G.R. No. 224469 (*Diosdado Sama y Hinupas and Bandy Masanglay y Aceveda v. People of the Philippines*).

Promulgated:

January 5, 2021

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DISSENTING OPINION

PERALTA, *C.J.*:

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

> That on or about the 15th day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating, and mutually helping one another, did then and there willfully, unlawfully, feloniously and knowingly cut with the use of an unregistered power chainsaw, a Dita tree, a forest product, with an aggregate volume of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php20,000.00), Philippine Currency.
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> CONTRARY TO LAW.[3]

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

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

SECTION 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License.* — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; *Provided*, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

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

[3] *Rollo*, p. 57.

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

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

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

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

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

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

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4 See *majority opinion*, p. 33.

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

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

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

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

Even the majority opinion noted that:

> With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines reasonable doubt as a doubt for which one can give a reason, **so long as the reason given is logically connected to the evidence.** An inability to give such a reason for the doubt one entertains is the first and most obvious indication that the doubt held may not be reasonable. x x x.
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> > You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt", not beyond "any doubt." A reasonable doubt is exactly what it says -a doubt based on reason- on the logical processes of the mind. It is not a fanciful or speculative doubt, nor is it a doubt based upon sympathy or prejudice. It is the sort of doubt which, if you ask yourself "why do I doubt?" - you can assign a logical reason by way of an answer.
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> > **A logical reason in this context means a reason connected either to the evidence itself, including any conflict you may find exists after considering the evidence as a whole, or to an absence of evidence which in the circumstances of this case you believe is essential to a conviction.** x x x.[8]

Accordingly, courts must evaluate the evidence in relation to the elements of the crime charged and, as such, the finding of guilt is *always a question of fact*.[9] Acquittals based on reasonable doubt, being a question of fact, therefore, has nothing to do with the interpretation of pertinent law, but has everything to do with the appreciation of evidence. It has been established that:

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

8 See *majority opinion* p. 8.

9 *Atty. Bernardo T. Constantino v. People of the Philippines, supra* note 5.

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

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

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

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

> By April 1, 1993, however, the RMDH had been devolved to the Provincial or Local Government of Zamboanga del Norte. **Thus, all financial transactions of the hospital were carried out through the Office of the Provincial Governor. The petitioners, therefore, had legal basis to believe that the duty to set aside funds and to effect the HDMF remittances was**

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10 *Far Eastern Surety and Insurance Co. Inc. v. People*, 721 Phil. 760, 767 (2013).
11 773 Phil. 614 (2015).
12 Entitled "*Amending the Act Creating the Home Development Mutual Fund*," December 14, 1980.
13 Entitled "*An Act Amending Presidential Decree No. 1752, As Amended*," June 17, 1994.

> **transferred from the hospital to the provincial government. Hence, the petitioners should not be penalized for their failure to perform a duty which were no longer theirs and over which they were no longer in control.**
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> x x x x
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> **The devolution of the hospital to the provincial government, therefore, was a valid justification which constituted a lawful cause for the inability of the petitioners to make the HDMF remittances for March 1993.**[14]

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

> **There was no showing either of fraudulent intent or deliberate refusal on the part of the petitioners to make the March 1993 remittance. Whatever lapses attended such non-remittance may be attributed to the confusion of the concerned personnel as to their functions and responsibilities brought about by the advent of the devolution. More important was the honest belief of the petitioners that the remittance function was transferred to, and assumed by, the provincial government. In fact, the petitioners duly informed the Hospital Chief of the need to make representations to the Governor to make such payment.**
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> For said reason, they cannot and should not be faulted for the non-remittance. Further, as aptly averred by petitioners, there was no reason for them to delay or realign the funds intended for remittances because they themselves were prejudiced and affected parties.
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> It is a general principle in law that in *malum prohibitum* case, good faith or motive is not a defense because the law punishes the prohibited act itself. The penal clause of Section 23 of P.D. No. 1752, as amended, however, punishes the failure to make remittance only when such failure is without lawful cause or with fraudulent intent.
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> **As earlier stated, evidence for fraudulent intent was wanting in this case.** In March 1993, the payroll was prepared showing all the amounts deductible from the salaries of the employees including Medicare, loan repayment, withholding taxes, retirement insurance premium, and Pag-IBIG contributions. In the said payroll, a total amount of P15,818.81 was deducted for the Pag-IBIG loan repayments and a total amount of P7,965.58 was deducted for the Pag-IBIG contributions of all the hospital and rural health employees. The deductions, however, were comingled with the funds of RMDH. The prosecution could not even argue and prove that the petitioners pocketed or misappropriated the deductions.[15]

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14 *Saguin, et al. v. People, supra* note 11.

