deliberation, the Court dismissed the petition and upheld the validity of the IPRA.

What is notable is that what the petitioners wanted to invalidate was the recognition of indigenous rights over ancestral domains, ancestral lands, priority rights over natural resources, applicability of customary laws in resolving land conflicts, and primacy of customary laws in resolving ICC/IP conflicts. These are all the core aspects raised by the proponents of the constitutional provisions recognizing indigenous rights as essential to correct the historical injustices suffered by indigenous peoples.

11 Cruz v. Secretary of DENR, G.R. No. 135385, December 6, 2000. https://lawphil.net/judjuris/juri2000/dec2000/gr_135385_2000.html (accessed on March 29, 2023).

Important to the discussion is Justice Puno's Separate Opinion, which historicized the context of indigenous peoples in the Philippines, as well as discussed the IPRA. He posited that:

> *"The IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities' right to their ancestral land but, more importantly, to correct a grave historical injustice to our indigenous people."*

In the discussion, Justice Puno noted that the provisions of the IPRA do not contravene the Constitution, as ancestral domains and ancestral lands are the private property of indigenous peoples and do not constitute part of the land of the public domain, citing Cariño v. Insular Government and the indigenous concept of ownership and customary law. He also posited that the IPRA does not violate the Regalian Doctrine. To bolster this argument, he cited the rights of ICCs/IPs over their ancestral domains and lands, and said that the right of ICCs/IPs to develop lands and natural resources within their ancestral domains does not deprive the State of ownership over the natural resources, as well as the control and supervision of the development and exploitation of the same. He then concluded that the IPRA is a recognition of the State in its active participation in the international indigenous movement.

Justice Puno's separate opinion also laid down the distinction between the indigenous concept of land and ownership. He reiterated that *"land is the central element of the indigenous peoples' existence"* and that, in general, *"there is no traditional concept of permanent, individual, land ownership."* Instead, what can be observed among the various tribes is *"the traditional belief that no one owns the land except the gods and spirits, and that those who work the land are its mere stewards."* It is also characterized by a type of 'trusteeship', as the right to possess the land is accompanied by a duty to care for it because it is also owned by future generations. The type of ownership of the land is skewed toward communal ownership of either *"a group of individuals or families who are related by blood or by marriage"* or ownership *"by residents of the same locality who may not be related by blood or marriage"*. This communal and trusteeship concept of land 'ownership' is derived from a highly collectivized form of subsistence economic production. It informs and is embodied in customary law.



In some tribes, individual ownership, though present, is a very limited system, where such rights possessed by the individual 'owner' are not equivalent to the bundle of rights defined under the Civil Code. The alienation or disposition of individually owned land is highly discouraged and is allowed only under specific circumstances (i.e., marriage, succession, and extreme circumstances of financial needs in case of sickness, death in the family, or loss of crops). In the process of alienation/ disposition, it must be offered to a clan-member, then to a village-member, but in no case to a non-member of the ili.

The opinion also noted that this type of ownership is not evidenced by physical titling. Land titles do not exist in the indigenous peoples' economic and social system. It also stated that the rights to ancestral domains/lands may be acquired through two modes: (1) by native title over both ancestral lands and domains, and (2) by Torrens Title under the Public Land Act and the Land Registration Act with respect to ancestral lands only. Both modalities further lay down the basis that indigenous ancestral lands and domains are private in nature.

Lastly, the Separate Opinion of Justice Puno clarified that while the IPRA recognizes ownership rights of indigenous peoples over their ancestral domain, Section 7 of the law expressly specifies the limits of that ownership:

> *The ICCs/IPs are given the right to claim ownership over "lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains".*
>
> *It will be noted that this enumeration does not mention bodies of water not occupied by the ICCs/IPs, minerals, coal, wildlife, flora and fauna in the traditional hunting grounds, fish in the traditional fishing grounds, forests or timber in the sacred places, etc. and all other natural resources found within the ancestral domains. Indeed, the right of ownership under Section 7(a) does not cover "waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna and all other natural resources" enumerated in Section 2, Article XII of the 1987 Constitution as belonging to the State.*
>
> *The non-inclusion of ownership by the ICCs/IPs over the natural resources in Section 7(a) complies with the Regalian Doctrine.*

*xxx*

*Ownership over the natural resources in the ancestral domains remains with the State and the ICCs/IPs are merely granted the right to "manage and conserve" them for future generations, "benefit and share" the profits from their allocation and utilization, and "negotiate the terms and conditions for their exploration" for the purpose of "ensuring ecological and environmental protection and conservation measures". It must be noted that the right to negotiate the terms and conditions over the natural resources covers only their exploration, which must be for the purpose of ensuring ecological and environmental protection of, and conservation measures in the ancestral domain. It does not extend to the exploitation and development of natural resources.*

**Unduran v. Aberasturi (2015)[12]**

This case involved a dispute between the Talaandig tribe represented by their organization Miarayon, Lapok, Lirongan, Talaandig Tribal Association (MILALITTRA) and non-indigenous claimants of a parcel of land that falls within the Talaandig territory in Miarayon, Talakag, Bukidnon. A Certificate of Ancestral Domain Title (CADT) has been issued by the NCIP to MILALITTRA and awarded to them by no less than President Arroyo. The initial case was filed by the non-indigenous land claimants with the Regional Trial Court (RTC) for an Accion Reinvidicatoria, who asserted that the parcel of land was bought from a Talaandig Chieftain in 1957 by Deed of Sale, and that they have been occupying the same since then and paid real estate taxes upon the same since 1957. The Talaandig tribe asserted that the NCIP and not the RTC had jurisdiction of the case because of Section 66 of the IPRA.

In this case, the Supreme Court clarified the jurisdictions of the NCIP as a quasi-judicial body, and the RTC. It said that the NCIP shall have jurisdiction only when the dispute arises between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, the case shall fall under the jurisdiction of the proper courts of justice, instead of the NCIP.

12 Unduran v. Aberasturi, G.R. No. 181284, October 20, 2015. https://lawphil.net/judjuris/juri2015/oct2015/gr_181284_2015.html (accessed on March 22, 2023).



When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, the case shall fall under the jurisdiction of the proper courts of justice, instead of the NCIP. A dispute which falls within the jurisdiction of the NCIP would need to satisfy exhaustion of remedies under customary law, and the submission of a certification by the Council of Elders/ Leaders that such resort to customary law was satisfied is required.

*A careful review of Section 66 shows that the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. This can be gathered from the qualifying provision that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/ Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.*

*The qualifying provision r***equires two conditions before such disputes may be brought before the NCIP***, namely:*

*(1) exhaustion of remedies under customary laws of the parties, and*
*(2) compliance with condition precedent through the said certification by the Council of Elders/Leaders."*

The High Court clarified that there are instances when the NCIP may have jurisdiction—that is, when the dispute is among two different ICC/IP groups with conflicting claims in the process of ancestral domain delineation, and fraudulent claims.[13]

13 Exceptional cases where the NCIP shall still have jurisdiction over such claims and disputes even if the parties involved do not belong to the same ICC/IP, viz.:

**1. Cases under Sections 52 and 62 of the IPRA, which contemplate a situation where a dispute over an ancestral domain involving parties who do not belong to the same, but to different ICCs/IPs, to wit:**

SECTION 52. Delineation Process. — The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

x x x x

h) Endorsement to NCIP.

x x x x
SECTION 62. Resolution of Conflicts

**2. Cases under Section 54 of the IPRA over fraudulent claims by parties who are not members of the same ICC/IP, to wit:**

SECTION 54. Fraudulent Claims. — The Ancestral Domains Office may, upon written request from the ICCs/ IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be canceled by the NCIP after due notice and hearing of all parties concerned.

**Lim v. Gamosa (2015)** [14]

This case involved the Tagbanua tribe in the Calamianes islands of northern Palawan. Even prior to the IPRA, the tribe had already asserted claims over their ancestral domains. With its passage, the Provincial Special Task Force on Ancestral Domains (PSTFAD), which was processing the Tagbanua tribe claim by virtue of DENR Department Administrative Order 2, s. 1993, recommended that the Tagbanua "undertake the validation of their proofs and claims with the newly created NCIP for the corresponding issuance of a CADT". This transition of processing a title from one agency to another would, according to the Tagbanua, set back their process for several years.

While the issue surrounding the title was still pending, a non-indigenous third-party fishing company, RBL Fishing Corporation, entered the Tagbanua ancestral domain and displaced tribe members living in the area: *"Engr. Ben Lim, RBL Fishing Corporation, Palawan Aquaculture Corporation and Peninsula Shipyard Corporation, entered and occupied portions of the Tagbanua ancestral domains [in] Sitio Makwaw and Sitio Minukbay Buenavista, Coron, Palawan. The workers of the above-named persons destroyed the houses of [their] tribal members, coerced some to stop from cultivating their lands and had set up houses within the said portions of their ancestral domains."* Lim and his fishing company did not seek any Free, Prior and Informed Consent (FPIC).

Tagbanua ICC of Palawan filed a petition before the NCIP against petitioners for violation of the FPIC and unauthorized and unlawful intrusion. Before the Supreme Court was the issue on the jurisdiction of the NCIP.

Once again, the High Court reiterated in this case that it is the RTC that has jurisdiction over the dispute and not the NCIP, as it involved a non-indigenous person as another party in the case. This is notwithstanding the fact that the main subject of the complaint is non-compliance with the FPIC and the forced displacement of the Tagbanua from inside their ancestral domain.

14 Lim v. Gamosa, G.R. No. 193964, December 02, 2015. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/61524 (accessed on March 22, 2023).



**Ha Datu Tawahig v. Lapinid (2019)**[15]

In this case, the High Court distinguished the limits of the application of indigenous justice systems and conflict resolution institutions within indigenous customary law. Section 15 of the IPRA enunciates the right of ICCs/IPs to use their own commonly accepted justice systems, conflict resolution institutions, peace-building processes or mechanisms, and other customary laws and practices within their communities. However, the IPRA also states that this right is subject to the limitation that these systems, institutions, and mechanisms of customary law and practice should be *"compatible with the national legal system and with internationally recognized human rights"*.

This case involved a tribal chieftain of the Higaonon tribe accused of committing rape against Lorraine Fe P. Igot. Igot filed the complaint for rape with the Cebu City Prosecutor on November 14, 2006. Finding probable cause, the information was filed with the RTC of Cebu City on April 4, 2007, and a warrant of arrest was issued on September 13, 2007. The arrest was made six years after.

