A Survey of Jurisprudence Affecting Indigenous Peoples and their Ancestral Land and Resource Rights in the Philippines (2009-2023)

Transformative Pathways
Forest Peoples Programme
LRC Legal Rights and Natural Resources Center

Contents

Acknowledgement:

This research piece was completed with the Legal Rights and Natural Resources Center (LRC - Friends of the Earth Philippines), through its research team composed of Efenita M. Taqueban, Jameela Joy Reyes, Kai Lawt and Yasmin O. Hatta.

Supported by:

Federal Ministry
for the Environment, Nature Conservation,
Nuclear Safety and Consumer Protection

based on a decision of
the German Bundestag

IKI INTERNATIONAL CLIMATE INITIATIVE

List of Acronyms

AD	Ancestral Domain
AL	Ancestral Land
CADC	Certificate of Ancestral Domain Claim
CALC	Certificate of Ancestral Land Claim
CADT	Certificate of Ancestral Domain Title
CALT	Certificate of Ancestral Land Title
CAR	Cordillera Administrative Region
CA	Court of Appeals
CARP	Comprehensive Agrarian Reform Program
CFI	Court of First Instance
CHR	Commission on Human Rights
CLOA	Certificate of Land Ownership Award
CP	Certificate Precondition
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
FPIC	Free, Prior, and Informed Consent
FTAA	Financial or Technical Assistance Agreement
MGB	Mines and Geosciences Bureau
MPSA	Mineral Production Sharing Agreement
MR	Motion for Reconsideration
NCIP	National Commission on Indigenous Peoples
NGP	National Greening Program
OCT	Original Certificate of Title
OSG	Office of the Solicitor General
ICCs/IPs	Indigenous Cultural Communities/Indigenous Peoples
IFMA	Integrated Forest Management Agreement
IPHRO	Indigenous Peoples' Human Rights Observatory
IPRA	Indigenous Peoples' Rights Act of 1997
TLA	Timber License Agreements
RHO	Regional Hearing Office of the NCIP
RTC	Regional Trial Court
RUP	Resource Use Permit
SC	Supreme Court
UCCP	United Church of Christ in the Philippines
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Executive Summary

This survey presents an overview of the current legal framework on indigenous peoples' rights in the Philippines. It historicizes the legal recognition of indigenous peoples' rights, including territorial rights,in Philippine national laws and explores how this finds interpretation through a review of existing jurisprudence (presented as an enumeration of case digests) that relates to the Indigenous Peoples' Rights Act (IPRA). Some attention is provided for cases situated in Baguio City, Benguet and Mountain Province, presented as its own section. As an outtake, it reserves a brief section on the observations of the Commission on Human Rights and its Indigenous Peoples Human Rights Observatory.

The survey is informative in what it implies of the issues that involve IPRA and indigenous peoples. The cases illustrate the conflicts that impede its implementation and the issues that beset indigenous peoples. These can serve to propose policy fixes and interventions to realize the aspirations of indigenous peoples.

There has been some shift in the appreciation of the Courts of the rights of indigenous peoples, from the early legal pronouncements exemplified in People v. Cayat almost a century ago (1939), wherethe court made a distinction on the rights of indigenous peoples, rationalizing "[t]his distinction is unquestionably reasonable, for the Act was intended to meet the peculiar conditions existing in the non-Christian tribes... cannot affect the reasonableness of the classification thus established" (pertaining to alcohol consumption), to the 1987 Philippine Constitution, which expresses the state policy to recognize, promote and protect the rights of indigenous cultural communities within the framework of national unity and development. While the legal recognition of indigenous peoples' rights has indeed progressed, it remains, however, not unchallenged.

IPRA. The Indigenous Peoples' Rights Act (IPRA) remains the primary legal framework that prescribes Indigenous peoples' rights. Upon its certification into legislation, it was challenged for its constitutionality and narrowly decided in favor of its validity. This would be a foreboding of the insecure status of indigenous peoples before the courts, seemingly out-of-place traditional figure in an era of legal modernity.

NCIP. The National Indigenous Peoples Commission's (NCIP) is given the mandate and task to implement the aspirations of the IPRA. To realize its mandate, it has quasi judicial functions to inquire into issues related to indigenous peoples. It is not surprising that it often finds itself a part of, if not a party to, many of the cases heard by the courts.

Right to land. The right to land and title to the land, arguably, is an indispensable foundation of indigenous peoples' rights, and a cornerstone of other rights—right to resources, to the management of the land, to the practice of traditions and cultures, among others. Indigenous peoples, in the exercise of these rights, have been recognized as key components in natural resources stewardship and protection. These have implications to the larger environmental issues that now more urgently beset the planet and humankind.

Courts have begun to acknowledge indigenous peoples' rights to ancestral domains and lands. Their right to exercise Free Prior Informed Consent has also acquired traction, with the Courts highlighting the importance of securing indigenous peoples' free, prior and informed consent before executing development projects or activities that may impact their ancestral areas and resources. This acknowledgement, however, has not translated in an easy vindication of rights; contests forwarded by indigenous peoples are often decided in calibration with, if not limited by, the "framework of national unity and development."

Jurisdiction. The survey finds that most of the legal contest that reach the Court are at their core land disputes, as such much of the discussion center on the clarification of the jurisdiction of the National Indigenous Peoples Commission's (NCIP). The underlying implication of the cases is that legal appreciation of IPRA requires more clarity. The jurisdictional issue has been mostly resolved with the regular courts having cognizance of the controversies that also involve non-indigenous persons as another party in the case. What the national law and the Philippine state recognizes are those which pertain exclusively to customary laws and practices governing only the members of the same indigenous cultural community. In other words, despite the aspirations of IPRA to lend sensitivity, forward the interests of indigenous peoples, and to remediate their historical marginalization, legal contests relating to and involving indigenous peoples may not be interpreted to mean limiting the jurisdiction of the Courts, that is, it does not imply that NCIP has primary and sole jurisdiction over all ICCs/IPs claims and disputes to the exclusion of the regular courts.

Conflicts and overlaps. The legal controversies reveal a larger system inadequacy—an insecure tenurial process. It is this process that consequently results in land disputes—borne of overlapping and unclarified jurisdiction of various government departments—Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Land Registration Authority, and NCIP—particularly in the processing and awarding of tenurial instruments. Administrative Order No. 2012-01 was intended to reconcile the conflicts. However, the NCIP, restricted in how it was to delineate its coverage, opted out of the process thus resulting to the uncertain state of Certificate of Ancestral Domain Titles (CADTs). If budget is to be an indicator of state support for indigenous peoples' concerns then it will be at a diminishing trend—the NCIP budget has been decreasing trend since 2012. As of 2021, only 251 CADTs have been approved.