15 *Id.* at 628. (Emphasis ours)

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

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

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

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

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16 *Monge, et. al. v. People*, 571 Phil. 472, 481 (2008).
17 783 Phil. 429 (2016); cited also in the Dissenting Opinion of Justice Mario V. Lopez.
18 *Tigoy v. Court of Appeals*, 525 Phil. 613, 624 (2006).
19 *Monge v. People, supra* note 16, at 479.

law's present wording – without any qualification – ought to be construed plainly and liberally in favor of petitioners.

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

The argument, however, tends to mislead. A full and careful examination of E.O. No. 277[23] reveals no showing of any intention, express

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

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

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

SECTION 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License.* — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, **without any authority under a license agreement, lease, license or permit**, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; Provided, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

[22] Executive Order No. 277 provides:

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

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

AMENDING SECTION 68 OF PRESIDENTIAL DECREE (P.D.) NO. 705, AS AMENDED, OTHERWISE KNOWN AS THE REVISED FORESTRY CODE OF THE PHILIPPINES, **FOR THE PURPOSE OF PENALIZING POSSESSION OF TIMBER OR OTHER FOREST PRODUCTS WITHOUT THE LEGAL DOCUMENTS** REQUIRED BY EXISTING FOREST LAWS, **AUTHORIZING THE CONFISCATION OF ILLEGALLY CUT, GATHERED, REMOVED AND POSSESSED FOREST PRODUCTS**, AND **GRANTING REWARDS TO INFORMERS OF VIOLATIONS OF FORESTRY LAWS**, RULES AND REGULATIONS

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

WHEREAS, there is an urgency to conserve the remaining forest resources of the country for the benefit and welfare of the present and future generations of Filipinos;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[28] Presidential Proclamation No. 2146 provides:

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

A. Environmentally Critical Projects

x x x x

II. Resource Extractive Industries

a. Major mining and quarrying projects

b. Forestry projects

1. Logging

x x x x (Emphasis ours)

[29] Presidential Proclamantion No. 2146 provides:

B. Environmentally Critical Areas

x x x x (Emphasis ours)

securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.[30]

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

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

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

In *1995*, then President Fidel V. Ramos executed E.O. No. 263[33] adopting a Community-Based Forest Management to ensure the sustainable development of the country's forestland resources. It stated that

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

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

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

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

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

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

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

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

participating communities, including IPs, may be granted access to forestland resources provided they employ sustainable harvesting methods duly approved by the DENR.

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

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

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

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

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

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

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

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

x x x x

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

allowed only subject to strict compliance with existing guidelines of the DENR."

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

In *2018*, Congress passed R.A. No. 110038, otherwise known as the Expanded National Integrated Protected Areas System (ENIPAS) Act of 2018, which amended the NIPAS Act of 1992. Just like the NIPAS Act of 1992 and its IRR, the IRR of the ENIPAS Act of 2018 allows the issuance of cutting permits in favor of IPs provided certain requirements are complied with.[36]

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

As a matter of fact, the DENR, together with the NCIP, had already effectively harmonized these interests found in the provisions of P.D. No. 705 and the IPRA when it issued DENR-NCIP Joint AO No. 2008-01.[37] By

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

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

x x x x

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

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

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

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

2.1. General Objectives: The DENR and NCIP shall:

a. **Jointly undertake the recognition**, documentation, registration and confirmation of the **Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices**

(STIFRMSP) of ICCs/IPs found to be sustainable, which have either been established and/or effectively managed by families, clans and communities as part of their **cultural practices and traditions** as well as the role of indigenous socio-cultural and socio political institutions in this endeavour;