Accused Datu Tawahig filed a Motion to Quash, asserting Sections 15 and 65 of the IPRA, referring to the Primacy of Customary Laws and Practices to resolve the dispute. It was asserted that Igot had submitted her accusations before the concerned Council of Elders and that the Dadantulan Tribal Court was subsequently formed. Datu Tawahig was tried under customary law within the Dadantulan Tribal Court and was cleared and declared that Datu Tawahig should be spared from criminal, civil, and administrative liability. The Datu anchored his argument on Section 65 of the IPRA.

The legal issue raised was whether the Supreme Court can issue a writ of mandamus to compel Judge Sinco, as well as Prosecutors Gubalane, Lapinid, Sellon, and Narido, to desist from proceeding with the rape case.

15 Ha Datu Tawahig v. Lapinid, G.R. No. 221139, March 20, 2019. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145 (accessed on March 22, 2023).

The Supreme Court, in denying the petition of Datu Tawahig, clarified that Section 66 on the Jurisdiction of the NCIP and Section 67 on Appeals to the Court of Appeals build on Section 65 of the IPRA. The IPRA recognizes that disputes among parties belonging to the same ICC that are brought under customary laws may be brought to the NCIP if remedies under customary laws have been exhausted, and the disputes remain unresolved. Moreover, the decisions of the NCIP may be appealed to the Court of Appeals by way of petition for review. The Court emphasized that these provisions under Chapter IX of the IPRA lend legitimacy to and enable the efficacy and viability of customary laws and practices, but also underscore that (1) customary law and practices are "structurally and operationally distinct" from national state legislature enactments and general application regulations, and (2) that the exclusive objects of the application of customary law and practices are parties belonging to the same ICC. *"A set of customary laws and practices is effective only within the confines of the specific ICC that adopted and adheres to it."*

This implies that, even though there may be existing indigenous customary law and practices that deal with other parties who are non-members of the ICC, these will not be recognized to resolve disputes under the IPRA. What the national law and the Philippine state recognize are those which pertain exclusively to customary laws and practices governing only the members of the same ICC.

**Daco v. Cabajar (2021)[16]**

This case involved members of the Tagbanua ICC in Busuanga, Palawan, and revolved around the ownership and possession of Isla Malajem, which is claimed to be located within the Tagbanua's ancestral domain.

Petitioner Daco is a Tagbanua and a native of Busuanga, Palawan, claiming that Isla Malajem was owned by his father, Ciriaco, but was taken from them by other Tagbanuas via the IPRA.

16 Daco v. Cabajar, G.R. No. 222611, November 15, 2021. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68052 (accessed on March 22, 2023).



He is praying that the Court of Appeals' March 6, 2015 and December 14, 2015 resolutions be reversed, which dismissed Daco's appeal from the decision of the NCIP Regional Hearing Office (RHO) based on procedural infirmities. He mainly argued that the NCIP lacks jurisdiction over the complaint filed by respondent before the Commission's RHO.

Respondent Cabajar, on the other hand, is a member of the Tagbanua ICC of Barangay Panlaitan, Busuanga, Palawan. He is also the president of the Panlaitan San Isidro Cultural Minorities Development Association (PASICMIDA), a local organization of indigenous peoples. Cabajar presented evidence to show he is a member of the Tagbanua ICC and that the Council of Elders of the Tagbanua tribe had authorized him to file a complaint before the NCIP.

Cabajar asserted that Isla Malajem is part of the ancestral domain of the Tagbanua and the main source of income of their community as this contains the caves where they gather 'balinsasayaw' or birds' nest. This is supported by the recognition by the Municipality of Busuanga, Palawan, through Resolution No. 39, s. 1996 of the Office of the Sangguniang Bayan that Isla Malajem is part of the ancestral lands *"discovered by the forefathers of the cultural minorities since time immemorial"* and *"exclusively for cultural minorities, of Barangay Panlaitan, San Isidro".*

NCIP RHO-Region IV ruled that Isla Malajem was part of the Tagbanuas' ancestral domain. It stated that the same finding had already been established in its previous ruling in PASICMIDA v. PCSD. It also found that the Tagbanua have established claim over their ancestral domain since time immemorial and that this constitutes native title. The area in question is a *"seashore and a cave traditionally used by the indigenous peoples to gather bird's nest or in Tagbanua dialect, 'balinsasayaw', since time immemorial";* therefore, it cannot be privately owned by one individual. The NCIP RHO found defendant Daco to have unlawfully and without authority intruded into the ancestral domain of the Tagbanua and was ordered to immediately vacate Isla Malajem and pay damages to the community.

In this case, the first condition for the NCIP to acquire jurisdiction is present: both parties were members of the same indigenous tribe (i.e., Tagbanua). The second condition (i.e., primary resort to the resolution of the dispute through customary law and the exhaustion of remedies available under customary law) was not been shown to be complied with. The Court proceeded to examine the exceptions to the requirement of a certification of exhaustion of customary law remedies from the Council of Elders.

The Court found that the NCIP has jurisdiction over the case, upheld the decision of the NCIP RHO, and dismissed the petition of Daco.

**B. IP Cases (1984, 2009–2022): Focus on the Cordillera Administrative Region (CAR)**

The following cases illustrate how courts have interpreted whether land in Baguio City is considered ancestral or public, and whether indigenous land within the city falls under the provisions of the IPRA.

**Republic v. Judge Fañgonil (1984)[17]**

This case has been cited in subsequent decisions of the Court and thus important to revisit in looking at decisions around Baguio after the passage of IPRA. It revolved around the registration of lots located within the Baguio Townsite Reservation and whether claims within the reservation may still be entertained beyond the period set by law or if laches have already set in.

The 1909 decision in Cariño vs. Insular Government, 212 U.S. 449, 41 Phil. 935 is recognized in this case as epochal and paved the way for the passage of Act No. 627, which allowed private claimants to lands within the Baguio Townsite Reservation to register their lots in Expediente de Reserve No. 1, GLRO Reservation Record No. 211 or Case 211.

17 Republic v. Fañgonil, G.R. No. L-57112, November 29, 1984. https://lawphil.net/judjuris/juri1984/nov1984/gr_l57112_1984.html (accessed on March 22, 2023).



The decision laid down the recognition of the seminal case of Cariño as background. In 1914, when the Land Registration Court was abolished, the registration records were transferred to the Court of First Instance of Benguet. The purpose of Case No. 211 was to determine once and for all what portions of the Baguio Townsite Reservation were private and registerable under Act No. 496, as provided in section 62 of Act No. 926. Once so determined, no further registration proceeding would be allowed (Sections 3 and 4, Act No. 627).

Judge Fangonil sought to apply the ruling therein to the instant eight cases, which was decided by the Court as unwarranted or unreasonable, as it would reopen Case No. 211 and would give way to baseless litigations intended to be foreclosed by the 1912 case.

Private claimants to lands within the Baguio Townsite Reservation were given a chance to register their lands in Case No. 211. The provisions of Act No. 627, allowing them to do so, are in harmony with the 1909 epochal decision of Justice Holmes in Cariño vs. Insular Government.

In this case, the eight applicants did not base their applications under Act No. 496 on any purchase or grant from the State nor on possession since time immemorial. That is why Act No. 496 cannot apply to them (see Manila Electric Company vs. Castro-Bartolome, L- 49623, June 29, 1982, 114 SCRA 799). They are not 'Igorot claimants' (see p. 35, Memo of Solicitor General).

The Court deemed the applicants to have the burden of proving that their predecessors were living upon or in visible possession of the lands in 1915 and were not served any notice, noting that if they have such evidence, apart from unreliable oral testimony, they should have produced it during the hearing on the motions to dismiss.

To support his motions to dismiss, the Solicitor General introduced evidence proving that after Case No. 211, it has always been necessary to issue Presidential proclamations for the disposition of portions of the Baguio Townsite Reservation.

Ultimately, the Court held that "the period of more than 50 years completely bars the applicants from securing relief due to the alleged lack of personal notice to their predecessors. The law helps the vigilant but not those who sleep on their rights. 'For time is a means of destroying obligations and actions, because time runs against the slothful and contemners of their own rights.'"

**City Government of Baguio v. Masweng (2009)[18]**

The case arose because private respondents claimed that the lands in question over which their residential houses stand are their ancestral lands, which they have been occupying and possessing openly and continuously since time immemorial, and that this ownership was conferred to them through Proclamation No. 15. Thus, they contended that the demolition of their residential houses was a violation of their right over their ancestral lands.

As a result, Respont Masweng, who was the Regional Officer of the NCIP-CAR, issued two temporary restraining orders (TROs) subject of this petition, directing the petitioners to refrain from enforcing the Demolition Advice.

The Court in this case said that while the NCIP has the authority to issue TROs and writs of injunction to preserve the rights of parties to a dispute who are members of ICCs/IPs, it also categorically ruled that Elvin Gumangan and others, whose houses and structures are the subject of the demolition orders issued by the City Government of Baguio, were not entitled to the injunctive relief.

While Proclamation 15 identifies the Molintas and Gumangan families as claimants of a portion of the Reservation, the Proclamation does not acknowledge vested rights over the same and does not serve to be a definitive recognition of the private respondents' ancestral land claim. In fact, Proclamation No. 15 explicitly withdraws the Reservation from sale or settlement. Moreover, the IPRA concedes the validity of prior land rights recognized or acquired through any process before its effectivity.

18 City Government of Baguio City v. Atty. Masweng, G.R. No. 180206, February 04, 2009.



Note: There are several cases that relate to this petition. These include the Heirs of Gumangan v. C, where the Supreme Court declared the Busol Forest Reservation as inalienable, which means it is not private property and cannot be converted, as well as The Baguio Regreening Movement v. Atty. Masweng. All the cases discussed the properties of forest reserves.

**Lamsis v. Dong-e (2010)[19]**

The case involved a conflict of ownership and possession over an untitled parcel of land situated in Baguio City, denominated as Lot No. 1, which is part of a larger parcel of land. While petitioners were the actual occupants of Lot No. 1, respondents averred that they own the said land and were seeking to recover the same. To bolster their argument, a respondent said that her family's ownership over the land can be traced as far back as 1922, and that petitioners' use of the land was merely tolerated by respondents' family.