The conflicting claims, often over untitled lands, involve:

- Applications for or issued Certificate of Land Ownership Award (CLOA) under Comprehensive Agrarian Reform Program (CARP) within Ancestral Domains (AD);
- Patents within CADT (e.g., patented mining claims issued prior to Mining Act and IPRA);
- Resource instruments issued by DENR within AD (e.g., Integrated Forest Management Agreement [IFMA], Timber License Agreements [TLA], National Greening Program [NGP], protected areas);
- Exploration permits/financial or technical assistance agreement (FTAA), mineral production sharing agreement (MPSA) within AD; and
- Areas with existing and/or vested rights.

The right to free and prior informed consent (FPIC) is inextricably related to the right to land— manifesting the 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 reveal controversies that stand to undermine FPIC. The violations of FPIC process straddles as a legal controversy and a human rights issue.

The conflicts that play out in the cases illustrate the condition of many indigenous communities who 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 appear to gloss over the fact that majority of the land conflict 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 are often regarded with acceptance by indigenous peoples. 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 understand the situation of indigenous peoples more.

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.

Beyond the regular courts and the NCIP, the Commission on Human Rights (CHR) has been a viable avenue for indigenous peoples seeking redress for rights violations with its mandate to "conduct investigations on human rights violations against marginalized and vulnerable sectors. "It has established programs within the commission specifically to address IP issues. Of note is the Indigenous Peoples' Human Rights Observatory (IPHRO), primarily a monitoring platform. While laudable in its efforts, its mandate is restricted, and its resources constrained. These fundamentally impacts how it can render urgent protection to ICCs/IPs. Its limited enforcement power and reliance on the government to take action on its recommendations also limits its efficacy. This has resulted in some human rights violations remaining unaddressed. The slow resolution of cases can result in victims not receiving justice or compensation. Nonetheless, where there is very limited avenue to seek redress against rights violations, the CHR serves as an avenue to buttress, drum support, and provide the highlight to reports of IP rights violations.

IPRA as a policy platform to assert indigenous peoples' rights continues to face various challenges. These challenges have been brought before the courts, not always resulting in ways that inure to the benefit and advantage of indigenous peoples. The following recommendations are forwarded:

Greater advocacy efforts to:

- Improving Implementation and Enforcement — Ensure that all levels of government fully implement and enforce the IPRA's provisions. This may necessitate increasing the awareness and training for government officials, local governments, and law enforcement organizations to ensure they understand and respect indigenous peoples' rights. This would also necessitate adequate institutional networking. This may also include reviewing any judicial guidelines that the Supreme Court may issue for lower courts handling indigenous peoples cases.
- Ancestral Domain and Land Rights — Acceleration of the process of recognizing and securing ancestral domain claims to protect indigenous groups' land rights. This involves resolving pending claims and resolving land use problems between indigenous people and other stakeholders.
- Free, Prior, and Informed Consent — Ensure FPIC in all projects and programs within ancestral domains.
- Evaluation and monitoring, and cyclical review — A robust monitoring and evaluation mechanism to examine the impact of policies and programs on indigenous peoples' rights. Review and update policies on a regular to ensure relevance and effectivity.
- Participation and involvement of IPs — Following the principles of self- governance and empowerment, the participation and involvement of indigenous peoples must be ensured and actualized in mechanisms that oversee regulatory activities and in program implementation; greater opportunities for indigenous peoples and their representatives to hold decision-making positions.
- Strategic litigation continuing to use the courts as an avenue to vindicate and seek redress for indigenous peoples' rights.

Introduction

This survey presents an overview of the current legal framework on indigenous peoples' rights in the Philippines. It historicizes the legal recognition of indigenous peoples' rights, including territorial rights,in Philippine national laws, and explores how this finds interpretation through a review of existing jurisprudence (presented as an enumeration of case digests) that relates to the Indigenous Peoples' Rights Act. Some attention is provided for cases situated in Baguio City, Benguet and Mountain Province, presented as its own a section. As an outtake, it reserves a brief section on the observations of the Commission on Human Rights and its Indigenous Peoples Human Rights Observatory.

I. 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 within the framework of national unity and development. It also recognizes the right of indigenous peoples to participation through partylist representation. It commits to protect the rights of indigenous cultural communities 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 the indigenous cultural communities. 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 Constitution recognizes territorial autonomy but fall short of recognizing indigenous peoples right to self-determination. Territorial autonomy is expressed with the commitment to create autonomous regions in Muslim Mindanao and the Cordilleras. 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 which 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 operationalised through the passage of the Indigenous Peoples Rights Act (IPRA) in 1997 and the Philippine's adoption of the United Nations Declaration on the Rights of Indigenous Peoples[1] (UNDRIP) in 2007. The IPRA[2] 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**.*

The UNDRIP Article 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. National Commission on Indigenous Peoples (NCIP) Chairperson Atty. Eugenio A. Insigne representing the Philippines 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.[3]"*

The 1987 Constitutional provisions respecting indigenous rights and the bills which would soon give birth to the IPRA were meant to address the centuries old historical injustice suffered

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

2 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). Accessed at https://www.officialgazette.gov.ph/1997/10/29/republic-act-no-8371/.

3 "General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major step forward' towards human rights for all, says President", GA/10612, 13 September 2007, https://www.un.org/press/en/2007/ga10612.doc.htm.

by indigenous peoples from the colonial government and subsequent independent Republic. This historical injustice includes the violent dispossession of the indigenous territories to discriminatory treatment of indigenous peoples. The Philippine Republic was by no means innocent of these atrocities of colonizers against indigenous peoples but became instrumental in the entrenchment of an insidious scheme.

When the constitutionality of the IPRA was challenged by former Supreme Court Chief Justice Isagani Cruz[4], 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 very well the State role in the marginalisation 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 vs-a-vs American colonial masters, unfortunately, worked against long standing assertions of the unsubjugated indigenous tribes.

In 1973, for the first time in close to 500 years, the highest law of the Philippine islands recognised the 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 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.*
> >
> > *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.*

4 Cruz vs. Sec. of Environment and Natural Resources GR 135385, December 6, 2000, 400 Phil 904, Accessed at https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/36882.

> *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.*

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, 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, the legislators 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 recognition of indigenous rights to land and resources within indigenous territories is 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 which 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 of their territory, economic and political marginalization and making many indigenous peoples communities become part of the poorest sectors of Philippine society despite the vastness of the resources within 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 produced by the American colonial government describe 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.*

> *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[5] for the Philippine Islands quotes 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[6].

> *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****.*

5 Wilfley, Lebbeus R. "The New Philippine Judiciary." The North American Review 178, no. 570 (1904): 730–41. http://www.jstor.org/stable/25119567 .