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

c. **Recognize the ICCs/IPs' preferential rights to benefit from the natural resources found within their ancestral lands/domains** jointly documented and confirmed pursuant to this Order;

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

x x x x

2.2. Specific Objectives:

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

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

x x x x

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

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

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

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

x x x x

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

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

x x x x

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

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

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

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

x x x x

Sec. 10. Resources Management and Sustainability. – **Resource management within registered traditionally-managed forests shall be strictly in adherence to the established traditional leadership structure and practices.** A resource management plan shall be prepared and institutionalized relative to

virtue of the joint order, the State duly recognized the inherent right of IPs to self-governance as well as their contribution to the conservation of the country's environment and natural resources, ensuring equitable sharing benefits thereof.

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

Under the present legal framework, then, IPs are actually not prevented from implementing their customary practices, as the majority opinion suggests. Quite the contrary, and by express provision of the joint order, resource management within registered traditionally-managed forests

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the identified ancestral management units/blocks by the community underscoring collective agreements and commitments on natural resource protection, conservation and utilization. **However, for purposes of ensuring sustainability and control, any resource utilization set by the communities shall be documented.** All concerned entities (DENR, NCIP, and LGU) shall be informed accordingly for purposes of monitoring and transparency. The following principles shall be observed in resources utilization:

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

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

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

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

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

10.6. Resources utilization from naturally grown forests for livelihood projects as carving, handicrafts, manufacturing, etc., shall be regulated and **only** the **allowable volume/number** of species needed as raw materials for livelihood projects could be disposed of outside the domain/locality in accordance with existing traditional resource rights and DENR laws, rules and regulations; and

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

are strictly in adherence to established traditional leadership structure and practices. Unlike the majority's assertions, therefore, the case before Us does not have to be one where a statute such as the IPRA is given preferred application at the expense of P.D. No. 705 especially since reconciliation is achievable to give force and effect to both. The DENR-NCIP Joint AO No. 2008-01 duly accomplishes this end.

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

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

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

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38 774 Phil. 31 (2015).

39 *Penera v. Commission on Elections*, 615 Phil. 667, 718 (2009); and *De Lima v. Guerrero*, 819 Phil. 616, 1211 (2017).

40 734 Phil. 353 (2014).

41 *Id.* at 425.

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

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

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

I, however, respectfully disagree. On the contrary, lands possessed by IPs undoubtedly fall within the statute's definition of private lands. Section 77 penalizes the unauthorized removal of timber or other forest products from any forest land,[44] or timber from alienable and disposable public lands,[45] or from private lands.[46] But as can be drawn from the definition of

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

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

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

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

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

private lands under Section 3(mm) of P.D. No. 705, ancestral domains and lands clearly fall under the category of *private land.*

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

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

In *Cruz*, former Chief Justice Puno expressly opined that ancestral domains and ancestral lands are the private property of indigenous peoples and do not constitute part of the land of the public domain.[50] Even Justice

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

47 41 Phil. 935, 944 (1907).

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

49 400 Phil. 904, 995 (2000).

50 Former Chief Justice Puno stated in *Cruz*:

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

x x x

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

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

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

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been public land. ***Domains and lands held under native title are, therefore, indisputably presumed to have never been public lands and are private.***

x x x x

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

x x x x

The private character of ancestral lands and domains as laid down in the IPRA is further strengthened by the option given to individual ICCs/IPs over their individually-owned ancestral lands. For purposes of registration under the Public Land Act and the Land Registration Act, the IPRA expressly converts ancestral land into public agricultural land which may be disposed of by the State. ***The necessary implication is that ancestral land is private.*** It, however, has to be first converted to public agricultural land simply for registration purposes.

x x x x

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

[51] Justice Kapunan stated in *Cruz*:

