Republic of the Philippines
Supreme Court
Manila

EN BANC

DIOSDADO SAMA *y* HINUPAS and BANDY MASANGLAY *y* ACEVEDA,
Petitioners,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 224469

Present:

PERALTA, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DE LOS SANTOS,
GAERLAN,
ROSARIO, *JJ.*

Promulgated:

January 5, 2021

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the following dispositions of the Court of Appeals in CA-G.R. CR No. 33906:

a) Decision[2] dated May 29, 2015 affirming the conviction of petitioners Diosdado Sama *y* Hinupas and Bandy Masanglay *y* Aceveda and their co-accused Demetrio Masanglay *y* Aceveda for violation of Section 77 of Presidential Decree 705 (PD 705) or the *Revised Forestry Code of the Philippines*; and

b) Resolution[3] dated April 11, 2016 denying their motion for reconsideration.

Proceedings before the Trial Court

By Information[4] dated May 27, 2005, petitioners and Demetrio were charged, as follows: [5]

INFORMATION

> The undersigned Prosecutor, under oath, accuses DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, BANDY MASANGLAY y ACEVEDA, residents of Barangay Baras, Baco, Oriental Mindoro with the crime of Violation of Presidential Decree No. 705 as amended, committed as follows:
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> 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 and then and there willfully, unlawfully, feloniously and knowingly cut with the use of 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) PESOS, Philippine Currency.
>
> Contrary to law.

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[1] *Rollo*, pp. 14-37.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Florito S. Macalino, all members of the Twelfth Division, *id.* at 79-89.

[3] CA *rollo*, pp. 143-144.

[4] *Rollo*, pp. 48-49.

[5] **SECTION 77. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. — Any person who shall cut, gather, collect, removed 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.

The case was raffled to the Regional Trial Court (RTC)– Branch 39, Calapan City, Oriental Mindoro.[6]

On arraignment, all three (3) accused pleaded not guilty.[7] Thereafter, they filed a Motion to Quash Information[8] dated July 31, 2007, alleging among others, that they are members of the Iraya-Mangyan tribe, and as such, are governed by Republic Act No. 8371 (RA 8371), *The Indigenous Peoples Rights Act of 1997* (IPRA). By Order[9] dated August 23, 2007, the motion was denied for being a mere scrap of paper. Trial followed.

The Prosecution's Version

PO3 Villamor D. Rance (PO3 Rance) testified that on March 15, 2005, his team comprised of police officers and representatives of the Department of Environment and Natural Resources (DENR) surveilled Barangay Calangatan, San Teodoro, Oriental Mindoro to address illegal logging operations in the area.[10]

While patrolling the mountainous area of Barangay Calangatan, they heard the sound of a chainsaw and saw a tree slowly falling down. They immediately crossed the river and traced the source of the sound. In the area where the sound was coming from, they caught the accused in the **act of cutting a *dita* tree**. They also saw a bolo stuck to the tree that had been cut.[11]

The team inquired from the accused if they had a license to cut down the tree. The latter replied they had none. After informing the accused of their violation, the team invited them to the police station for further investigation. The team left the illegally cut tree in the area because it was too heavy. Pictures of the accused and the cut down tree were also taken.[12]

The prosecution offered in evidence the Joint Affidavit of the apprehending officers, Apprehension Receipt dated March 5, 2005, and pictures.[13]

The Defense's Version

Barangay Captain Rolando Aceveda (Barangay Captain Aceveda) of Baras, Baco, Oriental Mindoro testified that on March 15, 2005, he was resting at home when he noticed several police officers and DENR employees passing by. He inquired where they were headed. They told him

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[6] *Rollo*, p. 57.
[7] *Id.*
[8] *Id.* at 52-55.
[9] Brief for Accused-Appellants, *CA rollo*, p. 33.
[10] Comment dated November 18, 2016; *rollo*, pp. 131-152.
[11] *Id.*
[12] *Id.*
[13] Record, pp. 5-6.

they were on their way to Barangay Laylay in San Teodoro for surveillance on illegal loggers.

After two (2) or three (3) hours, the team returned. They had arrested and brought with them the accused who are **members of the Iraya-Mangyan indigenous peoples (IPs)**. The police officers told him they caught the accused cutting down a *dita* tree. He then asked the accused if the allegations against them were true. **They told him they cut the tree for the construction of the Iraya-Mangyan IPs' community toilet. He was aware of this construction and confirmed that the *dita* tree was planted within the ancestral domain of the Iraya-Mangyan IPs.**[14]

The defense did not present any documentary evidence.[15]

The Trial Court's Ruling

By Decision[16] dated August 24, 2010, the trial court convicted the accused, as charged, thus:

> **ACCORDINGLY**, this Court finds accused **DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, and BANDY MASANGLAY y ACEVEDA GUILTY** beyond reasonable doubt as (principals) of the crime charged in the aforequoted Information and in default of any modifying circumstance attendant, the Court hereby sentences said accused to an indeterminate penalty ranging from ***four (4) months and one (1) day of arresto mayor, as minimum, to three (3) years, four (4) months and twenty-one (21) days of prision correccional, as maximum***, and to pay the costs.
>
> SO ORDERED.[17]

The trial court ruled that a *dita* tree with an aggregate volume of 500 board feet can be classified as "timber" within the purview of Section 68, now Section 77[18] of PD 705, as amended. Thus, cutting the *dita* tree without a corresponding permit from the DENR or any competent authority violated the law.