6 Rubi, et al. vs. The Provincial Board of Mindoro, GR L-14078, March 7, 1919. Accessed at https://lawphil.net/judjuris/juri1939/may1939/gr_l-45987_1939.html

This view of "non-Christian" unsubjugated tribes continued for the most part of the American colonial period. In People vs. Cayat[7], 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.*
>
> *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.*

7 People v. Cayat, GR L 45987, May 5, 1939. Accessed at https://lawphil.net/judjuris/juri1939/may1939/gr_l-45987_1939.html

II. Post Colonial Formative Cases on Indigenous Peoples Rights

A. Post IPRA

1. This survey identified five (5) formative jurisprudence related to indigenous peoples' rights after the passage of the Indigenous Peoples Rights Act of 1997 or the IPRA. These are

    - Cruz v. Secretary of DENR, G.R. No. 135385, 06 December 2000
    - Unduran v. Aberasturi, G.R. No. 181284, 20 October 2015
    - Lim v. Gamosa, G.R. No. 193964, 02 December 2015
    - Ha Datu Tawahig v. Lapinid, G.R. No. 221139, 20 March 2019

Cruz v. Secretary of DENR (2000)[8]

Even before the one (1) year 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 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 (7) justices of the Supreme Court voting to dismiss the petition and seven (7) 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.

Important to the discussion is J. Puno's separate opinion, which historicized the context of indigenous peoples in the Philippines as well as discussed the IPRA.

> *"[t]he 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."*

8 Cruz v. SENR, G.R. No. 135385, December 6, 2000, Accessed at https://lawphil.net/judjuris/juri2000/dec2000/gr_135385_2000.html

In the discussion, J. 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; the indigenous concept of ownership and customary law; and that the IPRA does not violate the regalian doctrine in the Constitution, citing the rights of ICCs/IPs over their ancestral domains and lands, and that their right to develop lands and natural resources within the ancestral domains does not deprive the State of ownership over the natural resources, and control and supervision in their development and exploitation. 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 on the indigenous concept of land and ownership. He reiterates 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*" because 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 towards 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" is not equivalent to the bundle of rights defined under the national / state law (Civil Code). Alienation/ disposition of individually owned land is highly discouraged and is allowed only under specific circumstances - 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 a to a village-member but in no case to 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 their 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 clarifies 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)[9]

This case involves a dispute between the Talaandig tribe represented by their organisation Miarayon, Lapok, Lirongan, Talaandig Tribal Association (MILALITTRA) and non-indigenous claimants of a parcel of land which falls within the Talaandig territory in Miarayon, Talakag Bukidnon. A 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 for an *Accion Reinvidicatoria*. The non-indigenous claimants 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 Regional Trial Court has jurisdiction of the case because of Section 66.

9 Unduran v. Aberasturi, G.R. No. 181284, October 20, 2015. Accessed at https://lawphil.net/judjuris/juri2015/oct2015/gr_181284_2015.html

In this case, the Supreme Court clarified the jurisdictions of the NCIP as a quasi-judicial body, and the Regional Trial Court, 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. 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.

> *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* ***requires 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.[10]

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10 *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)[11]

This case involves the Tagbanua tribe in the Calamianes islands of northern Palawan. They began asserting claims over their ancestral domain even prior to IPRA. With the passage of IPRA, 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 to the Tagbanua "to undertake the validation of their proofs and claims with the newly created National Commission on Indigenous Peoples (NCIP) for the corresponding issuance of a Certificate of Ancestral Domains Title (CADT)." This transition of processing a title from one agency to another would set back their process for several years.

While the issue about the title was still pending, 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, and Prior 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 SC was the issue on the jurisdiction of the NCIP.

Once again, the High Court reiterated in this case that it is the Regional Trial Court which has jurisdiction of the dispute and not the NCIP since it involves 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 Free and Prior Informed Consent and forced displacement of the Tagbanua from inside their ancestral domain.

11 Lim V. Gamosa, G.R. No. 193964, December 02, 2015, Accessed at https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/61524

Ha Datu Tawahig v. Lapinid (2019)[12]

In this case, the High Court distinguishes 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/ mechanisms of customary law and practice should be *"compatible with the national legal system and with internationally recognized human rights."*

This case involves a tribal chieftain of the Higaonon tribe who was 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 Regional Trial Court Cebu City on April 4, 2007, and a warrant of arrest was issued on September 13, 2007. Arrest was made six (6) years after.

Accused Datu Tawahig filed a Motion to Quash, asserting Section 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. Accused-Petitioner anchored his argument on Section 65 of the IPRA.

The legal issue raised was whether the SC can issue a writ of mandamus to compel Judge Sinco, Prosecutors Gubalane, Lapinid, Sellon and Narido to desist from proceeding with the rape case. Otherwise stated, the High Court investigated the "novel issue". The High Court ***denied*** the petition of Datu Tawahig.

The Court clarified that Section 66 on the Jurisdiction of the NCIP and Section 67 on Appeals to the Court of Appeals build on Section 65. The IPRA recognizes that disputes among parties belonging to the same indigenous cultural community that are brought under customary laws may be brought to the National Commission on Indigenous Peoples if remedies under customary laws have been exhausted and the disputes remain unresolved. And 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 indigenous cultural community. "*A set of customary laws and practices is effective only within the confines of the specific indigenous cultural community that adopted and adheres to it.*"

12 Ha Datu Tawahig v. Lapinid, G.R. No. 221139, March 20, 2019, Accessed at https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145

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

Daco v. Cabajar (2021)[13]

This is a case involving members of the Tagbanua indigenous community in Busuanga, Palawan. Both petitioner and respondent belong to the Tagbanua indigenous cultural community. The case revolves around the ownership and possession of Isla Malajem which is claimed to be located within the Tagbanua's ancestral domain.

The petitioner, Arnolfo A. Daco (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. He is praying that the Court of Appeals' March 6, 2015 and December 14, 2015 Resolutions be reversed. The assailed Resolutions dismissed Daco's appeal from the Decision of the NCIP Regional Hearing Office based on procedural infirmities. He mainly argues that the NCIP lacks jurisdiction over the complaint filed by respondent before the Commission's Regional Hearing Office.

Ruben E. Cabajar (Cabajar) is a member of the Tagbanua indigenous cultural community 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 in Busuanga, Palawan. Cabajar presented evidence to show he is a member of the Tagbanua ICC and that the Council of Elders of the Tagbanua tribe had authorised him to file a complaint before the NCIP.