The Regalian theory, however, does not negate native title to lands held in private ownership since time immemorial. In the landmark case of *Cariño vs. Insular Government the United States Supreme Court*, reversing the decision of the pre-war Philippine Supreme Court, made the following pronouncement: . . . x x x **A proper reading of Cariño would show that the doctrine enunciated therein applies only to lands which have always been considered as private, and not to lands of the public domain, whether alienable or otherwise.** A distinction must be made between ownership of land under native title and ownership by acquisitive prescription against the State. Ownership by virtue a of native title presupposes that the land has been held by its possessor and his predecessors-in-interest in the concept of an owner since time immemorial. The land is not acquired from the State, that is, Spain or its successors-in-interest, the United States and the Philippine Government. **There has been no transfer of title from the State as the land has been regarded as private in character as far back as memory goes.** In contrast, ownership of land by acquisitive prescription against the State involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person. Since native title assumes that the property covered by it is private land and is deemed never to have been part of the public domain, the Solicitor General's thesis that native title under Cariño applies only to lands of the public domain is erroneous. Consequently, the classification of lands of the public domain into agricultural, forest or timber, mineral lands, and national parks under the Constitution is irrelevant to the application of the Cariño doctrine because the Regalian doctrine which vests in the State ownership of lands of the public domain does not cover ancestral lands and ancestral domains. (*Id.* at 1044-1046; Emphases ours)

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

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

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

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

Maynilad bore emphasis on the State's role over the nation's natural resources as having a duty to regulate the same in the context of, and with due regard for, public interest. For the People, the State shall protect, foster, promote, preserve, and control the natural resources of the People.[55]

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53 G.R. Nos. 202897, 206823 & 207969, August 6, 2019.
54 *Id.* (Emphasis ours)
55 *Id.*

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

> CHAIRMAN FLAVIER. Accepted. Section 8 126 rights to ancestral domain, this is where we transferred the other provision but here itself —
>
> HON. DOMINGUEZ. Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, **we have decided to remove the provisions on natural resources because we all agree that belongs to the State.** Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras. So, if there could be, if our lawyers or the secretariat could just propose a provision for incorporation here so that maybe the right to consultation and the right to be compensated when there are damages within their ancestral lands.[56]

Hence, even when former Chief Justice Puno found basis to believe that ancestral domains do not belong to the public domain, he nevertheless categorically declared that the IP right does not extend to the natural resources thereon.[57] In line with this, Justice Kapunan similarly declared that

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

[57] Former Chief Justice Puno stated:

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

neither Section 3(a)[58] nor Section 7 (a)[59] and (b)[60] of the IPRA make mention of any right of ownership of IPs over natural resources. On the one hand, the former merely defines the coverage, extent, and limit of ancestral domains. On the other hand, the latter merely recognizes the "right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." But these provisions do not confer or recognize any right of ownership over the natural resources. Their purpose is definitional and not declarative of a right or title.[61]

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

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

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

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

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

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

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

62 *Id.* at 1071.

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

> Respondents being holders of a mere CALC, their right to possess the subject land is limited to occupation in relation to cultivation. Unlike No. 1, 26 Par. 1, Section 1, Article VII of the same DENR DAO, which expressly allows ancestral domain claimants to reside peacefully within the domain, nothing in Section 2 grants ancestral land claimants a similar right, much less the right to build permanent structures on ancestral lands — an act of ownership that pertains to one (1) who has a recognized right by virtue of a Certificate of Ancestral Land Title. On this score alone, respondents' action for injunction must fail.
>
> **Yet, even if respondents had established ownership of the land, they cannot simply put up fences or build structures thereon without complying with applicable laws, rules and regulations.** In particular, Section 301 of P.D. No. 1096, otherwise known as the National Building Code of the Philippines mandates:
>
> > SEC. 301. Building Permits. —
> >
> > **No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor** from the Building Official assigned in the place where the subject building is located or the building work is to be done. x x x x
>
> This function, which has not been repealed and does not appear to be inconsistent with any of the powers and functions of PEZA under R.A. No. 7916, subsists. Complimentary thereto, Section 14 (i) of R.A. No. 7916 states:
>
> > SEC. 14. **Powers and Functions of the Director General.** — The director general shall be the overall [coordinator] of the policies, plans and programs of the

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

> ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.
>
> In addition, he shall have the following specific powers and responsibilities:
>
> xxx xxx xxx
>
> (i) **To require owners of houses**, buildings or other structures constructed **without the necessary permit whether constructed on public or private lands, to remove or demolish such houses**, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding;
>
> **By specific provision of law, it is PEZA, through its building officials, which has authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands.**[64]

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

It cannot be denied, therefore, that Philippine law and jurisprudence alike merely grant indigenous cultural communities a general right to preserve their cultural integrity, ancestral domains, and ancestral lands which is neither absolute nor limitless. Applicable constitutional provisions are ordinarily read in light of, and subject to, the broader framework of the national development. In particular, Section 22, Article II of the 1987 Constitution provides that "the State recognizes and promotes the rights of indigenous cultural communities *within the framework of national unity and development.*" Similarly, Section 5, Article XII provides that "the State, *subject to the provisions of this Constitution and national development*

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64 *Id.* at 550-554. (Emphases ours)

policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."