The main issues included: (1) whether the ancestral land claim pending before the NCIP should take precedence over the reivindicatory action, and (2) whether the trial court had jurisdiction to decide the case considering the effectivity date of the IPRA vis-à-vis when the complaint was instituted.

Anent the first issue, the Supreme Court said that the application for issuance of a Certificate of Ancestral Land Title (CALT) pending before the NCIP is akin to a registration proceeding. The application, like a registration proceeding, aims to seek an official recognition of one's claim to a particular land and is a proceeding in rem. The titling of ancestral lands is for the purpose of 'officially establishing' one's land as an ancestral land; just like a registration proceeding, the titling of ancestral lands does not vest ownership upon the applicant but only recognizes ownership that has already vested in the applicant by virtue of his and his predecessor-in-interest's possession of the property since time immemorial.

19 Lamsis v. Dong-e, G.R. No. 173021, October 20, 2010. https://lawphil.net/judjuris/juri2010/oct2010/gr_173021_2010.html (accessed on March 22, 2023).

Given that a registration proceeding is not a conclusive adjudication of ownership, it will not constitute litis pendencia on the reivindicatory case.

As regards the second matter, the Supreme Court noted that the petitioners were belated in raising the IPRA vis-à-vis jurisdiction. The *ponencia's* penultimate paragraph provided that "even assuming arguendo that petitioners' theory about the effect of IPRA is correct (a matter which need not be decided here), they are already barred by laches from raising their jurisdictional objection under the circumstances."

**City Government of Baguio v. Masweng (2014)[20]**

The case arose because the City Government of Baguio issued demolition orders for the illegal structures that had been constructed on a portion of the Busol Watershed Reservation, without the required building permits and in violation of the Revised Forestry Code, the National Building Code, and the Urban Development and Housing Act.

The issue in this case was whether respondent Masweng, who was the RHO of NCIP-CAR, should be cited in contempt of court for issuing the TROs and writs of preliminary injunction on the demolition orders. The Supreme Court cited Section 3 of Rule 71 of the Rules of Civil Procedure, on disobedience of or resistance to a lawful writ, process, order, or judgment of a court, to discuss the matter at hand.

Procedurally, the main question as bar was whether private respondents' ancestral land claim was indeed recognized by Proclamation No. 15. If so, their right to the land may be protected by an injunctive writ. The rationale for this is that before a writ of preliminary injunction may be issued, petitioners must show that there exists a right to be protected and that the acts against which injunction is directed are violative of said right.

20 City Government of Baguio City v. Atty. Masweng, G.R. No. 188913, February 19, 2014.



Proclamation No. 15, however, does not appear to be a definitive recognition of private respondents' ancestral land claim. The proclamation merely identifies the Molintas and Gumangan families, the predecessors-in-interest of private respondents, as claimants of a portion of the Busol Forest Reservation, but it does not acknowledge vested rights over the same. In fact, Proclamation No. 15 explicitly withdraws the Busol Forest Reservation from sale or settlement.

**Begnaen v. Sps Caligtan (2016)[21]**

The main issue raised with the High Court in this case was whether the Court of Appeals committed an error in upholding the jurisdiction of the NCIP over a land dispute between members of the Kankaney Tribe of Mountain Province. Petitioner Begnaen claimed ownership of a 125-square-meter parcel of land in Sabangan, Mountain Province. Begnaen alleged that respondents Caligatan had constructed a shack on part of the property without his consent. The Caligatans countered that they owned the land, having acquired it through purchase from a relative in 1959, in accordance with long-standing customary practices.

The Court reiterated its earlier pronouncements and said that the NCIP cannot be said to have even primary jurisdiction over all the ICC/IP cases. Neither does the IPRA confer original and exclusive jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs. At best, the limited jurisdiction of the NCIP is concurrent with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies. (In Lim v. Gamosa, the Court also struck down as void the rule purporting to confer original and exclusive jurisdiction upon the RHO. It said that *"the limited jurisdiction of the NCIP is **concurrent** with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies.")*

21 Begnaen v. Sps Caligtan, G.R. No. 189852, August 17, 2016. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/62247 (accessed on March 23, 2023).

On the matter of the subject property, the Supreme Court said that the NCIP also has jurisdiction over the same, as it has been agreed upon that the land did not lose its character as ancestral domain.

Finally, the Court said that because the NCIP-RHO was the agency that first took cognizance of the complaint, it has jurisdiction over the same to the exclusion of the Municipal Circuit Trial Court (MCTC). While the doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter, the settled rule is that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others. Thus, assuming there is concurrent jurisdiction, this concurrence is not to be taken as an unrestrained freedom to file the same case before both bodies or to be viewed as a contest between these bodies as to which one will first complete the investigation.

**City Government of Baguio v. Masweng (2018)[22]**

The private respondents were petitioners in a previous NCIP case, seeking the identification, delineation, and recognition of their ancestral lands within the Busol Forest Reserve, as well as the issuance of the corresponding CALT. They also sought to restrain the City Government from enforcing demolition orders and to prevent the destruction of their residential houses at the Reserve pending their application for identification of said lands.

Other private respondents said that they also have properties inside the Reserve. Both parties asserted that their claims over their ancestral lands are protected and recognized under the IPRA.

Court decided in favor of petitioners.

At the outset, the Supreme Court said that the case was mooted due to intervening events. In the other contempt case also involving the City Government and Atty. Masweng (2014, above), the latter was found guilty of indirect contempt.

22 City Government of Baguio City v. Atty. Masweng, G.R. No. 188913, February 19, 2014.



Nonetheless, the Court stated that despite its mootness, a discussion was merited as exceptions existed warranting affirmative action: the case involved paramount public interest because it pertained to the Busol Water Reserve, which is a source of water for the people of Baguio and other neighboring communities. In addition, the case fell under the exceptions to the requirement of a motion for reconsideration in petitions for *certiorari*.

Regarding the decision making of the IPRA, the Court said that in the earlier case, Proclamation No. 15 was not a definitive recognition of land claims over portions of the Busol Forest Reserve. The Court further said in that case that while the NCIP was empowered to issue TORs and writs of injunction, the respondents therein were not entitled to injunctive relief because they failed to prove their definite right over the properties they claimed. The circumstances in both cases were the same, and so while res judicata may be inapplicable, stare decisis applied.

Proclamation No. 15 and the IPRA notwithstanding, provisional remedies such as TROs and writs of preliminary injunction should not ipso facto be issued to individuals who have ancestral claims over Busol. It is imperative that there is a showing of a clear and unmistakable legal right for their issuance because a pending or contingent right is insufficient. Nevertheless, the grant or denial of these provisional remedies should not affect their ancestral land claim, as the applicants are not barred from proving their rights in an appropriate proceeding.

**Republic v. Cosalan (2018)[23]**

The case at bar involved a parcel of land located in Sitio Adabong, Benguet, issued by the Bureau of Lands in 1964. Respondent Cosalan alleged that his family owned the subject property for generations and so filed an application for registration of title of the subject land before the RTC.

23 Republic v. Cosalan, G.R. No. 216999, July 04, 2018. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64401 (accessed on March 16, 2023).

Among others, he alleged that he had acquired the property in open, continuous, exclusive, peaceful, notorious, and adverse occupation, by himself and by his predecessors-in-interest since time immemorial, that the land was an ancestral land, and that he was a member of the Ibaloi tribe.

The RTC approved the respondent's application for registration and held that the subject land was owned and possessed by his ancestors even before the subject property was declared part of the forest reserve by virtue of Proclamation No. 217. This ruling was affirmed by the Court of Appeals. Aggrieved, petitioner brought the case to the Supreme Court, arguing that the subject land is a forest land even prior to the enactment of Proclamation No. 217; the fact that the land was subjected to the *kaingin* system does not deprive it of its character as forest land. Moreover, petitioner claimed that it is only the Executive department that has the authority to reclassify lands of public domain into alienable and disposable land.

The Supreme Court decided in favor of the respondent. At the outset, it mentioned that *"forest land located within the Central Cordillera Forest Reserve cannot be a subject of private appropriation and registration,"* however, the Court acknowledged that the respondent was able to prove that (1) the subject land was an ancestral land, and (2) he had been in open and continuous occupation of the same, as have his predecessors-in-interest, who are members of ICCs/Ips. Respondent was also able to prove that the subject land had been used for agricultural purposes even prior to the land's declaration as part of the Forest Reserve. Therefore, the Court concluded that the registration of the subject land in favor of Respondent Cosalan was proper.

**Republic v. Heirs of Ikang Paus, et al. (2019)[24]**

In the case at hand, respondents filed a petition for the identification, delineation, and issuance of a CALT with the NCIP. The heirs of Mateo Cariño opposed this petition, but the NCIP issued the same in the name of private respondents, who were therefore issued an Original Certificate of Title (OCT).

24 Republic v. Heirs of Ikang Paus, et al., G.R. No. 201273, August 14, 2019.



Subsequently, however, the Republic through the Office of the Solicitor General (OSG) questioned the OCT through a suit and pointed out several irregularities in the issuance of the CALT. The private respondents pointed out that the complaint, which assailed the CALT and the subsequently issued OCT, fell within the jurisdiction of the NCIP and not of regular courts.

The main question, therefore, that the Supreme Court sought to answer was whether the RTC had jurisdiction over the complaint.

The Court answered in the affirmative. It echoed earlier decisions and said that the NCIP has no power and authority to decide controversies involving non-ICCs/IPs even if it involves their rights, and these disputes should instead be brought before a court of general jurisdiction.

**Republic v. NCIP, Heirs of Cosen Piraso (2019)[25]**

Petitioners in this case occupied an ancestral land located in Session Road, Baguio. They subsequently filed an application for the identification, delineation, and recognition of the ancestral land initially before the Baguio NCIP City Office, which the NCIP granted. The NCIP did the same for other petitioners. Subsequently, the OSG sought to annul, reverse, and set aside the assailed resolutions of the NCIP.

The main issue of the case was whether the subject parcels of land (i.e., lands within Baguio City and the Baguio Townsite Reservation) were covered by the IPRA. Petitioners posited that, first, the Baguio Townsite Reservation, with the exception of existing property rights recognized before the effectivity of the IPRA, was exempt from the coverage of the law. Second, the NCIP has no jurisdiction to issue CALTs over lands within Baguio City and the Reservation, outside of those over which prior land rights have been earlier recognized.

