Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HA DATU TAWAHIG (RODERICK D. SUMATRA), TRIBAL CHIEFTAIN, HIGAONON TRIBE, Petitioner, -versus- **THE HONORABLE CEBU CITY PROSECUTOR I LINETH LAPINID, CEBU CITY PROSECUTOR II FERNANDO GUBALANE, ASSISTANT CITY PROSECUTOR ERNESTO NARIDO, JR., CEBU CITY PROSECUTOR NICOLAS SELLON, AND THE HONORABLE JUDGE OF REGIONAL TRIAL COURT BRANCH 12, CEBU CITY ESTELA ALMA SINGCO,** Respondents.	**G.R. No. 221139** Present: PERALTA, *J., Chairperson,* LEONEN, REYES, A., JR., HERNANDO, and CARANDANG,* *JJ.* **Promulgated:** March 20, 2019

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DECISION

LEONEN, *J.*:

The Philippine legal system's framework for the protection of indigenous peoples was never intended and will not operate to deprive courts

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* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

of jurisdiction over criminal offenses. Individuals belonging to indigenous cultural communities who are charged with criminal offenses cannot invoke Republic Act No. 8371, or the Indigenous Peoples' Rights Act of 1997, to evade prosecution and liability under courts of law.

This resolves a Petition for Mandamus[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioner Roderick D. Sumatra (Sumatra), also known as Ha Datu Tawahig, praying that respondent Judge Estela Alma Singco (Judge Singco) and her co-respondents, all public prosecutors from Cebu City, be compelled to honor a January 3, 2007 Resolution[2] issued by a body known as the "Dadantulan Tribal Court," and be required to put an end to Sumatra's criminal prosecution. The Dadantulan Tribal Court absolved Sumatra, a tribal leader of the Higaonon Tribe, of liability for charges of rape and discharged him from criminal, civil, and administrative liability.

On November 14, 2006, Lorriane Fe P. Igot (Igot) filed a Complaint-Affidavit[3] before the Cebu City Prosecutor charging Sumatra with rape.

In her April 4, 2007 Resolution,[4] Prosecutor I Lineth Lapinid found probable cause to charge Sumatra with rape and recommended filing a corresponding information. After the Information was filed, the case was raffled to Branch 12 of the Regional Trial Court, Cebu City, and docketed as Criminal Case No. CBU-81130.[5]

In her September 13, 2007 Order,[6] Judge Singco directed the issuance of a warrant of arrest against Sumatra, but he would not be arrested until July 2, 2013.[7]

Following his arrest, Sumatra filed a Motion to Quash and Supplemental Motion to Quash.[8] These motions cited as bases Sections 15[9] and 65[10] of the Indigenous Peoples' Rights Act, and were:

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1 *Rollo*, pp. 3–32.
2 Id. at 55–63.
3 Id. at 64–68.
4 Id. at 69–74. The Resolution was penned by Prosecutor I Lineth S. Lapinid, recommended by Prosecutor II Fernando K. Gubalane, and approved by City Prosecutor Nicolas C. Sellon of the City Prosecutor's Office, Cebu City.
5 Id. at 12.
6 Id. at 75.
7 Id. at 12.
8 Id. at 78.
9 Rep. Act No. 8371 (1997), ch. IV, sec. 15 provides:
SECTION 15. *Justice System, Conflict Resolution Institutions, and Peace Building Processes.* — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.
10 Rep. Act No. 8371 (1997), ch. IX, sec. 65 provides:
SECTION 65. *Primacy of Customary Laws and Practices.* — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

> . . . predicated on the ground that the [Regional Trial Court] ha[d] no jurisdiction over *the person of the accused*, . . . Accused through counsel asserts that the present controversy is purely a dispute involving indigenous cultural communities over which customary laws must apply in accordance with their tribal justice system and under the jurisdiction of the National Commission on Indigenous Peoples.[11] (Emphasis supplied)

In her August 29, 2013 Order,[12] Judge Singco denied the Motion to Quash and Supplemental Motion to Quash. She reasoned that:

> [T]he [Indigenous Peoples' Rights Act] does not apply [to] the prosecution of a "dispute" such as this case as it does not involve claims over ancestral domain nor it relates (*sic*) to the rights of indigenous communities/people which would require the application of customary laws and practices to resolve the "dispute" between the parties herein.[13]

On May 11, 2015, a certain Vicente B. Gonzales, Jr. (Gonzales), identifying himself as Datu Bontito Leon Kilat[14] and representing himself to be a "customary lawyer,"[15] filed a "Motion to Release the Indigenous Person,"[16] which was founded on grounds substantially the same as the Motion and Supplemental Motion to Quash.