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

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

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65 Section 7(b) of the IPRA provides:

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

66 Section 2(e) of the IPRA provides:

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

67 Section 9 of the IPRA provides:

Section 9. *Responsibilities of ICCs/IPs to their Ancestral Domains.* - ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a. Maintain Ecological Balance- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b. Restore Denuded Areas- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and

c. Observe Laws- To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

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

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

69 296 Phil. 694 (1193).

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

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

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

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

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

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

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

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

constituting 110 ICCs, while over 60 million other Filipinos constituting the overwhelming majority will have to share the remaining.[71]

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

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

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

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

72 Taken from website of the United Nations Development Program, (https://www.undp.org/content/dam/philippines/docs/Governance/fastFacts6%20%20Indigenous%20Peoples%20in%20the%20Philippines%20rev%201.5.pdf), and from the National Commission on Indigenous Peoples Official Facebook Portal (https://www.facebook.com/NCIPportal/photos/a.207388702837501/3114873668738994).

73 See *majority opinion*, p. 52-53.

land is hardly any protection against any potential abuse that the forest may endure.

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

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

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

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74 *Id.* at 49.

75 Records, p. 18.

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

SEC. 7. *Penal Provisions.*

1. *Selling, Purchasing, Re-selling, Transferring, Distributing or Possessing a Chainsaw Without a Proper Permit.* – Any person who sells, purchases, transfers the ownership, distributes, or otherwise disposes or possesses a chainsaw without first securing the necessary permit from the Department shall be punished with imprisonment of four (4) years, two (2) months and one (1) day to six years or a fine of not less than Fifteen thousand pesos (PhP 15,000.00) but not more than Thirty thousand pesos (PhP 30,000.00) or both at the discretion of the court, and the chainsaw/s confiscated in favor of the government.

x x x x

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

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

The testimony, however, is insufficient to prove that the cutting of the tree was for the construction of a communal toilet. If petitioners indeed cut the tree for the toilet at the instance of the NGO, the defense should have presented petitioners instead of the barangay captain who has no personal knowledge of the circumstances leading to the arrest of the accused and any representative from the NGO to testify at the stand. It should have submitted such other supporting documentation such as plans and illustrations of the supposed communal toilet which are readily available to the NGO. The

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

x x x x

Q: On that day Mr. Witness when you were resting along the road did you witness anything unusual?
A: Yes ma'am.
Q: And what was that Mr. Witness?
A: Several policemen and DENR employees passed by ma'am.
Q: Did you ask them where they were going?
A: Yes ma'am.
Q: And what did they say?
A: According to them they were going to a place called Laylay in the Municipality of San Teodoro ma'am.
Q: Did they tell you what the reason was in visiting the place?
A: No ma'am.
Q: And then what happened next Mr. Witness?
A: They already went ahead ma'am.
Q: Hours after the policemen and the employees of the DENR passed by what happened, Mr. Witness?
A: After more or less two to three hours later they already returned ma'am.
Q: Did you notice anything unusual Mr. Witness?
A: Yes, ma'am.
Q: And what was that?
A: They were already being accompanied by three mangyan persons ma'am.
Q: And could you identify before this Court who these mangyans were?
A: Yes ma'am.
Q: Could you identify the three?
A: Diosdado Sama, Bandy Masanglay, and Demetrio Masanglay ma'am.
Q: What was the reason that they were taken under custody by these policemen?
A: They cut down trees or lumbers ma'am.
Q: And where was the felled log cut Mr. Witness according to them?
A: In a land owned by the Mangyans ma'am.
Q: Where in particular Mr. Witness?
A: In Sitio Matahimik Barangay Baras, Baco ma'am.
Q: And according to them, what was the reason why that log was cut Mr. Witness?
A: Those logs would be used in a project being initiated by an NGO ma'am.
Q: *What NGO and what project was it Mr. Witness?*
A: *Team MISSION ma'am.*
Q: What particular project Mr. Witness?
A: Construction of a community comfort room ma'am.
Q: And you stated earlier Mr. Witness that the felled log was cut in the portion of the land owned by the Mangyans of Oriental Mindoro, am I correct?
A: Yes ma'am.
Q: Do you have any proof that the (discontinued) do you know of any proof that will establish the fact of ownership of the Mangyans?
A: Yes ma'am.
Q: What document is it Mr. Witness?
A: CADC 126 ma'am.