Cabajar asserted that Isla Malajem is part of the ancestral domain of the Tagbanua and 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, series 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 Regional Hearing Office-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 [i]ndigenous peoples to gather bird's nest or in [T]agbanua dialect, 'balinsasayaw' since time immemorial," it cannot be privately owned by one individual. The NCIP RHO found defendants [Daco] to have unlawfully and without authority intruded into the ancestral domain of the Tagbanua and were ordered to immediately vacate Isla Malajem and pay damages to the community.

13 Daco v. Cabajar, G.R. No. 222611, November 15, 2021, Accessed at https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68052

In this case, the first condition for the National Commission on Indigenous Peoples to acquire jurisdiction is present - both parties being members of the same indigenous tribe (Tagbanua). The second condition - 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 Cordillera (CAR)

The following set of cases show the interpretation of whether the land in Baguio City is treated as ancestral land or considered as public land, and whether indigenous land within Baguio City is subject to the provisions of the Indigenous Peoples Rights Act (IPRA).

Republic v Judge Fañgonil (1984)[14]

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 revolves 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 recognised 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.

The decision lays down the recognition of the seminal case of Cari as background, it should be noted that in 1912 a petition was filed in the Court of Land Registration regarding the Baguio Townsite Reservation, Expediente de Reserve No. 1, GLRO Reservation Record No. 211. In 1914, when the Land Registration Court was abolished, the record was 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 (Secs. 3 and 4, Act No. 627)

Judge Fangonil seeks to apply the ruling therein to the instant eight cases. We find that his order is unwarranted or unreasonable. It would reopen Case No. 211. It would give way to baseless litigations intended to be foreclosed by that 1912 case.

14 Republic v. Fañgonil, G.R. No. L-57112, November 29, 1984. https://lawphil.net/judjuris/juri1984/nov1984/gr_l57112_1984.html

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, 212 U.S. 449, 41 Phil. 935. The two Igorots named Zarate and those who were allowed to register their lots in Case No. 211, like Mateo Carino, the Igorot involved in the Cariño case, inherited their lands from their ancestors. They had possession of the lands since time immemorial. The Igorots were allowed to avail themselves of registration under Act No. 496.

Here, the eight applicants do 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).

Anyway, the applicants 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. 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 (Annex E of Petition).

The period of more than fifty 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)[15]

Court in this case said that while the NCIP has the authority to issue temporary restraining orders and writs of injunction to preserve the rights of parties to a dispute who are members of indigenous cultural communities or indigenous peoples, it also categorically rules that Elvin Gumangan, et al, whose houses and structures are the subject of the demolition orders issued by the City Government of Baguio, are not entitled to the injunctive relief granted by Atty. Masweng. While Proclamaton 15 identifies the Molintas and Gumangan families as claimants of a portion of the Reservation, it does not acknowledge vested rights over the same. In fact, Proclamation No. 15 explicitly withdraws the Reservation from sale or settlement.

The IPRA concedes the validity of prior land rights recognized or acquired through any process before its effectivity.

See also: Heirs of Gumangan v. CA (Where the Court declared the Busol Forest Reservation as inalienable, which means it is not private property) as well as The Baguio Regreening Movement v. Atty. Masweng

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

Lamsis v. Dong-e (2009)[16]

Petitioners are actual occupants of the parcel of land, but respondent is claiming ownership thereof. Respondents tolerated the use of the land by petitioners and their ancestors.

Main issue relevant to the discussion is whether the trial court has jurisdiction to decide the case considering the effectivity of the IPRA when the complaint was instituted. Also, whether the ancestral land claim pending before the NCIP should take precedence over the reivindicatory action.

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

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

The petitioners were belated in raising the IPRA vis-à-vis jurisdiction. Unfortunately, the ponencia's penultimate paragraph indicated 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)[17]

A petition for contempt was filed against respondent Masweng, who issued orders in his capacity as Regional Hearing Officer of NCIP-CAR. The case arose because the City Government of Baguio issued Demolition orders ordering the demolition of 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 is whether the respondent should be cited in contempt of court for issuing the TROs and writs of preliminary injunction. Supreme Court cited Section 3 of Rule 71 of the Rules of Civil Procedure, re disobedience of or resistance to a lawful writ, process, order, or judgment of a court. Here, respondent was charged with indirect contempt for issuing the subject orders enjoining the implementation of demolition orders against illegal structures constructed on a portion of the Busol Watershed Reservation.

The crucial question to be asked then is whether private respondents' ancestral land claim was indeed recognized by Proclamation No. 15, in which case, their right thereto may be protected by an injunctive writ. After all, 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.

16 Lamsis v. Dong-E, G.R. No. 173021, October 20, 2010, https://lawphil.net/judjuris/juri2010/oct2010/gr_173021_2010.html

17 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 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)[18]

In this case, the main issue raised with the High Court is whether the Court of Appeals committed an error in upholding the jurisdiction of the NCIP over a land dispute between members of the Kankanaey Tribe of Mt. Province. Petitioner Begnaen claims ownership over a 125 square meter piece of land in Sabangan, Mountain Province. Begnaen complained that the Respondents Caligatan constructed a shack inside a portion of the property without the consent of Begnaen. The Caligatans contend that the property is owned by them, acquired by purchase from their relative in 1959 pursuant to age-old customs and traditions.

The Court reiterated its decision 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)

The lower courts concur that the parties to the case are members of ICCs, and so the NCIP is vested with jurisdiction over the parties.

Re the subject property, the Court said that the NCIP also has jurisdiction over the same. It was agreed upon that the land did not lose its character as ancestral domain (see comments section).

Finally, the Court said that since the NCIP Regional Hearing Office (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.

Finally, the IPRA's declaration of the primacy of customary laws and practices in resolving disputes between ICCs/IPs is no less significant.

18 Begnaen v. Sps Caligtan, G.R. No. 189852, August 17, 2016. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/62247

City Government of Baguio v Masweng (2018)[19]

Private respondents are petitioners in an earlier NCIP case, praying that their ancestral lands in the Busol Forest Reserve be identified, delineated, and recognized, and that the corresponding Certificate of Ancestral Land Title (CALT) be issued. 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 they also had properties inside the Reserve. Both grounds aver that their claims over their ancestral lands are protected and recognized under the IPRA.

Court decided in favour of petitioners.

At the outset, it said that the case was mooted due to intervening events. In the other contempt case also involving the City Government and Atty. Masweng, the latter was found guilty of indirect contempt. Nonetheless, the SC said that it merited a discussion because exceptions existed warranting an affirmative action from the court – the case involves paramount public interest because it pertains to the Busol Water Reserve, which is a source of necessity of the people of Baguio and other neighbouring communities. Case also fell under the exceptions to the requirement of a Motion for Reconsideration (MR) in petitions for certiorari.