25 Republic v. NCIP, Heirs of Cosen Piraso, G.R. No. 208480, September 25, 2019. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65663 (accessed on March 16, 2023).

The Supreme Court noted that Section 78 of the IPRA expressly excluded the City of Baguio from the application of the general provisions of the IPRA. Among the mandates of Section 78 are that (1) Baguio City shall not be subject to provisions of the IPRA but will be governed by its own charter, (2) all lands previously proclaimed as part of the Reservation shall remain as such; (3) the reclassification of properties within the Townsite Reservation of Baguio City can only be made through a law passed by Congress; (4) prior land rights and titles recognized and acquired through any judicial, administrative, or other process before the effectivity of the IPRA shall remain valid; and (5) territories which become part of the City of Baguio after effectivity of the IPRA are exempted. Corollary, the NCIP did not have jurisdiction to issue CALTs over the subject lands.

The Court also noted that the lots in the case at bar were not shown to be part of any ancestral land prior to the effectivity of the IPRA. It provided that *"private respondents' rights over the subject properties located in the Townsite Reservation in Baguio City were never recognized in any administrative or judicial proceedings prior to the effectivity of the IPRA law. The CALTs and CADTs issued by the NCIP to respondents are thus void."*

**Benguet Congressional District v. Lepanto (2022)[26]**

In 1990, a Mineral Production Sharing Agreement (MPSA) was issued through the DENR for respondents to conduct mining operations on a vast tract of land located in the Municipality of Mankayan, Benguet, which covered part of the ancestral domains of the Mankayan ICC/IPs.

The crux of this case revolved around the renewal of the MPSA, as laws effected after its execution affected its renewal.

26 Lone Congressional District of Benguet Province v. Lepanto Consolidated Mining Company, G.R. No. 244063, June 21, 2022.



In 1995, the Mining Act was enacted. In 1997, the IPRA was enacted. The latter enjoined all departments and other government agencies from granting, issuing, or renewing any concession, license, or lease, or from entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domains. It also required the obtaining of the IPs' FPIC. In addition, NCIP Administrative Order No.1, s. 1998 was issued, outlining the procedures and guidelines for the implementation of the IPRA, particularly on the requirement of the certification as a pre-condition for the issuance of any mining permits or lease.

Since the MPSA was set to expire in March 2015, the respondents wrote a letter addressed to the MGB-CAR, stating in the main that they wanted to renew the agreement for another 25 years, subject to the same terms and conditions pursuant to Section 3.1 thereof *("upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided for by law")*. The issue arose when MGB-CAR informed respondents that the application for renewal would be endorsed to the NCIP for appropriate action, supposedly for the required FPIC and NCIP Certification Precondition.

The main controversy revolved around the propriety of complying with the FPIC and NCIP Certification Precondition required by the IPRA, as a precondition for the renewal of the MPSA.

The Supreme Court held that the Arbitral Tribunal, which excused the respondents from the IPRA requirements, erred in doing so: "The non-application of the requirement contravenes a strong and compelling public policy on the protection of the rights of the Mankayan ICCs/IPs to their ancestral domains."

The rest of the decision proved illumination:

> "It bears underscoring that the protection of the 'rights of ICCs to their ancestral lands to ensure their economic, social, and cultural well-being', is a Constitutionally declared policy of the State.

> This is also reflected as a State Policy under the Philippine Mining Act of 1995, safeguarding the environment and protecting the rights of affected communities, more particularly the ICCs/IPs to their ancestral domains. In recognition of this policy, Section 16 of the Act mandates that 'no ancestral land shall be opened for mining operations, without prior consent of the ICC concerned.'As aptly observed by Associate Justice Alfredo Benjamin S. Caguioa, this general requirement of consent on the part of the affected ICCs/IPs is now made more specific and concrete through the FPIC and Certification Precondition explicitly mandated in Section 59 of the IPRA."[27]

However, the Court also noted that while the interests of the mining companies cannot outweigh the interests of ICCs/IPs, "due process and fairness dictate that respondent mining companies be given the opportunity to fully comply with the consent requirement under the IPRA" for the renewal of the MPSA.

**Sps Maliones v. Timario, Jr., et al. (2023)[28]**

The case stemmed from a citizen suit filed against the spouses Maliones seeking enforcement of rights and obligations under environmental laws, cancellation of tax declarations, and the issuing of a temporary environmental protection order (TEPO) and a permanent environmental protection order. The subject parcel of land located in Barangay Data, Sabangan, Mountain Province, was where the Timarios and others freely pastured their farm animals and held other communal activities, and which had been given tax declarations under the Maliones' names. The Maliones were alleged to have made alterations to the land, which excluded the public from its use and enjoyment.

The Maliones insisted that they possess native title over the subject parcel of land, as those were ancestral lands from their predecessors-in-interest. They claimed that the subject land was the ancestral land of the late John Miguel, which was first declared for tax purposes in the year 1970 and had since been paid by him until his death in 1986. His heirs took over and eventually sold the ancestral land to the Maliones in 2012.

27 Citations and emphasis were omitted.

28 Sps Maliones v. Timario Jr., et al., 2023. https://sc.judiciary.gov.ph/wp-content/uploads/2023/12/252834.pdf (accessed on March 16, 2023).



The Court stated that it could not resolve the ownership controversy raised by spouses Maliones, as it will necessarily entail identifying and recognizing individuals claiming to be ICC/IP who claim ownership under a native title: *"This Court cannot simply accept and declare the parties as ICCs/IPs without violating the doctrine of primary jurisdiction. This doctrine provides that if a case is such that its determination requires the expertise, specialized training, and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction."*

Stating further that the issues regarding the underlying claims of ownership and recognition as indigenous peoples were beyond the expertise of the Court and best left to the determination of the NCIP as *"the primary government agency presumed to be equipped with the technical knowledge and expertise in this specialized field"*. According to the Court, such issues could not be resolved within a citizen suit involving an environmental dispute.

On the main, the Court ruled that the Maliones failed to prove the parcel of land to be "*'outside the Alienable and Disposable Zone' by the Director of Forestry, being forest lands, has been reclassified to alienable and disposable lands of public domain"*. The Maliones couple was ordered by the Court to *"cease and desist from bulldozing, cultivating, and introducing improvements, from other earthmoving activities that cause irreparable damage to the forest zone"*. These activities included cutting trees, engaging in kaingin, and other illegal activities that can cause pollution, as well as claiming ownership of the communal forest.

**C. Other cases[29]**

**Ramos v. NCIP (2020)[30]**

The controversy arose because Bae Tenorio filed with the NCIP an application for the issuance of a CALT over the ancestral land of her parents. The NCIP granted such application and issued a CALT.

29 These cases focus on indigenous peoples' cases outside of CAR.

30 Ramos v. NCIP, G.R. No. 192112, August 19, 2020. https://lawphil.net/judjuris/juri2020/aug2020/gr_192112_2020.html (accessed on March 17, 2023).

Subsequently, an amended CALT was issued to exclude existing property rights from the coverage of any issued CALT pursuant to Section 56 of IPRA, which meant that the CALT's coverage was reduced significantly.

Prior to this, in the 1920s, several hectares of land covered by the CALT was the subject of a lease in favor of an Orval Hughes, after whose death his heirs filed individual sales application of the leased land. Petitioners in this case, therefore, were among the beneficiaries of heirs of the land awarded.

This case, hence, involved a land dispute that had evolved into several other cases in various fora. The main issue was whether the NCIP had jurisdiction over the subject matter.

The Supreme Court, citing Unduran v. Aberasturi, ruled that the NCIP's jurisdiction under the IPRA extends only to claims and disputes involving parties who belong to the same ICC/IP. Because the NCIP lacked jurisdiction to issue the injunction in this case, the Court did not address the other issues raised.

**Datu Malingin v. Sandagan, et al. (2020)**[31]

The case at bar is a criminal case. A criminal information was issued by respondent Prosecutor, where petitioner was accused of having carnal knowledge of a 14-year old minor on six occasions. Petitioner Malingin filed a Motion to Quash on the ground of lack of jurisdiction, saying that he was a member of the Higaonon-Sugbuanon Tribe, and, according to him, the criminal case should therefore be resolved first through the customary laws and practices of the indigenous group to which he belonged and, subsequently, the NCIP.

The crux of the case was whether a writ of mandamus can prosper to compel respondent Judge and Prosecutor to desist from proceeding with the rape case against petitioner.

31 Datu Malingin v. Sandagan, et al., G.R. No. 240056, October 12, 2020 https://lawphil.net/judjuris/juri2020/oct2020/gr_240056_2020.html (accessed on March 17 2023).



The Supreme Court, in denying the petition, held firstly that the petitioner failed to show that he had a clear legal right that the respondents had violated. Secondly, the petitioner did not prove any ministerial duty on the part of the respondents, which they failed to perform. The Court further held thus:

> *"To stress, petitioner relied on Sections 65 and 66 (on the jurisdiction of the NCIP) of RA 8371 in arguing that respondents have no jurisdiction to prosecute him for his supposed criminal liability. However, his postulation is untenable because RA 8371 f**inds application in disputes relating to claims and rights of ICCs/IPs**.*
>
> *This is not the case here.*
>
> *Let it be underscored that petitioner's indictment for rape has nothing to do with his purported membership in an ICC, but by reason of his alleged acts that is covered by the RPC. At the same time, RA 8371 does not serve as a bar for criminal prosecution because crime is an offense against the society. Thus, penal laws apply to individuals without regard to his or her membership in an ICC.*
>
> *Definitely, customary laws and practices of the IPs may be invoked provided they are not in conflict with the legal system of the country. There must be legal harmony between the national laws and customary laws and practices in order for the latter to be viable and valid and must not undermine the application of legislative enactments, including penal laws.*
>
> *xxx*
>
> *… [t]he intention of our laws to protect the IPs does not include the deprivation of courts of its jurisdiction over criminal cases. This means that members of the ICC who are charged with criminal sanctions cannot simply invoke the provisions of RA 8371 to evade prosecution and the possibility of criminal sanctions."*

**Sama v. People (2021)**[32]

The case stemmed from an information filed against Diosdado Sama and two other individuals for the alleged violation of Presidential Decree No. 705 or the Revised Forestry Code. It was stated in the Information that the named accused *"willfully, unlawfully, feloniously and knowingly cut with the use of unregistered power chainsaw, a Dita tree, a forest product xxx"*. The three accused pleaded not guilty during arraignment, and later filed a Motion to Quash said information, alleging, among other things, that they were members of the Iraya-Mangyan tribe, and were, therefore, governed by IPRA. The motion was denied for being a mere scrap of paper.