In her June 5, 2015 Order,[17] Judge Singco noted Gonzales' Motion without action as it: (1) did not comply with the requirements of a valid pleading; (2) bore no indication that Igot was notified of the Motion; and (3) contained no notice of hearing. She further directed Gonzales to coordinate with Sumatra's counsel of record and/or secure prior authority from this Court to act as counsel.

In response to the June 5, 2015 Order, Gonzales filed before the trial court a Motion to allow him to appear as counsel for Sumatra.[18] He later filed a Motion to Issue Resolution[19] asking the trial court to rule on the Motion to allow him to appear for Sumatra.

In a September 11, 2015 Order,[20] Judge Singco reiterated the need for Gonzales to first produce proof of his authority or competence to act as counsel before a court of law.

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11 *Rollo*, p. 78.
12 Id. at 78–79.
13 Id. at 79.
14 Id. at 36.
15 Id. at 33.
16 Id. at 33–36.
17 Id. at 37.
18 Id. at 40.
19 Id. at 40–41.
20 Id. at 38.

Thus, Sumatra filed this Petition for Mandamus[21] on November 11, 2015. He notes that Igot had already brought her accusations against him before the concerned Council of Elders and that the Dadantulan Tribal Court was subsequently formed.[22] He adds that on January 3, 2007, the Dadantulan Tribal Court issued a Resolution[23] clearing him and declaring that he "should [be spared] from criminal, civil[,] and administrative liability."[24]

Relying on the Indigenous Peoples' Rights Act and "other related laws concerning cases involving indigenous peoples,"[25] petitioner maintains that a writ of mandamus must be issued to compel respondents to "uphold and respect"[26] the Dadantulan Tribal Court Resolution, and "[t]hereby releas[e] [Sumatra] from jail to stop [his] continued arbitrary detention."[27]

For resolution is the issue of whether or not this Court may issue a writ of mandamus ordering respondents Judge Estela Alma Singco, City Prosecutor II Fernando Gubalane, City Prosecutor I Lineth Lapinid, City Prosecutor Nicolas Sellon, and Assistant City Prosecutor Ernesto Narido, Jr. to desist from proceeding with the rape case against petitioner Roderick D. Sumatra.

This Court denies the Petition.

Petitioner is well-served to disabuse himself of the notion that the Indigenous Peoples' Rights Act will shield him from prosecution and prospective liability for crimes.

I

The 1987 Constitution vests this Court original jurisdiction over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.[28] However, it is not only this Court that has the competence to issue writs of certiorari, prohibition, and mandamus. The Court of Appeals and regional trial courts are equally capable of taking cognizance of petitions for such writs.

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21 Id. at 3–32.
22 Id. at 11.
23 Id. at 55–63.
24 Id. at 62.
25 Id. at 17.
26 Id. at 29.
27 Id.
28 CONST., Art. 8, sec. 5 (1).

Nonetheless, the original jurisdiction this Court shares with the Court of Appeals and regional trial courts is not a license to immediately seek relief from this Court. Petitions for certiorari, prohibition, and mandamus must be filed in keeping with the doctrine of hierarchy of courts.[29]

The doctrine of hierarchy of courts is grounded on considerations of judicial economy. In *Aala v. Mayor Uy*:[30]

> The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."[31] (Citations omitted)

Applying this doctrine is not merely for practicality; it also ensures that courts at varying levels act in accord with their respective competencies. *The Diocese of Bacolod v. Commission on Elections*[32] noted that "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner."[33] Thus:

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
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> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review

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29 *People v. Cuaresma*, 254 Phil. 418 (1989) [Per J. Narvasa, First Division].
30 803 Phil. 36 (2017) [Per J. Leonen, En Banc].
31 Id. at 54–55.
32 751 Phil. 301 (2015) [Per J. Leonen, En Banc].
33 Id. at 329.