Re the decision making of the IPRA, the Court said that in the earlier case, the Court there explained that Proclamation No. 15 is 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 is empowered to issue Temporary Restraining Orders (TROs) 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, the SC said, in both cases are the same. 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.

19 City Government of Baguio City v. Atty. Masweng, G.R. No. 195905, July 04, 2018

Republic v. Cosalan (2018)[20]

The controversy involves a parcel of land located in Sitio Adabong, Barrio Kapunga, Municipality of Tublay, Benguet, with an area of 98,205 square meters under an approved Survey Plan PSU-204810, issued by the Bureau of Lands on March 12, 1964. Ronald M. Cosalan, respondent, alleged that the Cosalan clan came from the Ibaloi Tribe of Bokod and Tublay, Benguet; that he was the eldest son of Andres Acop Cosalan (Andres), the youngest son of Fernando Cosalan (Fernando), also a member of the said tribe; that he was four generations away from his great-grandparents, Opilis and Adonis, who owned a vast tract of land in Tublay, Benguet; that this property was passed on to their daughter Peran who married Bangkilay Acop (Bangkilay) in 1858; that the couple then settled, developed and farmed the said property; that Acop enlarged the inherited landholdings, and utilized the same for agricultural purposes, principally as pasture land for their hundreds of cattle; that at that time, Benguet was a cattle country with Mateo Cariño (Mateo) of the landmark case Cariño v. Insular Government, having his ranch in what became Baguio City, while Acop established his ranch in Betdi, later known as Acop's Place in Tublay Benguet, that Mateo and Acop were contemporaries, and became "abalayans" (in-laws) as the eldest son of Mateo, named Sioco, married Guilata, the eldest daughter of Acop; and that Guilata was the sister of Aguinaya Acop Cosalan (Aguinaya), the grandmother of respondent.

Respondent also alleged that Peran and Bangkilay had been in possession of the land under claim of ownership since their marriage in 1858 until Bangkilay died in 1918; that when Bangkilay died, the ownership and possession of the land was passed on to their children, one of whom was Aguinaya who married Fernando; that Acop's children continued to utilize part of the land for agriculture, while the other parts for grazing of work animals, horses and family cattle; that when Fernando and Aguinaya died in 1945 and 1950, respectively, their children, Nieves Cosalan Ramos (Nieves), Enrique Cosalan (Enrique), and Andres inherited their share of the land; that Nieves registered her share consisting of 107,219 square meters under Free Patent No. 576952, and was issued Original Certificate of Title (OCT) No. P- 776; that Enrique, on the other hand, registered his share consisting of 212,688 square meters through judicial process, docketed as Land Registration Case (LRC) No. N- 87, which was granted by then Court of First Instance (CFI) of Baguio and Benguet, Branch 3, and was affirmed by the Court in its Decision dated May 7, 1992, and that OCT No. O-238 was issued in his favor.

Similarly, Andres sought the registration of his share. He had the subject land surveyed and was subsequently issued by the Director of Lands the Surveyor's Certificate. In 1994, Andres sold the subject land to his son, respondent, for the sum of P300,000.00, evidenced by the Deed of Absolute Sale of Unregistered Land. On February 8, 2005, respondent filed an application for registration of title of the subject land. Respondent presented himself and Andres as principal witnesses and the owners of the properties adjoining the subject land namely, Priscilla Baban (Priscilla) and Bangilan Acop (Bangilan).

Respondent alleged, among others, that he acquired the subject land in open, continuous, exclusive, peaceful, notorious and adverse occupation, cultivation and actual possession, in the concept of an owner, by himself and through his predecessors-in-interest since time immemorial; that he occupied the said land which was an ancestral land; that he was a member of the cultural minorities belonging to the Ibaloi Tribe; that he took possession of the subject land and performed acts of dominion over the area.

20 Republic v. Cosalan, G.R. No. 216999, July 04, 2018 https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64401

The Department of Environment and Natural Resources (DENR)–Cordillera Administrative Region (CAR), opposed the application filed by respondent on the ground that the subject land was part of the Central Cordillera Forest Reserve established under Proclamation No. 217.

On July 29, 2011, the RTC approved respondent's application for registration. Aggrieved, petitioner appealed before the CA. In its decision dated August 27, 2014, the CA affirmed in toto the ruling of the RTC. Petitioner filed a motion for reconsideration, but it was denied by the CA in its resolution dated February 4, 2015. As a rule, forest land located within the Central Cordillera Forest Reserve cannot be a subject of private appropriation and registration. Respondent, however, was able to prove that the subject land was an ancestral land and had been openly and continuously occupied by him and his predecessors in-interest, who were members of the ICCs/IPs.

To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way. The CA has correctly relied on the case of Cruz v. Secretary of DENR, which institutionalized the concept of native title.

It was proven that respondent and his predecessors-in- interest had been in open and continuous possession of the subject land since time immemorial even before it was declared part of the Central Cordillera Forest Reserve under Proclamation No. 217. Thus, the registration of the subject land in favor of respondent was proper.

Republic v. Heirs of Ikang Paus, et al (2019)[21]

Private respondents filed a petition for the identification, delineation, and issuance of a CALT with the NCIP. Heirs of Mateo Cariño opposed this, but the NCIP issued the same in the name of private respondents Original Certificate of Title (OCT). 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. Private respondents pointed out that the complaint assailed the CALT and the OCT issued based on the CALT fall within the jurisdiction of the NCIP, not of regular courts.

Main question here is whether the Regional Trial Court (RTC) has jurisdiction over the complaint.

The Court answered in the affirmative: 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.

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

Republic v. NCIP, Heirs of Cosen Piraso (2019)[22]

Petitioners occupied an ancestral land 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 is whether the subject parcels of land are covered by the IPRA.

The Court said that (1) the NCIP has no legal authority to issue CALTs or CADTs in favour of the subject properties included as Townsite Reservation areas in Baguio City. RA 8371 or the IPRA expressly excludes the City of Baguio from the application of the general provisions of the IPRA.

Petitioners are heirs of Cosen "Sarah" Piraso, daughter of Piraso (Kapitan Piraso), an Ibaloi, who occupied an ancestral land now known as Session Road. Other set of petitioners are heirs of Josephine Molintas Abanag, descendant of Ibaloi named Menchi. Menchi owned several parcels of ancestral land in Baguio City. submitted evidence - narrative of customs and traditions of the Ibaloi community in Baguio, Real Property Tax receipts, photographs of improvements and rituals. NCIP granted issuance of twenty-eight (28) CALTs. CA declared that Baguio City and Baguio Townsite Reservation are covered by the IPRA, and that the resolutions of the NCIP.

The Supreme Court reversed the CA decision. It held that given the facts, NCIP has no legal authority to issue CALTs or CADTs in favor of subject properties included as Townsite Reservation areas in Baguio City.