The trial court convicted the accused, ruling that a dita tree with an aggregate volume of 500 board feet can be classified as 'timber'; therefore, cutting it without a corresponding permit from the DENR or any competent authority violated the law. Further, it held that a violation of Section 68, now Section 77, of the Code is malum prohibitum; therefore, intent is immaterial. The case was brought to the Supreme Court, which had, to explain its acquittal of the accused, the opportunity to discuss the Forestry Code, as well as the rights of indigenous peoples under the IPRA.

At the outset, the Supreme Court said that the petitioners were members of the Iraya-Mangyan indigenous peoples, through dissecting two sets of evidence. The first evidence, according to the Court, of their being members was the testimony of the Barangay Captain, who said in clear and concise language that petitioners are Mangyans and the dita tree was grown on the land the Mangyans occupied.

The Court then investigated the Iraya-Mangyan practice of cutting down the dita tree as probably indicative of their right to preserve their cultural integrity and to claim or title to ancestral domains or lands. The construction of communal toilets, for which the dita tree was cut, was, according to the Court, a cultural practice of the Mangyans. Again, the discussion of probability and doubt came about, when the Court reasoned, as regards the cutting of the dita tree, that *"since time immemorial, probably this has been how the Mangyans, including petitioners herein, have been able to source the materials for their communal building activities."*

32 Sama v People, G.R. No. 224469. January 5, 2021. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108 (accessed on March 17, 2023).



To bolster their claim, the petitioners also mentioned that they had already applied for a Certificate of Ancestral Domain Claim (CADC) over the land before the IPRA became a law, and, as of 2018, has been in the process of being converted into a CADT. Even so, a CADC was sufficient to afford petitioners substantial rights and obligations and was in and of itself a formal recognition of the rights of those who applied for the same. Therefore, as possessors of a CADC, the Court recognized the right of the Iraya-Mangyan to the exclusive communal use of their ancestral domain, as well as the right to enjoy its economic fruits.

However, the Court noted further (and went back to the elements of the act to do so) that:

> "While ownership itself is not a defense to a prosecution for violation of Section 77, PD 705 as amended, as police power invariably trumps ownership, the subject IP rights are not themselves the same as the ownership proscribed as a defense in this type of offense. The IP rights are to preserve their cultural integrity, primordially a social and cultural and also a collective right.
>
> On the other hand, the claim or title to ancestral domains and land is sui generis ownership that is curiously identical to the purpose for which Section 77 as a police power measure was legislated – the protection and promotion of a healthy and clean ecology and environment through sustainable use of timber and other forest products.
>
> Thus, the purpose for requiring State authority before one may cut and collect timber is claimed to have been satisfied by the sui generis ownership which IPs possess. This parallelism all the more supports our conclusion debunking on reasonable doubt the claim that petitions intended and voluntarily cut and collected the dita tree without lawful authority."[33]

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

Accordingly, the Supreme Court granted the petition, and acquitted petitioners on the ground of reasonable doubt.

**Santos v. Gabaen, et.al. (2022)[34]**

This case involved a petition for certiorari and prohibition with prayer for a TRO under Rule 65 of the Rules of Court filed by Anita Santos against Atty. Kissack B. Gabaen, Ricardo D. Sanga, the NCIP, and the DENR, to assail the Cease and Desist Order issued by the Commission.

*Pinagtibukan It Pala'wan, Inc.* (PINPAL), a people's organization of Palawan Indigenous Cultural Community in Barangay Punta Baja, Rizal, Palawan, is the holder of Resource Use Permit (RUP), which authorizes it to occupy, cut, collect, and remove almaciga resin from the CADCs located in the said barangay. Since time immemorial, Danny Erong (Erong), a Pala'wan tribal chieftain of Purok Culapisan, Barangay Punta Baja, Rizal, Palawan, and his ancestors have been engaged in the gathering and selling of almaciga resin within the forest area. Santos is a buyer-dealer of almaciga.

Erong claimed that PINPAL, as the holder of the RUP, required him to sell his almaciga resin only to Santos, thereby allowing her to have monopoly over the market. When Erong found another buyer offering a better price than that given by Santos, he pleaded to PINPAL that he be allowed to gather and sell resin to his buyer of choice. However, PINPAL allegedly refused and even threatened to confiscate his almaciga resin and prohibited him from gathering and selling the same. Santos intervened with the petition for certiorari, which the Court denied.

34 Santos v. Gabaen, et.al., G.R. No. 195638. March 22, 2022. https://lawphil.net/judjuris/juri2022/mar2022/gr_195638_2022.html (accessed on March 18, 2023).



**D. Other related cases**

**Atong Paglaum v. COMELEC (2013)[35, 36]**

This case was a consolidation of 54 petitions for *certioriari* and prohibition filed by 52 party-list groups and organizations, which assailed earlier resolutions of the COMELEC disqualifying them from participating in the May 2013 party-list elections, either by the denial of their petitions of registration under the party-list system or by the cancellation of their registration and accreditation as party-list organizations. Among the organizations that filed the petition were those that sought to represent indigenous peoples, including the Action League of Indigenous Masses (ALIM) and Agapay ng Indigenous Peoples Rights Alliance, Inc (A-IPRA).

The Supreme Court took this time to look at the intent behind party-lists by laying down the discussions in the constitutional deliberations. First, it noted that the party-list system is not only for sectoral parties but also for non-sectoral parties. Second, R.A. 7941 (Party-List System Act) does not require national and regional parties or organizations to represent the 'marginalized and underrepresented' sectors. The Court said:

> *Under the party-list system, an ideology-based or cause-oriented political party is clearly different from a sectoral party. A political party need not be organized as a sectoral party. There is no requirement in R.A. No. 7941 that a national or regional political party must represent a 'marginalized and underrepresented' sector. It is sufficient that the political party consists of citizens who advocate the same ideology or platform, or the same governance principles and policies, regardless of their economic status as citizens.*
>
> *Section 5 of R.A. No. 7941 states that 'the sectors shall include labor, peasant, fisherfolk, urban poor,* **indigenous cultural communities**, *elderly, handicapped, women, youth, veterans, overseas workers, and professionals.' The sectors mentioned in Section 5 are not all necessarily 'marginalized and underrepresented'.*

35 Atong Paglaum v. COMELEC, G.R. No. 203766, April 2, 2013. https://lawphil.net/judjuris/juri2013/apr2013/gr_203766_2013.html (accessed on March 18, 2023).

36 It is recommended that the reader read BANAT v. COMELEC first prior to this case.

For sectors that are marginalized and underrepresented, the requirements are thus: a majority of the members of the sectoral party must belong to the marginalized and underrepresented, further, that the nominees of the sectoral party either must belong to the sector or must have a track record of advocacy for the sector represented.

The Supreme Court thus granted the 54 petitions.

**Arroyo v. Court of Appeals (2019)[37]**

The case arose from the enactment of the IPRA, which resulted in the reorganization of two offices—the Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC)—which were merged to create the NCIP.

It dealt more with the bureaucracy of the NCIP. Private respondent and other individuals, formerly holding the positions of Bureau Director and Regional Director, filed a petition for quo warranto, assailing the appointment of petitioner as Regional Director of Region V, arguing that Arroyo did not possess the required Career Executive Service eligibility for the position.

The Supreme Court, first off, modified the final and executory decision of the Court of Appeals. It decided that while the ruling of the Court of Appeals was finalized, the Supreme Court can modify a final and executory decision when circumstances transpire that render the execution unjust or inequitable. In this case, private respondent did not have the requisite qualifications for the controverted public office, and so the petition for *quo warranto* cannot prosper.

**Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. (FCBPFAI) v. The Secretary of the DENR (2020)[38]**

While this case does not discuss IPRA nor directly affecting indigenous peoples, its discussion of native title is important. The case involved the FCBPFAI and Sandigan ng Mambubukid ng Bintuan Coron, Inc. (SAMBICO), which were federations of Palawan farmers.

37 Arroyo v. Court of Appeals, G.R. No. 202860, 10 April 2019. https://lawphil.net/judjuris/juri2019/apr2019/gr_202860_2019.html (accessed on March 18, 2023).

38 Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. v. The Secretary of the DENR, G.R. No. 247866, September 15, 2020. https://lawphil.net/judjuris/juri2020/sep2020/gr_247866_2020.html (accessed on March 18, 2023).



SAMBICO members took farmlands in Sitio Dipangan and Langka, Brgy in 2002. The Department of Agrarian Reform (DAR) designated Bintuan, Coron, Palawan as part of the Comprehensive Agrarian Reform Program (CARP). The lands under CARP had titles in the name of Mercury Group of Companies and covered a total area of 1,752.4006 hectares.

However, the implementation of the CARP on these lands was halted due to their classification as unclassified forest land under Section 3(a) of Presidential Decree No. 705, making them inalienable and government property. Because these are forest lands, they are under the control of the DENR rather than the DAR. The petitioner argued that declaring unclassified lands as forest lands violates the Constitution, denying actual possessors the right to claim ownership. The petitioner also asserted that lands in the public domain are presumed to be agricultural under the Philippine Bill of 1902.

In its decision, the Court clarified that the "only exception in the Regalian Doctrine is native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown." Despite recognizing the validity of native title, the Court concluded that petitioners nevertheless failed to prove actual possession and ownership of the land, and that the subject forest land has been classed as alienable and disposable land.

**E. Cases before the Commission on Human Rights (CHR)**

As an outtake, this section provides observations on the cases filed before the CHR and its Indigenous Peoples Human Rights Observatory.

The Philippine CHR has undertaken several actions and initiatives related to the rights of indigenous peoples in the Philippines. Some of these actions included conducting investigations into human rights abuses against indigenous peoples, such as land grabbing, displacement, and other violations of their rights. Moreover, the CHR has advocated for the recognition and protection of the rights of indigenous peoples in various national and international fora.

Further, the CHR has facilitated dialogues among indigenous peoples, government agencies, and other stakeholders to address issues affecting indigenous peoples.