x x x x

Q: *And you know of the project by Team MISSION as regards the construction of the community comfort room because you yourself is also a Mangyan and the barangay captain of the area, is that correct?*
A: Yes ma'am. (TSN 5, pp. 3-8)

State, therefore, was deprived of its right to cross-examine the petitioners and test the credibility of their defense. Indeed, the admission of the solitary witness' testimony without personal knowledge violates the fundamental principles of justice and rules of fair play.[78]

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

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

Fourth, in the same Motion to Quash, petitioners cited an incident where the Tagbanua tribe logged numerous trees without a permit in Coron, Palawan, for the repair of *handrails* at the Kayangan Lake.[81] When the DENR tried to confiscate the logs, the tribe claimed they do not need a permit since the cutting was for the benefit of the community. By the simple allegation of community benefit, the Tagbanuas and all other IPs who log

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

79 Records, p. 277.

80 *Id.* at 170.

81 *Id.*

trees without permit can now be exonerated regardless of the number of trees they cut. I do not think this to have been the intention of the IPRA.

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

The majority acquits petitioners based on their unique characteristics as IPs that set them apart from the rest of the Filipinos. Justice Zalameda adds that due to IPs' limited access to information, challenges in availing learning facilities, and lack of financial resources, they must be treated differently from the Filipino mainstream. But how, then, do We reconcile this with the fact that petitioners actually went to school, even reaching the level of Grade IV primary education?[82] Or in the case of the Tagbanuas of Coron, how do We harmonize their supposed aboriginal characteristics to the fact that they are an IP group formally registered as a legal entity who, since receiving their ancestral domain title in 2001, have been requiring tourists to Coron Island to pay a fee prior to their entrance therein? How different, then, are petitioners from a typical, non-IP Filipino? Are we really prepared to cede all regulatory measures of the government to the IPs?

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

> Some later cases which categorically held that the mitigating circumstance of lack of instruction does not apply to crimes of theft and robbery leave us with no choice but to reject the plea of appellant. **Membership in a cultural minority does not per se imply being an uncivilized or semi- uncivilized state of the offender, which is the circumstance that induced the Supreme Court in the Maqui case, to apply lack of instruction to the appellant therein who was charged also with theft of large cattle.** Incidentally, the Maqui case is the only case where lack of instruction was considered to mitigate liability for theft, for even long

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82 *Id.* at 12.

83 195 Phil. 604 (1981).

84 Article 15 of the RPC provides:

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

> before it, in U.S. vs. Pascual, a 1908 case, lack of instruction was already held not applicable to crimes of theft or robbery. **The Maqui case was decided in 1914, when the state of civilization of the Igorots has not advanced as it had in reaching its present state since recent years, when it certainly can no longer be said of any member of a cultural minority in the country that he is uncivilized or semi-uncivilized.**[85]

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

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

In the first place, the land where the *dita* tree was cut herein is not covered by the provisions of the ENIPAS Act. The said law provides that a National Integrated Protected Areas System which aims to ensure sustainable use of resources shall apply to all designated protected areas,[88] one of which Mounts Iglit-Baco Natural Park in Occidental and Oriental Mindoro.[89] But while the land subject of the present case is also in the province of Oriental Mindoro, it is not located in any of the municipalities