> of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
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> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[34] (Citation omitted)

The doctrine of hierarchy of courts admits of exceptions in *Aala*:[35]

> However, the doctrine on hierarchy of courts is not an inflexible rule. In *Spouses Chua v. Ang*, this Court held that "[a] strict application of this rule may be excused when the reason behind the rule is not present in a case[.]" This Court has recognized that a direct invocation of its original jurisdiction may be warranted in exceptional cases as when there are compelling reasons clearly set forth in the petition, or when what is raised is a pure question of law.
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> In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[36] (Emphasis in the original, citations omitted)

It does not escape this Court's attention that an equally effective avenue for relief was available to petitioner through recourse to the Court of Appeals. This Court, however, takes cognizance of the Petition, in the interest of addressing the novel issue of whether the Indigenous Peoples' Rights Act works to remove from courts of law jurisdiction over criminal cases involving indigenous peoples.

It does not.

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34 Id. at 329–330.
35 803 Phil. 36 (2017) [Per J. Leonen, En Banc].
36 Id. at 57.

II

Rule 65, Section 3 of the 1997 Rules of Civil Procedure provides for instances when recourse to a petition for mandamus is proper:

> SECTION 3. *Petition for Mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
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> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Rule 65, Section 3 indicates that a writ of mandamus is available in two (2) alternative situations:

> A writ of mandamus may issue in either of two (2) situations: first, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."[37]

Petitioner asserts that, in light of the Indigenous Peoples' Rights Act, it was respondents' duty to desist from proceeding with the case against him. His plea for relief, therefore, falls under the first situation. For a writ of mandamus to be issued in such a situation, there must be a concurrence between: (1) a clear, duly established legal right pertaining to petitioner; and (2) a correlative, ministerial duty imposed by law upon respondent, which that respondent unlawfully neglects.[38]

Lihaylihay v. Tan[39] scrutinized these twin requirements and their defining components:

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37 *Lihaylihay v. Tan*, G.R. No. 192223, July 23, 2018, <http://sc.judiciary.gov.ph/jurisprudence/2018/july2018/192223.pdf> 7 [Per J. Leonen, Third Division].

38 Id.

39 G.R. No. 192223, July 23, 2018, <http://sc.judiciary.gov.ph/jurisprudence/2018/july2018/192223.pdf> [Per J. Leonen, Third Division].

The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.

Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals*, this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established." In *Pefianco v. Moral,* this Court underscored that a writ of mandamus "never issues in doubtful cases."

Respondents must also be shown to have *actually* neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully *neglect*" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The duty subject of mandamus must be ministerial rather than discretionary. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:

> [M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Samson v. Barrios*:

> Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . . Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . . , when the act complained of is either judicial or quasi-judicial. . . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion.[40] (Emphasis in the original, citations omitted)

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[40] Id. at 7–8.

Additionally, a writ of mandamus, as with certiorari and prohibition, shall be issued only upon a showing that "there is no other plain, speedy[,] and adequate remedy in the ordinary course of law[.]"[41]

III

Petitioner anchors his plea on Section 65 of the Indigenous Peoples' Rights Act, which reads:

> SECTION 65. *Primacy of Customary Laws and Practices.* — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

Falling under Chapter IX of the Indigenous Peoples' Rights Act, Section 65 is part of a larger framework on "Jurisdiction and Procedures for Enforcement of Rights." This framework enables the application of customary laws and practices in dispute resolution for indigenous peoples.

Section 66[42] builds on Section 65. It indicates that disputes still unresolved despite the exhaustion of remedies under customary laws governing the parties belonging to the same indigenous cultural community may be brought to the National Commission on Indigenous Peoples.[43] Further building on Sections 65 and 66, Section 67 states that "[d]ecisions of the [National Commission on Indigenous Peoples] shall be appealable to the Court of Appeals by way of a petition for review."