The CHR has provided legal assistance to indigenous peoples who have been victims of human rights violations and has helped them seek justice and compensation. The CHR has conducted awareness-raising campaigns to educate the public about the rights of indigenous peoples and the challenges they face. The CHR has developed guidelines on the rights of indigenous peoples, which provide guidance to government agencies, nongovernmental organizations, and other stakeholders on how to respect and protect their rights. Overall, the CHR has played an important role in promoting and protecting indigenous peoples' rights in the Philippines. However, there are still significant challenges that need to be addressed, including the need for stronger enforcement mechanisms to hold perpetrators accountable for human rights violations against indigenous peoples.

The CHR's Indigenous Peoples' Human Rights Observatory (IPHRO) is a mechanism that was established to monitor and document human rights violations against indigenous peoples in the Philippines.

It aims to provide a platform for the documentation and analysis of human rights abuses against indigenous peoples, as well as to provide timely and accurate information to the CHR and other stakeholders.

The IPHRO collects and analyzes information on human rights violations against indigenous peoples, including extrajudicial killings, forced displacement, land grabbing, and other forms of abuse. It also conducts investigations, fact-finding missions, and other activities to gather evidence of human rights violations. It works in close collaboration with indigenous communities, human rights organizations, and other stakeholders to raise awareness of human rights issues and to advocate for the recognition and protection of indigenous peoples' rights.

**Sample cases**

**Land grabbing by palm oil companies in Bataraza and Española, Palawan**
Based on fact-finding activities, there was prima facie evidence that indigenous peoples' and local communities' lands were being taken over by palm oil companies without respect for their rights, without FPIC, and without the required presence of the NCIP.

These procedures continued even after the NCIP warned one of the companies that they were entering ancestral domain and should report to the NCIP Office.

It appeared that companies were adopting schemes of acquiring lands through forced and fraudulent land sales with the alleged complicity of local government officials. These measures were depriving the indigenous communities of their livelihoods, dislocating them from their culture, and driving them into further poverty and occasioned severe impacts on the forests and local environment. Cooperative joint ventures have imposed unexplained and heavy debts on communities, and these debts were being maintained in ways resembling debt peonage. Moreover, the pollution of rivers with palm oil mill effluents risked affecting the health of downstream residents and fish stocks. Both the plantations and the mill have been imposed without required environmental impact assessments.

This case was also the subject of discussions at the 5th Regional Conference on Human Rights and Agribusiness attended by participants from Southeast Asian National Human Rights Institutions Forum (SEANF), UN Permanent Forum on Indigenous Issues and civil society and international organizations, held in November 2015, to consider ways of ensuring state and non-state actors respect, protect, and remedy human rights in the agribusiness sector. The meeting was convened by the Philippines CHR and the Coalition Against Land Grabbing (CALG) of Palawan, with the support of the Forest Peoples Programme (FPP).

**Violations of indigenous peoples' rights**

The year 2015 marked a grim period for indigenous peoples in Mindanao as seen in the number of extrajudicial killings (EJK) committed against the Lumad. In 2015, the CHR investigated eight cases of extrajudicial killings of indigenous peoples from Regions X, XI, and CARAGA—all in Mindanao. In the eight recorded cases, 21 indigenous peoples were killed, while 7 were injured and survived. This was a marked increase from the two cases of EJKs among indigenous peoples in 2014, one of which involved the killing of two Manobos (i.e., Martino Y Sugian Dagodoy and Henry Arreza from Surigao del Norte). The other case was from Surigao del Sur, also involving the killing of a Manobo, Henry Alameda of Sitio Kabalawan, Barangay San Isidro, Lianga.

It was alleged that Almeda was killed by members of paramilitary group headed by a certain Calpit Egua. The killing resulted in the displacement of some 240 families from different areas of Barangay Diatagon, Lianga, Surigao del Sur.

This list does not include all indigenous peoples' killings and cases from 2014 and 2015, as it is based solely on cases filed and investigated by the Commission's Regional Offices.

From the indigenous peoples-related cases in 2015, the CHR particularly focused on the following high-profile cases, which showed the vulnerability of indigenous peoples to human rights violations and abuses in the context of conflict and development aggression:

**The case of Pangantucan Five**

On August 18, 2015, in Sitio Mahayhay, Mendis, Pangantucan, Bukidnon, five indigenous persons of the Manobo tribe were killed during an alleged gunfight between the military and the NPA.

Two of the victims were minors, Emer Somina (16) and Norman Samia (13), and one was a senior citizen, Herminio Samia (67). The other victims were Elmer Somina (19) and Joebert Samia (21). According to the account of both the police and the military, there was an encounter on the said day at around 4PM, about 4 kilometers from the Barangay Hall of Mendis, involving the 1st Special Forces Battalion led by Captain Alberto Balatbat (INF) PA and SPP1 Guerilla Front 68.

After an hour of armed confrontation, the rebels withdrew toward the northwest leaving behind five lifeless bodies. The case remains pending investigation by CHR Region 10.

**Displacement of indigenous peoples in Haran**

Some of the monitored displacement for 2014 included the displacement which resulted from the killing of Henry Almeda, a Purok Chairman of Sitio Kabalawan, Barangay San Isidro, Lianga, Surigao del Sur. According to the investigation conducted by the CHR Regional Office, the residents fled because of the conduct of military operations in the area and that a community store was allegedly ransacked by unidentified armed men believed to be elements of the Philippine Army. The armed men allegedly fired their weapons indiscriminately causing panic among residents and causing displacement.



On April 3, 2014, the CHR monitored over 1,300 indigenous peoples belonging to the Ata-Manobo Tribe fleeing Talaingod, Davao del Norte, to Davao City due to military operations in the area involving elements of the 60th Infantry Battalion and the 4th Special Forces. There were 957 evacuees composed of 309 families. Among them were 515 children. They were then transferred to the United Church of Christ in the Philippines (UCCP) in Haran, Davao City.

In 2015, another major displacement of indigenous peoples in Mindanao took place, this time allegedly due to armed conflict and/or development aggression. Once again, the IPs encamped and sought refuge in UCCP Haran.

In response to the indigenous peoples' encampment at UCCP Haran, the CHR promptly conducted fact-finding investigations into reports of alleged harassment, militarization, the presence of armed groups, and school closures, particularly in Talaingod and Kapalong, Davao del Norte, Compostela Valley, Bukidnon, Surigao, and other nearby areas in Mindanao. The CHR Central Office also held dialogues with some stakeholders to draw information on the real situation of the indigenous peoples, including those encamped in the UCCP Haran Compound.

During the public inquiry and fact-finding mission, the CHR also investigated the human rights situation of children, focusing on their general health and welfare, and the alleged encampment and occupation of Lumad schools.

**Lumad killing cases (2015–2016)**

The CHR investigated several cases of killings of Lumad indigenous peoples in Mindanao allegedly by members of paramilitary groups. The CHR recommended the filing of criminal charges against the perpetrators and the provision of security to the Lumad communities.[39]

39 See indigenous groups, UN rapporteur Tauli-Corpuz discuss Lumad killings, harassment: https://chr.gov.ph/wp-content/uploads/2020/10/The-Haran-Report-2019-FINAL-REY-2019-12-04.pdf; https://www.gmanetwork.com/news/topstories/nation/653743/indigenous-groups-un-rapporteur-tauli-corpuz-discuss-lumad-killings-harassment/story/.

**Mining operations in indigenous peoples' ancestral domain case (2016)**

The CHR investigated a complaint about mining operations in an indigenous peoples' ancestral domain in Zambales. The CHR recommended the suspension of the mining operations and the conduct of an environmental and social impact assessment.

**Attack against the Lumad Indigenous peoples**

Lumad activist and Karapatan paralegal officer Renalyn Tejero, along with 32 others in the Caraga region, was red-tagged in November 2020 by a group calling itself the Movement Against Terrorism. Authorities arrested Tejero on March 21, 2021 on charges of murder and attempted murder. Activist groups stressed Tejero was targeted for trumped-up charges due to her affiliation with the Karapatan, an NGO focused on human rights defense.[40]

**III. Discussion: Challenges to Indigenous Peoples' Rights**

At their core, most of the legal contests are land disputes. Court decisions often center on the clarification of the NCIP's jurisdiction. The underlying implication of the decided cases is that legal appreciation of IPRA requires further clarity. In gist, the trend has been to pronounce that regular courts have jurisdiction where the dispute involves a non-indigenous person as another party in the case.

In other words, despite the aspirations of IPRA, among others to recognize the particularities of indigenous peoples' practices, world views, and to recognize and vindicate their historical marginalization, this may not be interpreted to mean limiting the jurisdiction of courts nor does it imply that NCIP has primary and sole jurisdiction over all ICCs/IPs claims and disputes to the exclusion of the regular courts. This also applies to the few criminal cases.

40 See Situation of Human Rights Annual Report in the Philippines (June 2020): https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/156/66/PDF/G2015666.pdf?OpenElement.



Much of the legal controversy emanates from overlapping and unclarified jurisdiction of various departments of the government, particularly in the processing and awarding of tenurial instruments. In an effort to address this issue, the DAR, DENR, Land Registration Authority, and NCIP signed Joint Administrative Order No. 2012-01. The policy's goal was to clarify, restate, and connect the agencies' respective jurisdictions, policies, programs, and initiatives to overcome jurisdictional and operational concerns.

Among these conflicted claims involve:

- Untitled lands claimed by ICCs/IPs and are also being claimed by DAR and/or DENR;
- Titled lands with registered Certificate of Land Ownership Awards (CLOAs);
- Patents within CADT (e.g., patented mining claims issued prior to Mining Act and IPRA);
- Resource instruments issued by DENR over lands within ancestral domains (e.g., Integrated Forest Management Agreement, Timber License Agreements, National Greening Program, protected areas);
- Exploration permits/financial or technical assistance agreement, MPSA over CARP lands; and
- Areas with existing and/or vested rights.

The NCIP was instructed to exclude and separate any lands covered by titles. The joint administrative was regarded by the NCIP as restricting in their delineation of ancestral territories. The Commission withdrew from the agreement in November 2019, putting CADT applications in a quandary.