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

86 Section 20 (c) which provides:

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

x x x x

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

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

88 Section 2 of R.A. No. 11083 provides:

Sec. 2. Declaration of Policy. – x x x

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

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

where Mounts Iglit-Baco Natural Park is located.[90] To recall, the *dita* tree was cut in the Barangay Calangatan, Municipality of San Teodoro. It must also be mentioned that both Pres. Proc. No. 557 and R.A. No. 6148 expressly identified only the Batangan tribe, one of the eight ethno-linguistic groups of the Mangyans, as the IP group which shall be allocated a 1,000-hectare area within the protected area for their settlement and development. But petitioners herein are Iraya-Mangyans and are not part of the Batangan tribe.[91] Evidently, the land subject of the present case is not part of the protected area that is Mounts Iglit-Baco Natural Park and is, therefore, not subject to the provisions of the ENIPAS Act.

In the second place, even if We assume that the subject land is covered by the ENIPAS Act, petitioners are nonetheless liable for violating the provisions thereof. Contrary to Justice Perlas-Bernabe's postulation, IPs still do not possess an unbridled right to log trees within a protected area. A cursory perusal of the ENIPAS Act and its IRR reveals that these protected areas are, in fact, strictly regulated, perhaps even stricter than unprotected ones. Pursuant to the provisions of the ENIPAS Act and its IRR, any tree cutting activity to be conducted by IPs within protected areas must first satisfy the following requirements: (1) a cutting permit from the Protected Area Superintendent (PASu) which is primarily accountable to the Protected Area Management Board (PAMB) and the DENR for the management and operations of the protected area;[92] (2) the tree shall be solely for traditional and subsistence uses; (3) only five cubic meters per applicant per year is allowed;[93] (4) no permit shall be required of Protected Area Community

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

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

92 Section 11-B of the ENIPAS Act provides that

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

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

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

93 The IRR of the ENIPAS Act provides:

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

d. **Recommend actions for cutting permit** for planted trees **solely for the traditional and subsistence uses by ICCs/IPs** and tenured migrants, of **up to five (5) cubic meters per applicant per year**. Provided, that, PACBRMA holders with affirmed Community-based Resource Management Plan shall no longer be issued cutting permits. Provided, further, that **the total volume cut shall not exceed the**

Based Resource Management Agreement (*PACBRMA*) holders; (5) the total volume cut shall not exceed limits set by the PAMB; and (6) the cutting must be within the Multiple Use Zone.[94] The records of the present case, however, do not contain any proof whatsoever of compliance with these requirements.

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

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

This does not mean, however, that it is only the State and its interests which shall be the sole consideration in the management of natural resources found in the ancestral domains. Emerging in our current legal framework is a trend towards a pro-active and collaborative effort to achieve a reasonable balance between the recognition of IPs' rights to their lands, on the one

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limits set by the PAMB, and that the **location of the cutting is within the appropriate site** within the Multiple Use Zone; and x x x (Emphasis ours)

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

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

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

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

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

hand, and the protection of scarce resources found within these lands, on the other. This is the clear import of DENR-NCIP Joint AO No. 2008-01 as well as the ENIPAS Act and its IRR in mandating the State to consult with all interested IPs towards a holistic agreement that will institutionalize the traditional and culture-driven forest resources practices of the IPs. To me, both the State and the IPs can benefit from the present shift to a more decentralized form of management where participation and dialogue between and among *all* stakeholders is encouraged.

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

For this reason, I do not share the view that the acquittal handed to the petitioners in this case is not a blanket exemption. No matter how one looks at it, the implication of the present majority opinion would be just that: a blanket exemption. For how, then, can the Court prevent all other IPs from invoking the doctrine of this case under the principle of *stare decisis*? In *Cruz*, Justice Kapunan, who seems to have foreseen the present scenario, explicitly emphasized that "the grant of said priority rights to indigenous peoples is not a blanket authority to disregard pertinent laws and regulations. The utilization of said natural resources is always subject to compliance by the indigenous peoples with existing laws, ... since it is not they but the State, which owns these resources."[98]

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

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

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

everyday lives of IPs such that one cannot survive a day without cutting a tree, then government regulation is all the more necessary to prevent the depletion of these trees that take decades and decades to grow.

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

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

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

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

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99 Records, p. 170.

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

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

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

DIOSDADO M. PERALTA
Chief Justice