The clear legislative intent is that, despite the enactment of the IPRA, Baguio City shall remain to be governed by its charter and that all lands proclaimed as part of Baguio City's Townsite Reservation shall remain to be a part of the Townsite Reservation unless reclassified by Congress. The NCIP cannot transgress this clear legislative intent. The IPRA expressly excludes land proclaimed to be part of the Baguio Townsite Reservation. Absent legislation passed by Congress, the Baguio Townsite Reservation shall belong to the public and exclusively for public purpose. The Wright Park, the Secretary's Cottage, the Senate President's Cottage, the Mansion House, and the public roads therein which are all covered by the assailed CALTs shall remain to exist for the benefit and enjoyment of the public. These subject lands comprise of historical heritage and belong to the State.

While the IPRA does not generally authorize the NCIP to issue ancestral land titles within Baguio City, there are also recognized exceptions under Section 78. These refer to (1) prior land rights and titles recognized and acquired through any judicial, administrative, or other process before the effectivity of the IPRA; and (2) territories which became part of Baguio after the effectivity of the IPRA. For prior land rights, the remedy afforded to indigenous cultural communities is Act No. 926.

22 Republic v. NCIP, Heirs of Cosen Piraso, G.R. No. 208480, September 25, 2019 https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65663

In Fañgonil, the alleged claims were not previously claimed by the predecessors-in-interest and, therefore, the Court declared that the said properties were not susceptible of registration. Since the claimants did not base their applications under Act No. 496 or any purchase from the State, the Court held that the said claims were not considered valid native claims. Under Fañgonil, 134 persons living upon or in visible possession were personally served with the notice of reservation. Section 3 of Act No. 627 provides that the certification by the clerk of court is "conclusive proof of service" of the said notice. Since respondents in the present case claim possession since time immemorial, their predecessors were necessarily given notice of the reservation and, hence, should have filed their claims within the stated period. However, no such claim was filed. In fact, the said lots in the present case were not shown to be part of any ancestral land prior to the effectivity of the IPRA. To stress, 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)[23]

In 1990, an 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 revolves around the renewal of the MPSA, because laws effected after its execution affected its renewal.

In 1995, the Mining Act was enacted. In 1997, the IPRA was enacted. The latter enjoins 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 FPIC. (FPIC and NCIP Certificate Precondition)

NCIP AO No. 1-98 was also issued which outlined procedures and guidelines for the implementation of the IPRA.

Respondents wanted to renew the MPSA as it was set to expire on 18 March 2015.

The Mines and Geosciencies Bureau - Cordillera Administrative Region (MGB-CAR) informed Lepanto that the latter had substantially complied with the requirements for the MPSA renewal and advised the same that their joint application for renewal will be endorsed to the NCIP, supposedly for the required FPIC and NCIP CP. Respondents questioned said endorsement, and said that the imposition of the certification would impair their vested rights to renew the MPSA, and said that they were exempt from the IPRA requirement and the CP.

(To note that there was an arbitral award saying that the issue was arbitrable)
The main issue is whether the Arbitral Award was correctly sustained.

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

(Also, to note that the District of Benguet sought to intervene, because it has legal interest in this case, as it represents the interest of its constituents falling as ICCs/IPs, but the remedy of intervention does not extend to arbitration cases.)

The Court said, "the Arbitral Tribunal's determination xxx does not relate to a mere application of law. The non-application of the requirements contravenes a strong and compelling public policy on the protection of the rights of the Mankayan ICCs/IPs to their ancestral domains." Also, a mining agreement partakes of a mere privilege, which can be amended, modified, or rescinded when the national interest so requires.

C. Other Cases

Ramos v. NCIP (2020)[24]

The case involved land dispute. Bae Tenorio filed with the NCIP the application for the issuance of a CALT. The NCIP issued CALT in favor of the Egalan-Gabayan clan, later an amended CALT issued to exclude existing property rights from coverage of CALT. Previously, the CALT was subject of a lease in favor of Hughes, who after his death, went to his heirs (filing individual sales application of the lease land). The lease was opposed by 133 oppositors. In an amended decision, 399 hectares was awarded to the 133 oppositors and 317 hectares to the Hughes heirs. The heirs instituted suits to challenge the award. The land awarded to the Hughes heirs would become a subject of another dispute. It would evolve to become part of the Lapanday Agricultural and Development Case, previously as part of a Department of Agrarian Reform Adjudication Board's (DARAB) case.

This yet again was a land dispute case, and was appreciated mostly as a case that determined the appropriate jurisdiction for cases that would involve ICCs. In this case, the Supreme Court partially set aside the contested NCIP decision. It reiterated that jurisdiction is conferred by law. When claims and disputes arise between or among parties who no not belong to the same indigenous community, the case falls withing the ambit of the Court of Justice (instead of the NCIP). Because the complaint was filed by private individuals who are not indigenous peoples, the case filed in the NCIP was dismissed for lack of jurisdiction.

Datu Malingin v. Sandagan Et al (2020)[25]

Datu Malingin, also known as Lemuel Talingting, was charged with charged with raping a minor. Datu Malingin filed a plea to quash the information filed against him, claiming that the court lacks jurisdiction over him because he is a member of the indigenous group Higaonon-Sugbuanon Tribe. He invoked Sections 55 and 66 of the Indigenous Peoples Rights Act (IPRA) R.A. No. 8371. According to Datu Malingin, the case against him should be settled in accordance with Higaonon-Sugbuanon Tribal customary law and practices. Membership in an indigenous group does not preclude the filing of a criminal action against the individual in question. The filing of rape allegations against Datu Malingin violated none of his rights as a member of an Indigenous Cultural Community (ICC). The goal to safeguard Indigenous Peoples does not

24 Ramos v. NCIP (2020), G.R. No. 192112, August 19, 2020, https://lawphil.net/judjuris/juri2020/aug2020/gr_192112_2020.html

25 Datu Malingin v. Sandagan Et al (2020), G.R. No. 240056, October 12, 2020 https://lawphil.net/judjuris/juri2020/oct2020/gr_240056_2020.html

involve depriving courts of jurisdiction over criminal proceedings. This means that ICC members charged with criminal charges cannot simply invoke RA 8371 to avoid prosecution and the risk of criminal punishment.

Sama v. People (2021)[26]

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 Information, alleging, among other things, that they are members of the Iraya-Mangyan tribe, and are therefore governed by Republic Act No. 8371, or The Indigenous Peoples Rights Act of 1997. 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," and 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 are 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, and again, the discussion of probability and doubt came about, when it 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."

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 law, and, as of 2018, is in the process of being converted into a Certificate of Ancestral Domain Title (CADT). Even so, a CADC is sufficient to afford to petitioners substantial rights and obligations and is 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.