Many indigenous communities look up to the IPRA as the means by which historical injustice around land would be resolved. The limiting of the jurisdiction of the NCIP to land conflict to only between members of the tribe or among different indigenous tribes appears to gloss over the fact that majority of land conflicts and intrusion into indigenous territories, which cause social division and displacement, are done by non-indigenous and often corporate interests. Entry into indigenous territory by non-indigenous migrant rural poor families, while at times regarded with acceptance by indigenous peoples, does not mean indigenous peoples' abdication of their rights. Resort to the NCIP by indigenous communities whose rights are violated comes with the belief that the NCIP, as a government institution dispensing quasi-judicial powers, is more accessible and would have a better understanding of the situation and contexts of indigenous peoples.

The legal issues are illustrative of the implementation of the IPRA. They imply delayed and overdue concerted policy implementation across government bodies (resulting in policy overlaps and tenurial conflicts), the lack of support and recognition of IPRA beyond advocates and IP organizations, and, to some extent, NCIP's resource constraints. The national legal tenure system via the Torrens registration and the tenurial disposition scheme for the public domain contributed to the displacement of indigenous peoples from their ancestral lands. These are some of the critical gaps intended to be remedied by the framers of the IPRA, but the same issues persist decades after its passing.

A particularly glaring set of controversies involved cases presented to the CHR, highlighting incidents of human rights violations against indigenous peoples, concerns regarding their civil and political rights, and their struggles for self-determination. Many of these cases involved violations of the FPIC process.

The FPIC is inextricably related to the right to land—foundational to indigenous peoples' right to self-determination. Thus, an insecure claim to land renders their self-determination at risk and tenuous, making indigenous peoples vulnerable to the violation of their rights and usurpation of their land. The cases revealed controversies that stand to undermine FPIC. The violations of FPIC process straddles as a legal controversy and a human rights issue.

The notion of FPIC has been taken up in the United Nations Human Rights Committee. Here, worth mentioning is a communication filed before the United Nations Human Rights Committee, Poma Poma v. Peru (Communication No. 1457/2006 Views adopted in 2009). The author and her children own the 'Parco-Viluyo' alpaca farm in the Palca district of the Tacna province and area. They solely make a living by raising alpacas, llamas, and other smaller animals. The farm is located on the Andean altiplano at 4,000 meters above sea level, with only grasses for grazing and underground springs that supply water to the highland wetlands. The farm has about 350 hectares of pastureland, including a wetland region along the historic channel of the Uchusuma River. In the 1950s, the Government of Peru diverted the course of the river Uchusuma. In the 1970s, the Government drilled wells, which significantly limited the water supply to the pastures and regions where water was collected for human and animal consumption. In 1994, members of the community staged demonstrations in the Ayro region, which were broken up by police and armed troops.



Juan Cruz Quispe, the community leader who halted the construction of the 50 wells planned under Juan Cruz Quispe, the community leader who halted the construction of the 50 wells planned under Proyecto Especial Tacna (PET), was assassinated in the Palca district, and his death was never investigated. In its conclusion, the Committee stated that the State party never contacted the author or the society to which she belongs. It also observed that the author has been unable to continue benefiting from her typical economic activities because of the drying out of the land and the loss of her livestock. As a result, the Committee stated that it considers that the State's action has fundamentally undermined the author's way of life and culture as a member of her community. The Committee also concluded that the State party's acts breach the author's right to enjoy her own culture alongside the other members of her group, as stated in Article 27 of the Covenant.

Another exemplar is the case of Francis Hopu v. France (Communication No. 549/1993; views adopted on 29 July 1997). The authors are the descendants of the owners of a land tract (approximately 4.5 hectares) called Tetaitapu, in Nuuroa, on the island of Tahiti. They argued that their ancestors were dispossessed of their property by *jugement de licitation* of the *Tribunal Civil d'instance of Papeete* (1961). The authors and other descendants of the landowners peacefully occupied the land in 1992. They gathered at the site to oppose the planned development of a hotel complex. They argued that the land and lagoon bordering it play a significant role in their history, culture, and lifeways. They further stated that the area includes the site of pre-European burial mound, while the lagoon remains a traditional fishing ground and provides a means of subsistence for over thirty households living adjacent to the lagoon. Deciding, the Committee determined that it was unable to assess whether an independent breach of Article 26 occurred in the circumstances of the communication. It, however, determined that the authors were entitled to an appropriate remedy under the Covenant's Article 2, Paragraph 3(a) (i.e., "The State party has an obligation to adequately protect the author's rights and prevent similar abuses in the future").

As a Philippine example, the Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Philippines (2020) illustrates how right to land and right to FPIC are inextricably human rights issues. The report cited the case of Datu Victor Danyan, leader of the Taboli Manobo tribe that has long resisted the encroachment of an agro-industrial plantation in their ancestral domains as emblematic of human rights violations in the Philippines.

Datu Victor and seven other members of his clan were killed in an alleged military encounter. The Armed Forces of the Philippines (AFP) alleged that they were part of the New Peoples Army (NPA), an insurgent group in the Philippines. The report stated, "the killing by the military of tribal leader, Datu Victor Danyan – one of eight Lumad killed in Lake Sebu in South Cotabato in December 2017 – amounted to a human rights violation."[41] With the Taboli Manobo clan, other affected indigenous communities within the approximate 29,000-hectare designated plantation called for the cancellation of the agreement, challenging that the integrated forest management agreement was issued without complying with the required processes under FPIC guidelines of the NCIP. They explained that only a community assembly was conducted by the NCIP and other requisite processes such as the decision meeting was not fulfilled. The NCIP would later issue a cease-and-desist order (issued in 2019) against the agro-industrial plantation. To date, however, there has been no vindication of the loss of family and community members suffered by the Taboli Manobo clan and the plantation continues to operate.

It must be kept in mind that as a State party to the Optional Protocol, the State has accepted the competence of the Committee to evaluate whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant. The Philippines is an early signatory to the Covenant.

IPRA's bundle of rights is often pit to unfortunate disadvantage against other laws that often diminish indigenous peoples' rights. In July 2020, R.A. No. 11479 or the Anti-Terrorism Act of 2020 was officially signed into law, effectively replacing the Human Security Act of 2007. Criticized for being a dangerous piece of legislation that disregards human rights and basic liberties, 37 petitions were filed in the Supreme Court assailing its constitutionality. In 2021, the Supreme Court decided that apart from two provisions of the law that it deemed unconstitutional, the rest of the provisions were constitutional and thus upheld.

41 Human Rights Council. (4 June 2020). Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines 44th session, p. 14. https://reliefweb.int/report/philippines/report-united-nations-high-commissioner-human-rights-situation-human-rights (accessed May 5, 2023).



It is to be noted that during the pendency of the case questioning the law's constitutionality, Aetas Japer Gurung and Junior Ramos were arrested in August 2020 for allegedly firing at military members, resulting in the death of one of soldier, and were charged with a violation of the Anti-Terror Law—the first known case of its kind, barely a month since its enactment. The two were accused of being members of the armed New Peoples' Army, and were charged under Section 4 of the law, or committing terrorism. The Olongapo RTC junked the case almost a year later, in July 2021, ruling that it was a case of mistaken identities.[42] The decision provided that *"after a careful examination of the records, the Court holds that the prosecution failed to discharge the burden of proving the identities of the accused as perpetrators of the crime of violation of Section 4 of Republic Act No. 11479. Thus, the case for violation of this law against the accused must be dismissed."* The Court also noted that there were inconsistencies in the statements of the soldiers, which meant they could not be positively identified as perpetrators of the crime, and that the warrantless arrest effected upon the two was unlawful. While the two Aetas were acquitted, there remain plenty of individuals and groups, many from indigenous communities, that have been targeted by the draconian law.

The above case illustrates how certain laws put indigenous peoples at risk. Even prior to the passage of the Anti-Terror Law, many indigenous peoples have been threatened, harassed, or red-tagged by government forces, and the law's passage have all but institutionalized such violence. The increasing trend of criminalizing indigenous peoples is parallel to the increasing encroachment of corporate and government interest in their ancestral domains. For cases of assertion of rights and redress against human rights violations, the recourse of affected indigenous persons and communities has been mostly through the CHR and not the courts. The CHR, limited to its investigative powers, can only do so much to protect and vindicate indigenous peoples and their rights.

42 Buan, L. (2021, July 19). Mistaken identity: Aetas acquitted in first known anti-terror law case. Rappler. https://www.rappler.com/nation/olongapo-trial-court-decision-aetas-charged-anti-terror-law-case/ (accessed on April 13, 2023).

This survey did not include criminal cases that involve indigenous peoples. The courts do not distinguish by ethnolinguistic group nor by sector. When the crimes alleged against indigenous peoples are under the Revised Penal Code or Special Laws, the law and the courts often decontextualize and simplifies the events resulting in the current state of increasing criminalization of indigenous peoples. With challenged capacity to access justice, it will not be surprising if indigenous peoples languish in jails.

Criminalization of indigenous peoples is often related to their protection of their ancestral domains. As indigenous peoples protest development aggression in their ancestral domains, they are met with Strategic Lawsuit Against Public Participation (SLAPP). Notwithstanding the application of the Rules of Procedure for Environmental Cases (RPEC)[43] in the implementation of the IPRA, particularly SLAPP as an affirmative defense, this has not prevented SLAPP suits from being filed against indigenous peoples.

Section 7 of NCIP Administrative Circular No. 1, series of 2003, provides that criminal proceedings and penal sanctions assessed for breach of the IPRA "will be prosecuted before the regular courts with adequate jurisdiction". Section 72 of the IPRA articulates the penal provisions of the law, stipulating that any anyone who violates any of the IPRA provisions include—but are not limited to unauthorized and/or illicit entrance into any ancestral lands or domains as mentioned in Section 10, Chapter III, or shall commit any of the forbidden acts listed in Sections 21 and 24, Chapter V, Section 33, and Chapter VI of the IPRA—shall be punished in accordance with the customary laws of the ICCs concerned. To date there has been no such finding of anyone proceeded based on these penal provisions.

On matters that pertain to state impunity, the Court has not been without cognizance. In 2007, it promulgated the Rule on the Writ of Amparo:[44] *"The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof."*

43 Supreme Court of the Philippines, Rules of Procedure for Environmental Cases AM No 09-6-8-SC. https://lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html (accessed on April 12, 2023).

44 Supreme Court of the Philippines, Rule on the Writ of Amparo AM No. 07-9-12-SC. https://sc.judiciary.gov.ph/wp-content/uploads/2023/07/07-9-12-SC.pdf (accessed on April 25, 2023).