The provisions under Chapter IX do not only lend legitimacy to and enable the continuing efficacy and viability of customary laws and practices to maintain order and dispense justice *within* indigenous cultural communities. They also work to segregate customary laws and practices in two (2) respects. First, they make customary laws and practices structurally and operationally distinct from enactments of the legislature and of those upon whom legislative power has been delegated, as well as regulations of general application. Second, they distinguish disputants belonging to the

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41 RULES OF COURT, Rule 65, sec. 3.

42 Rep. Act No. 8371 (1997), sec. 66 provides:

SECTION 66. *Jurisdiction of the NCIP.* — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: *Provided, however*, 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.

43 *Unduran v. Aberasturi* (771 Phil. 536 (2015) [Per J. Peralta, En Banc]) settled that:

[P]ursuant to Section 66 of the IPRA, 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. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, *i.e.*, parties belonging to different ICC/IPs or where one of the parties is a non-ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP.

same indigenous cultural communities as the exclusive objects of the application of customary laws and practices.

As such, Chapter IX is a means to effect the overarching right of indigenous peoples to self-governance and empowerment, as spelled out in Chapter IV.

In turn, the Indigenous Peoples' Rights Act's provisions on self-governance and empowerment,[44] along with those on the right to ancestral domains,[45] social justice and human rights,[46] and cultural integrity,[47] collectively reflect and bring to fruition the 1987 Constitution's aims of preservation.

The 1987 Constitution devotes six (6) provisions "which insure the right of tribal Filipinos to preserve their way of life":[48]

> ARTICLE II
> Declaration of Principles and State Policies
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> SECTION 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.
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> . . . .
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> ARTICLE VI
> The Legislative Department
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> . . . .
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> SECTION 5. . . .
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> . . . .
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> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, *indigenous cultural communities*, women, youth, and such other sectors as may be provided by law, except the religious sector.[49]
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44 Rep. Act No. 8371 (1997), ch. IV.
45 Rep. Act No. 8371 (1997), ch. III.
46 Rep. Act No. 8371 (1997), ch. V.
47 Rep. Act No. 8371 (1997), ch. VI.
48 J. Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 960 (2000) [Per Curiam, En Banc].
49 Const. Art. VI, sec. 5.

ARTICLE XII
National Economy and Patrimony

. . . .

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

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

. . . .

ARTICLE XIII
Social Justice and Human Rights

. . . .

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

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

. . . .

ARTICLE XIV
Education, Science and Technology, Arts, Culture, and Sports Education

. . . .

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

. . . .

ARTICLE XVI
General Provisions

. . . .

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

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

> SECTION 2. *Declaration of State Policies.* — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:
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> a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
>
> b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall *recognize the applicability of customary laws* governing property rights or relations in determining the ownership and extent of ancestral domain;
>
> c) The State shall recognize, respect and protect the rights of ICCs/IPs to *preserve and develop their cultures, traditions and institutions*. It shall consider these rights in the formulation of national laws and policies;
>
> d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;
>
> e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and *guarantee respect for their cultural integrity*, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and
>
> f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.
>
> Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.[50] (Emphasis supplied)

The 1987 Constitution's attitude toward indigenous peoples, with its emphasis on preservation, is a marked departure from regimes under the 1935 and 1973 constitutions, which were typified by integration. Integration, however, was still "like the colonial policy of assimilation

[50] Rep. Act No. 8371 (1997), ch. I, sec. 2.

understood in the context of a guardian-ward relationship."[51] Like assimilation, it was eager to have indigenous peoples attune themselves to the mainstream. This eagerness inevitably tended to measures that eroded indigenous peoples' identities.

Spanish and American colonial rule was characterized by the "need to impart civilization[.]"[52] In *People v. Cayat*:[53]

> As early as 1551, the Spanish Government had assumed an unvarying solicitous attitude towards these inhabitants, and in the different laws of the Indies, their concentration in so-called "reducciones" (communities) had been persistently attempted with the end in view of according them the "spiritual and temporal benefits" of civilized life. Throughout the Spanish regime, it had been regarded by the Spanish Government as a sacred "duty to conscience and humanity" to civilize these less fortunate people living "in the obscurity of ignorance" and to accord them the "moral and material advantages" of community life and the "protection and vigilance afforded them by the same laws." (Decree of the Governor-General of the Philippines, Jan. 14, 1887.) This policy had not been deflected from during the American period. President McKinley in his instructions to the Philippine Commission of April 7, 1900, said:
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> > In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government, and under which many of those tribes are now living in peace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal government should, however, be subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.[54]

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

REPUBLIC ACT NO. 1888

AN ACT TO EFFECTUATE IN A MORE RAPID AND COMPLETE

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51 J. Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 957 (2000) [Per Curiam, En Banc].