26 Sama v People, G.R. No. 224469. January 5, 2021 https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108

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 generies 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."* [27]
>
> Accordingly, the Supreme Court granted the petition, and acquitted petitioners on the ground of reasonable doubt.

Santos v. Gabaen et.al. (2022)[28]

This case involved a petition for *Certiorari* and Prohibition with prayer for a temporary restraining order (TRO) under Rule 65 of the Rules of Court filed by Anita Santos against Atty. Kissack B. Gabaen, Ricardo D. Sanga, and the National Commission on Indigenous Peoples (NCIP), Department of Environment and Natural Resources (DENR) to assail the Cease and Desist Order ordered by the Commission. The petition was dismissed by the High Court.

Pinagtibukan It Pala'wan, Inc. (PINPAL) is 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 Certificates of Ancestral Domain Claims (CADC) 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.

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27 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.

28 Santos v. Gabaen et.al., G.R. No. 195638. March 22, 2022 https://lawphil.net/judjuris/juri2022/mar2022/gr_195638_2022.html

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.

In its decision, the Court said that, "While Santos may have an indirect interest, as a buyer of the almaciga resins, this interest is only incidental as compared to the interest of PINPAL - the holder of the RUP. As pointed out by the OSG, her interest does not qualify as that contemplated to warrant the exercise of judicial review because it arises only from her alleged exclusive dealership with PINPAL, and not from the RUP itself. Santos has no direct or personal right prejudiced by the nullity of the RUP granted to PINPAL. Thus, she is not in the position to ask for injunctive relief against the proceedings for the validity of the RUP before the NCIP-RHO."

Most of the legal contest presented in court are at their core land disputes, but decisions often center on the clarification of National Indigenous Peoples Commission (NCIP) jurisdiction. The underlying implication of the decided cases is that legal appreciation of IPRA requires more clarity. The disputes before the courts make for the process that refines the understanding of the law. 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. What the national law and the Philippine state recognizes are those which pertain exclusively to customary laws and practices governing only the members of the same indigenous cultural community.

In other words, despite the aspirations of IPRA to be more cognizant of 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.

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. An attempt to sort this was through the Department of Agrarian Reform (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 AD (e.g., Integrated Forest Management Agreement [IFMA], Timber License Agreements [TLA], National Greening Program [NGP], protected areas);
- Exploration permits/financial or technical assistance agreement (FTAA), mineral production sharing agreement (MPSA) over Comprehensive Agrarian Reform Program lands (CARP); and
- Areas with existing and/or vested rights.

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.

III. Commission on Human Rights

Review the website of the Philippine Commission on Human rights and including the Indigenous Peoples Human Rights Observatory

The Philippine Commission on Human Rights (CHR) has undertaken several actions and initiatives related to the rights of Indigenous Peoples (IPs) in the Philippines. Some of these actions include conducting investigations. The CHR has conducted investigations into human rights abuses against IPs, such as land grabbing, displacement, and other violations of their rights. The CHR has advocated for the recognition and protection of the rights of IPs in various national and international forums.

Facilitating dialogues, the CHR has facilitated dialogues between IPs, government agencies, and other stakeholders to address issues affecting IPs. The CHR has provided legal assistance to IPs 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 IPs and the challenges they face. The CHR has developed guidelines on the rights of IPs, which provide guidance to government agencies, non-governmental organizations, and other stakeholders on how to respect and protect the rights of IPs. Overall, the CHR has played an important role in promoting and protecting the rights of IPs 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 IPs.

The IP Observatory

The IPs Observatory of the Commission on Human Rights or the Indigenous Peoples' Human Rights Observatory (IPHRO) is a mechanism that was established to monitor and document human rights violations against Indigenous Peoples (IPs) in the Philippines. The Observatory aims to provide a platform for the documentation and analysis of human rights abuses against IPs, as well as to provide timely and accurate information to the CHR and other stakeholders.

The IPs Observatory collects and analyzes information on human rights violations against IPs, 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 against IPs.

The IPs Observatory works in close collaboration with IP communities, human rights organizations, and other stakeholders to raise awareness of human rights issues affecting IPs, and to advocate for the recognition and protection of their rights.

Through its activities, the IPs Observatory seeks to promote accountability for human rights violations against IPs, and to ensure that the rights of IPs are fully respected and protected in the Philippines.

Sample Cases

Land grabbing by Palm Oil Companies in Bataraza and Espanola, Palawan

Based on fact finding activities, there is prima facie evidence that indigenous peoples' and local communities' lands are being taken over by oil palm companies without respect for their rights, without the mandatory free, prior, and informed consent from indigenous peoples and without the required presence of the National Commission on Indigenous Peoples (NCIP). These procedures have continued even after NCIP warned one of the companies that they were entering ancestral domain and should report to the NCIP office, two years ago.

It appears that companies are adopting schemes of acquiring lands through forced and fraudulent land sales with the alleged complicity of local government officials. These measures are 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 are being maintained in ways resembling debt peonage. Pollution of rivers with palm oil mill effluents risks 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 5th and 6th 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 Commission on Human Rights of the Philippines (CHRP) 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 committed against the lumads. This 2015, the Commission is investigating/ has investigated eight (8) cases of extrajudicial killings of indigenous peoples from regions X, XI, CARAGA, all in Mindanao. In the eight recorded cases, twenty-one (21) IPs were killed while seven (7) were injured and survived. This is a marked increase over 2014's two cases of IP EJKs, one of which involved the killing of two Manobos, Martino Y Sugian Dagodoy and Henry Arreza from Surigao del Norte. The other case is still from Surigao del Sur, the killing of a Manobo, Henry Alameda, of Sitio Kabalawan, Brgy. San Isidro, Lianga, Surigao Del Sur. It was alleged that Almeda was killed by members of paramilitary group headed by a certain Calpit Egua. The killing likewise resulted in the displacement of some 240 families from different areas of Barangay Diatagon, Lianga, Surigao del Sur.

The list is not an exhaustive list of IP killings and cases for 2014 and 2015 as these are based on cases filed and investigated by the Commission's Regional Offices.

From the IP cases of 2015, the Commission 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 18 August 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), 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 18th of August 2015 at around 4PM about 4 kilometers from the Barangay Hall of Barangay Mendis, Pangantukan, Bukdinon involving the 1st Special Forces Battalion led by Capt. Alberto Balatbat (INF) PA and SPP1 Guerilla Front 68. After an hour of armed confrontation, the rebels withdrew toward the northwest leaving behind five (5) lifeless bodies. The case remains pending investigation by CHR-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, Brgy. San Isidro, Lianga, Surigao del Sur. According to the investigation conducted by the Commission's Regional Offices, the residents likewise 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 the community residents and causing displacement.