And in 2008, it made effect the Rule on the Writ of Habeas Data:[45] *"The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party."*

The application for such writs, however, has presented challenges. Indigenous peoples without sustained and persistent legal assistance are at a disadvantage in availing of the remedies. Particular to the Mountain Province in the CAR and as members of an indigenous activist organization, a Writ of Amparo was partially approved by a local court for the protection of two of the three indigenous leaders petitioning while being threatened by the military.[46] In this case, the presence of Sgt. Estrella and his men, as they patrolled the community and surrounding vicinity of the petitioner Bargue's farm *"spawned fear"* in the petitioner and her household, limiting their activities, and raising their fears over being surveilled. In the case of the other petitioner Battawang, the bus she rode on was flagged down at a PNP checkpoint. She was asked to step down, taken and subjected to interrogation. The third petitioner Kotyag was not granted the writ based on insufficient evidence. On the other hand, the Writ of Amparo filed by 24 leaders of the Cordillera Peoples Alliance before the Court of Appeals was denied. According to the court the issuance of the writ may have already been rendered moot being that the incidents referred to took place at the start of the COVID-19 pandemic and no longer showed "imminent threat for which court action is necessary."[47] Moreover, the Court of Appeals required the establishment of the authors of the red-tagging.

The nexus of indigenous peoples' rights and the environment is an area that needs greater appreciation by the courts. Justice Caguioa in his separate opinion on Sama v. People of the Philippines gave a sense of the Court's developing rumination: *"The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is*

45 Supreme Court of the Philippines, Rule on the Writ of Habeas Data AM No. 08-1-16-SC. https://sc.judiciary.gov.ph/wp-content/uploads/2023/07/08-1-16-SC.pdf (accessed on April 25, 2023).

46 Kotyag, et al. v. Sgt. Estrella, et al. Special Proceedings Case No. 2021-9-9-Amparo-01. https://drive.google.com/file/d/1s3RGfeV9cyPMGjRLosPIhet0gEJuM9Ek/view (accessed May 14, 2023).

47 Philippine Daily Inquirer. (2022, November 3). Cordillera activists fail to get writ of amparo vs red taggers. https://newsinfo.inquirer.net/1688573/cordillera-activists-fail-to-get-writ-of-amparo-vs-red-taggers (accessed on May 14, 2023).

*still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe the IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, vis-a-vis forestry laws, has failed or delivered on its fundamental promise. That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether they are guilty of an offense, but whether or not there was even an offense to speak of. At most, this doubt only further burdens the fate of the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity."*

Indigenous peoples are not homogenous and are differently situated, but the majority remain among the most impoverished in the country and depend their culture, heritage, and livelihood on their ancestral domains. Defense of these lands mean defense of their ways of life, rights and their very lives. For most indigenous peoples in the Philippines, access to courts and the NCIP remains difficult, as offices are generally located centrally, necessitating long periods of travel for indigenous communities, and as indigenous peoples remain mostly without capacity and enough knowledge of the law and its procedures.

Exploring indigenous legal systems as an additional source of rights has the possibility of enabling postcolonial states' legal systems to better appreciate and recognize peoples' indigenous rights. The need to further decolonize the legal system and explore the possibilities of legal pluralism to recognize the rights of indigenous peoples is a matter long overdue. One that is predicated on the premise that indigenous law can provide rights that are legitimate because they represent historically ingrained, but persistently marginalized, practices and living systems.[48] A contemporary legal pluralism can be appreciated rather than as an outright combat to the formalistic and monism of national law, but as a challenge and nudge to take cognizance of multiculturalism, which has the potential to meaningfully provide access to justice to all groups in accordance with their own culture and law. Corollary, to consider also the furtherance of legal inclusivity presented by the growing international legal system as in the human rights conventions to serve as a key framework for legal discourse and legitimacy, which are also constantly evolving to create new rights in response to emerging societal challenges and needs.[49]

48 Thornhill, C., Calabria, C., Cespedes, R., Dagbanja, D. & O'Loughlin, E. (2018). Legal pluralism? Indigenous rights as legal constructs. University of Toronto Law Journal, 68(3), pp. 440-493. doi: 10.3138/utlj.2017-0062

49 Ibid.



## IV. Conclusion

This paper sought to examine cases involving indigenous peoples' rights in the Philippines. Specifically, it analyzes whether the country's current legal framework adequately upholds, protects, and promotes these rights.

It can be gleaned from the above discussion that while there are current policies in place to protect indigenous peoples, they remain to be insufficient to address the needs of indigenous peoples. The IPRA, for instance, needs to be implemented with more urgency, applied more appropriately to appreciate indigenous peoples' world views, values, and practices, and made more stringent to address current contexts of indigenous peoples' precarity. On the whole, the centralized Philippine national legal system continues to *"utilize and reinforce legal structures and concepts first impost during the Spanish and North American Regimes"*[50] —concepts that are rooted in Western jurisprudence. Notwithstanding that the IPRA was supposed to be the legislation that will reclaim the indigenous laws that have been displaced by colonial laws, Philippine jurisprudence involving indigenous peoples continue to reflect issues framed similarly to western disputes and are still grappling with the *"divergences or differences obtain between official law and the 'living' law"* (Fernando in Lynch, 1983); the Court has shied from appreciating native principles and indigenous juristic features.

National policies, particularly those couched under development that often entangle with indigenous peoples' land rights, also inform the legal appreciation of the issues. Both the national governance and legal systems are rooted in colonial structures that have been historically shaped by the values and priorities of colonization, contemporarily by the state, which generally exclude indigenous customs and values. As a result, they fail to address the specific legal needs of indigenous communities, often undermining, if not overlooking, their rights.[51]

50 Lynch, O. J. (1983). The Philippine indigenous law collection: An introduction and preliminary biography. Philippine Law Journal, 58, 457–471.

51 Morad, E. (2019). Legal Pluralism and Indigenous Peoples Rights: Challenges in Litigation and Recognition of Indigenous Peoples Rights, 87 U. Cin. L. Rev. 1043.

Such is the current justice landscape of indigenous peoples in the Philippine—ironically, a country rife with indigenous culture and an early leader in promoting the rights of indigenous peoples with the passage of the IPRA. A century after Cariño and decades after the passing of IPRA, indigenous peoples' status and rights remain precarious. It is as the concurring opinion of Justice Leonen in Sama v. People of the Philippines: *"Unfortunately, certain government policies threaten the Filipino indigenous peoples' way of life. There are those who are denied the resources found within the very land they have occupied and cultivated for many years. As a result, the economic base upon which their survival rests is put at risk."*



# Authors

**Augusto Jose Emmanuel B. Gatmaytan** is one of the founders of the Legal Rights and Natural Resources Center. Gus was the first coordinator of the Direct Legal Services arm of the Center and is its current Chairperson of the Board of Trustees. He earned his doctorate in Anthropology from the London School of Economics and Political Science, and his Master's degree in Anthropology from Ateneo de Manila University. He holds degrees in History and Political Science from De la Salle University and finished his Law degree from the University of the Philippines College of Law. He has served on the faculty of the University of the Philippines Mindanao and has been a member of the Department of Anthropology at Ateneo de Davao University. He currently serves as the director of the Ateneo Institute of Anthropology of the Ateneo de Davao University.

**Armi Beatriz E. Bayot** is a Doctor of Philosophy (DPhil) in Law student at the University of Oxford, where she is undertaking research on the human rights implications of intrastate peace agreements. She holds a Master of Laws Degree (LL.M.) in Transnational Law (with Distinction) from King's College London and a Juris Doctor (JD) degree from the University of the Philippines. Armi was a Senior Lecturer at the University of the Philippines, teaching Legal History and Administrative Law. She was awarded the Dickson Poon School of Law Prize in Transnational Law and was the sole winner of the Georg Schwarzenberger Prize in International Law in 2016. In the Philippines, Armi worked at the Commission on Human Rights (CHR), where she is the founding Head of the CHR's Analysis Unit.

**Yasmin O. Hatta** has been contributing to the Legal Rights and Natural Resources Center as a paralegal and legal researcher, having been first part of the Direct Legal Services group and then the Research and Policy Development, reviewing indigenous rights, extractive resources, and natural resources management. In between her work at the Center, Japs has been on humanitarian missions with various international aid agencies and contributed to research around climate change adaptation, climate change mitigation, and disaster risk reduction. Her work on Climate Change Adaptation, Mitigation and Disaster Risk Reduction is as a contributor to an open database for forensic investigation of disasters in Southeast Asia (March 2022) jointly produced by the British Geological Survey, the Ateneo de Manila University, and the Vietnam National University. She holds a degree in Law from the University of the Philippines College of Law.

# Authors

**Jameela Joy M. Reyes** is part of the Research and Policy Development group of the Legal Rights and Natural Resources Center. She received her MSc in Global Environment, Politics and Society from the University of Edinburgh, United Kingdom, where she garnered the highest honors of her graduating class. Joy holds degrees in Political Science and Psychology from the Ateneo de Manila University and finished her Law degree from the University of the Philippines College of Law. Joy has co-written articles on climate governance and climate justice, particularly on loss and damage and just transition, and the intersections between environmental and human rights.

**Efenita M. Taqueban** is the executive director of the Legal Rights and Natural Resources Center. She started in LRC as a law intern, later as its Research and Policy Development Adviser. Mai is co-Convener of the Panaghiusa Philippine Network to Uphold Indigenous Peoples' Rights (Panaghiusa). She received her PhD in Anthropology from the University of Amsterdam in the Netherlands. She teaches Anthropology at the Department of Anthropology of the University of the Philippines in Diliman.

# Philippine Natural Resources Law Journal

2024 Volume 14, Issue 1

This edition of the Philippine Natural Resources Law Journal examines the state of indigenous peoples in the Philippines as they are enmeshed in both historically embedded challenges and modern complexities. The authors reflect on indigenous struggles within an evolving socio-political landscape, revealing both the obstacles and possibilities that indigenous peoples face in their fight for self-determination, dignity, and cultural survival.

@lrcphl

www.lrcksk.org

LRC is a scientific non-government organization that works with indigenous peoples and marginalized communities for the recognition and protection of their rights to land and environment. LRC is the Philippines chapter of the Friends of the Earth International.

For more information send an email to lrckskfoeph@gmail.com.

The Legal Rights and Natural Resources Center