52 Sedfrey M. Candelaria, *Introducing the Indigenous Peoples' Rights Act*, 47 Ateneo L.J. 571, 573 (2002).

53 68 Phil. 12 (1939) [Per J. Moran, First Division].

54 Id. at 17.

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

> SECTION 1. It is hereby declared to be the policy of Congress to foster, accelerate and accomplish by all adequate means and in a systematic, rapid and complete manner the moral, material, economic, social and political advancement of the Non-Christian Filipinos, hereinafter called National Cultural Minorities, and to render real, complete and permanent the integration of all the said National Cultural Minorities into the body politic.[55]

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

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

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

Under the 1973 Constitution, former President Ferdinand E. Marcos enacted Presidential Decree No. 1414, creating the Office of the Presidential Assistant on National Minorities. With its policy of "integrat[ing] into the mainstream . . . groups who seek full integration into the larger community, and at the same time protect[ing] the rights of those who wish to preserve their original lifeways beside that larger community[,]"[56] Presidential Decree No. 1414 maintained the drive for integration, but conceded that indigenous peoples may want preservation rather than admission.

The 1987 Constitution reorients the State toward enabling indigenous peoples to maintain their identity. It declines articulating policies of integration and assimilation and transcends the 1973 Constitution's undertaking to "consider." Instead, it commits to not only recognize, but also *promote*, "the rights of indigenous cultural communities."[57] It expressly

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55 Rep. Act No. 1888 (1957), sec. 1.
56 Pres. Decree No. 1414 (1978), sec. 1.
57 CONST., Art. II, sec. 22.

aims to "preserve and develop their cultures, traditions, and institutions."[58] It elevates to the level of constitutional text terms such as "ancestral lands" and "customary laws." Because the Constitution is the "fundamental and organic law of the land,"[59] these terms' inclusion in the Constitution renders them integral to the Republic's being. Through the same inclusion, the State manifestly assents to the distinctiveness of indigenous peoples, and undertakes obligations concomitant to such assent.

With the 1987 Constitution in effect, the Indigenous Peoples' Rights Act was adopted precisely recognizing that indigenous peoples have been "resistan[t] to political, social[,] and cultural inroads of colonization, non-indigenous religions and cultures, [and] became historically differentiated from the majority of Filipinos."[60]

Among the Indigenous Peoples' Rights Act's provisions on self-governance and empowerment is Section 15:

> SECTION 15. *Justice System, Conflict Resolution Institutions, and Peace Building Processes.* — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and *as may be compatible with the national legal system* and with internationally recognized human rights. (Emphasis supplied)

Section 15 limits indigenous peoples' "right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices[.]" It explicitly states that this right is applicable only "within their respective communities" and only for as long as it is "*compatible with the national legal system* and with internationally recognized human rights."

It is a basic rule of statutory construction that "courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious[,] and sensible."[61]

Section 65 ought not be read as an all-encompassing, unqualified authorization. Rather, it must be viewed within the confines of how it is a

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58 CONST., Art. XIV, sec. 17.

59 J. Francisco, Concurring and Dissenting Opinion in *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 438 [Per J. Kapunan, En Banc].

60 Rep. Act. No. 8371 (1997), sec. 3 (h).

61 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, 617 Phil. 358, 367 (2009) [Per J. Leonardo-De Castro, En Banc] *citing Republic v. Reyes*, 123 Phil. 1035 (1966) [Per J. Sanchez, En Banc].

component of a larger mechanism for self-governance. Section 65 is qualified by Section 15. With respect to dispensing justice, resolving conflicts, and peace-building, the application of customary laws and practices is permissible only to the extent that it is in harmony with the national legal system. 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.