IPs already sought refuge in UCCP Haran in 2014. Particularly, the Commission has monitored that on 03 April 2014 more than One Thousand Three Hundred (1,300) Indigenous People belonging to the Ata-Manobo Tribe evacuated from Talaingod, Davao del Norte to Davao City due to military operations in the area (elements of the 60th IB and the 4th Special Forces). There are nine hundred fifty-seven (957) evacuees composed of three Hundred nine (309) families. Among them are five hundred fifteen (515) children. They are now housed at the UCCP Church at Barangay 8-A, Upper Madapo, Davao City.

In 2015, the major displacement of Indigenous Peoples was in Mindanao and were allegedly due to armed conflict and/or development aggression. Once again, the IPs encamped and sought refuge in UCCP Haran.

In response to the encampment of IPs in UCCP, Haran, Davao City, the CHR immediately pursued fact-findings/investigation on the reports of alleged harassments, militarization and presence of armed groups, closure of schools 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 IPs, including those encamped in the United Church of Christ in the Philippines (UCCP) Haran Compound, Davao City.

During the public inquiry and fact-finding, the Commission also investigated the human rights situation of children particularly their general health and welfare and the allegation of encampment and occupation in lumad schools. Thus, a creative Focus Group Discussion with children and their mothers was conducted inside Haran and the creative outputs of children were exhibited at the CHR Central Office (see Commission on Human Rights -2015-annual accomplishment report).

Policy Development and Advocacy: The CHR conducts policy research and analysis, and advocates for the development of laws and policies that promote and protect human rights in the Philippines.

According to their yearly accomplishment report, commission received request for protection services of different types of human rights violations, followed by the full-blown investigation majority needed legal aid and counselling services, some complaints found to be outside CHR jurisdiction, which immediately refer to other agencies. Mainly provide legal assistance and financial aid to the victim family members, referred to other agencies

Commission on Human Rights IP campaigns

Advocacy regarding business-related human rights violations in the country, particularly extractive industries operated by multinational corporations: As one of the speakers in the UN Forum on Business and Human rights held in Geneva in December 2013, the CHR chair took the opportunity to raise the issue of extra-territorial obligations of companies as well as the negative impact business practices on the environment that further cause disastrous climate changes such as super typhoon Yolanda. As chair of the ICCWG, the Commission actively participated in the UN Forum and organized the pre-forum session for NHRIs entitled, "Strengthening Rights, Responsibilities, and Remedies, Bridging Accountability".[29]

National Inquiry on the Situation of Indigenous Peoples: In 2018, the CHR launched a national inquiry into the human rights situation of Indigenous Peoples in the Philippines. The inquiry aimed to document and analyze the human rights situation of IPs, identify the root causes of rights violations, and provide recommendations to the government on how to address the situation.

Indigenous Peoples' Rights Program: The CHR has a dedicated program focused on promoting and protecting the rights of Indigenous Peoples in the Philippines. The program includes various activities, such as human rights training for IPs and government officials, capacity-building for Indigenous Peoples' organizations, and advocacy for the recognition of IPs' rights.

Indigenous Peoples' Human Rights Defenders Network: The CHR has also established a network of Indigenous Peoples' human rights defenders to help protect and promote the rights of IPs in the Philippines. The network aims to provide support and assistance to Indigenous Peoples' organizations and individuals who are working to defend the rights of their communities.

29 CHR Reports:
https://chr.gov.ph/wp-content/uploads/2018/01/CHR-2013-Annual-Accomplishment-Report.pdf
https://chr.gov.ph/statement-of-commissioner-gwendolyn-pimentel-gana-on-the-findings-of-the-commission-on-human-rights-report-on-drug-related-extrajudicial-killings-in-the-country/

Indigenous groups, UN rapporteur Tauli-Corpuz discuss Lumad killings, harassment
https://www.gmanetwork.com/news/topstories/nation/653743/indigenous-groups-un-rapporteur-tauli-corpuz-discuss-lumad-killings-harassment/story/

UN human rights experts call for independent probe into Philippines violations on 7 June 2019
https://www.ohchr.org/en/press-releases/2019/06/un-human-rights-experts-call-independent-probe-philippines-violations

Answers to questionnaire of the UN special reporter on the situation of human rights defenders
https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/LargeScale/NGOs/KarapatanAlliancePhilippines.pdf

Questionnaire: Answers from the Commission on human Rights of the Philippines
https://chr.gov.ph/wp-content/uploads/2018/04/Answers-to-the-Questionnaire-of-the-UN-Permanent-Forum-on-Indigenous-Issues.pdf

Receive human rights situations from local rights-based organizations for the UPR process
https://www.upr-info.org/sites/default/files/documents/2013-10/iprmphluprs12008indigenouspeoplerightsmonitoruprsubmission.pdf
https://aippnet.org/wp-content/uploads/2021/05/Katribu-UPR-Phils-Cover-and-combined.pdf

Campaigns against discrimination and violence: The CHR has undertaken various campaigns to address discrimination and violence against Indigenous Peoples in the Philippines. For example, the CHR has launched campaigns against the use of derogatory terms to refer to IPs, as well as campaigns to address violence against IP women and children.

Lumad Killings Case (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. (HARAN report_2019)[30]

Mining Operations in IP Ancestral Domain Case (2016): The CHR investigated a complaint about mining operations in an IP ancestral domain in Zambales. The CHR recommended the suspension of the mining operations and the conduct of an environmental and social impact assessment.

Ethnic Lumad (an indigenous group in Mindanao) activist and Karapatan paralegal officer Renalyn Tejero was, with 32 others in the Caraga region, red-tagged in November 2020 by a group calling itself the Movement Against Terrorism. Authorities arrested Tejero on March 21 on charges of murder and attempted murder. Activist groups stressed Tejero was targeted for trumped up charges due to her affiliation with the Karapatan organization, an NGO focused on human rights defense.[31]

The CHR conducts its public hearings in accordance with Rule 7 of the Commission's Omnibus Guidelines and Procedures in the Investigation and Monitoring of HR Violations and Abuses. The inquiry proceedings are fact- finding and non-adversarial in nature, hearings are open to the public, and the participation of affected parties and sectors is encouraged. Public hearings were conducted on 24-25 September 2015 at the Apo View Hotel in Davao City. Prior to the public hearings, the Commission en banc also held a dialogue with *Lumad* victims and support groups at the CHR Central Office on 18 Sept 2015.[32]

30 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/

31 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)

32 Haran report https://chr.gov.ph/wp-content/uploads/2020/10/The-Haran-Report-2019-FINAL-REY-2019-12-04.pdf

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