The impetus for preservation does not exist in a vacuum. The 1987 Constitution qualifies the State's duty of "recogniz[ing] and promot[ing] the rights of indigenous cultural communities"[62] as necessarily operating "within the framework of national unity and development."[63] This reference to "national unity" is as much an articulation of an ideal as it is a legal formulation. Thus, it entails the imperative of legal harmony. Customary laws and practices are valid and viable only to the extent that they do not undermine the proper scope and application of legislative enactments, including criminal statutes.

IV

The Indigenous Peoples' Rights Act does not compel courts of law to desist from taking cognizance of criminal cases involving indigenous peoples. It expresses no correlative rights and duties in support of petitioner's cause. Thus, a writ of mandamus cannot be issued.

A crime is "an offense against society."[64] It "is a breach of the security and peace of the people at large[.]"[65]

A criminal action, where "the State prosecutes a person for an act or omission punishable by law,"[66] is thus pursued "to maintain social order."[67] It "punish[es] the offender in order to deter him [or her] and others from committing the same or similar offense, . . . isolate[s] him [or her] from society, reform[s] and rehabilitate[s] him [or her]."[68] One who commits a crime commits an offense against all the citizens of the state penalizing a given act or omission:[69] "a criminal offense is an outrage to the very sovereignty of the State[.]"[70] Accordingly, a criminal action is prosecuted in the name of the "People" as plaintiff. Likewise, a representative of the State,

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62 CONST., art. II, sec. 22.
63 CONST., art. II, sec. 22.
64 P.J. ORTMEIER, PUBLIC SAFETY AND SECURITY ADMINISTRATION 23 (1999).
65 *Baviera v. Prosecutor Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division].
66 RULES OF COURT, Rule 1, sec. 3(b).
67 *Ramiscal, Jr. v. Sandiganbayan*, 487 Phil. 384, 405 (2004) [Per J. Callejo, Sr., Second Division].
68 Id.
69 See P.J. ORTMEIER, PUBLIC SAFETY AND SECURITY ADMINISTRATION 23 (1999).
70 *Tan, Jr. v. Gallardo*, 165 Phil. 288, 293 (1976) [Per J. Antonio, Second Division].

the public prosecutor, "direct[s] and control[s] the prosecution of [an] offense."[71] As such, a public prosecutor is:

> [T]he representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he [or she] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.[72]

The capacity to prosecute and punish crimes is an attribute of the State's police power.[73] It inheres in "the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights."[74]

The basic precepts underlying crimes and criminal actions make it improper for the State to yield "disputes" involving criminal offenses to indigenous peoples' customary laws and practices.

To yield criminal prosecution would be to disregard the State and the Filipino people as the objects of criminal offenses. The application of customary laws may enable a measure of reparation for private injuries engendered by criminal offenses, but it will never enable the consummate recompense owed to the State and the Filipino people. Ultimately then, yielding prosecution would mean sanctioning a miscarriage of justice.

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

Viewed through the lens of the requisites for issuing a writ of mandamus, there is no right or duty to even speak of here. Nowhere in the Indigenous Peoples' Rights Act does it state that courts of law are to abandon jurisdiction over criminal proceedings in favor of mechanisms applying customary laws.

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71 *Baviera v. Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division] *citing Tan, Jr. v. Gallardo*, 165 Phil. 288 (1976) [Per J. Antonio, Second Division].

72 *Suarez v. Platon*, 69 Phil. 556, 564–565 (1940) [Per J. Laurel, En Banc] *citing* 69 United States Law Review, June, 1935, No. 6, p. 309.

73 See *People v. Santiago*, 43 Phil. 120 (1922) [Per J. Romuladez, En Banc].

74 *U.S. v. Pablo*, 35 Phil. 94, 100 (1916) [Per J. Torres, Second Division].

Petitioner derives no right from the Dadantulan Tribal Court to be spared from criminal liability. The Regional Trial Court is under no obligation to defer to the exculpatory pronouncements made by the Dadantulan Tribal Court. Instead, it must proceed to rule on petitioner's alleged liability with all prudence and erudition.

WHEREFORE, the Petition is **DENIED**. Respondents are directed to proceed with dispatch in the resolution of Criminal Case No. CBU-81130.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice
(per Special Order No. 2644
dated March 15, 2019)

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAY 30 2019