The trial court further held that a violation of Section 77 of PD 705 constituted *malum prohibitum*, and for this reason, the commission of the prohibited act is a crime in itself and criminal intent does not have to be established. **The trial court dismissed the defense of the accused that they had an IP right to log the *dita* tree** which **they intended** to use for the **construction of** a **communal toilet** for the **Iraya-Mangyan IPs.**

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[14] *Rollo*, pp. 58-59.
[15] *Id.* at 58.
[16] Penned by Judge Manuel C. Luna, Jr.; *id.* at 57-62.
[17] *Id.* at 62.
[18] Renumbered in PD 705 as Section 77 pursuant to Section 7 of RA 7161 (1991); See *supra* for text of Section 77, PD 705 as amended.

The trial court also faulted petitioners for not testifying and opting, instead, to present as their lone witness, Barangay Captain Aceveda, who allegedly had no personal and first-hand knowledge of the events which transpired before, during, and after the prohibited act.

Under Order[19] dated October 13, 2010, the trial court denied the accused's motion for reconsideration.[20] Only petitioners Diosdado Sama *y* Hinupas, Bandy Masanglay *y* Aceveda appealed from the trial court's ruling.

Proceedings before the Court of Appeals

Petitioners asserted anew their IP right to harvest the *dita* tree logs as part and parcel of the Iraya-Mangyan IPs' rights to cultural integrity and ancestral domain and lands. In particular, they claimed that: (1) pursuant to their cultural practices, they **followed the order of their indigenous community leaders** to log the *dita* tree to be used for the construction of **their communal toilet**; and (2) the land where the *dita* tree was planted was **part of their ancestral domain and lands** under RA 8371 or the *Indigenous People's Rights Act of 1997* ***(IPRA)***, and thus, the Iraya-Mangyan IPs have **communal dominion** over the fruits and natural resources found therein; (3) PO3 Rance did not actually witness their act of cutting the *dita* tree; and (4) the prosecution failed to prove they had conspired in cutting the tree.[21]

The Office of the Solicitor General (OSG) countered that: (1) there is no justification for IPs who cut a *dita* tree or any other tree without a permit that is special and distinct from any justification available to our compatriots; (2) even if the logging of trees is deemed part of the IPs' rights to cultural integrity or their ancestral domain or lands, the Iraya-Mangyan IPs failed to prove that as for them, the logging of a *dita* tree for building a communal toilet was justified by these rights; (3) PO3 Rance positively testified that the accused were the ones responsible in cutting down the *dita* tree; (4) it was not necessary for PO3 Rance to actually witness the accused fell the tree as the chain of events before, during, and after the incident led to the conclusion beyond a shadow of doubt that they had committed the offense charged; (5) the accused already admitted they had logged the *dita* tree intending to use the logs for the construction of a communal toilet for the Iraya-Mangyan indigenous community; and (6) defense witness Barangay Captain Aceveda corroborated this admission.[22]

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[19] Record, p. 363
[20] Appellants' Brief before the Court of Appeals, CA *rollo*, p. 34.
[21] *Rollo*, pp. 79-89.
[22] *Id.*

The Court of Appeals' Ruling

In its Decision[23] dated May 29, 2015, the Court of Appeals affirmed. It focused on the failure of the accused to present any license agreement, lease, or permit authorizing them to log the *dita* tree. It also faulted the accused for relying on *IPRA* as the source of their alleged rights to cultural heritage and ancestral domain and lands. For they purportedly failed to substantiate their claim that they are Iraya-Mangyan IPs and the land where the *dita* tree was situated is part of their ancestral domain and lands.

Under Resolution[24] dated April 11, 2016, the Court of Appeals denied the accused' motion for reconsideration.

The Present Petition

Petitioners now seek affirmative relief from the Court, reiterating their plea for acquittal.[25]

They maintain that their act of harvesting the *dita* tree is part and parcel of the Iraya-Mangyans' rights to cultural integrity and ancestral domain and lands. In particular, they profess that: (1) pursuant to their cultural practices, they followed the order of their indigenous community leaders to log the *dita* tree for the construction of their communal toilet; and (2) the land where the *dita* tree was planted was part of their ancestral domain and lands under the *IPRA*, thus, the Iraya-Mangyan IPs have communal dominion over the fruits and natural resources found therein. Additionally, as the Court of Appeals rejected their claim of being Iraya-Mangyan IPs, petitioners devote substantial space to emphasize what had not been disputed during the trial, that they are in fact Iraya-Mangyan IPs.

In the alternative, petitioners stress that: (1) PO3 Rance did not actually witness their supposed act of cutting the *dita* tree; (2) the prosecution failed to prove they conspired in cutting the tree; and (3) the Court of Appeals misappreciated PO3 Rance's testimony identifying them as the ones who cut the *dita* tree.[26]

The People, through the OSG, seeks to dismiss the petition on the following grounds: (1) whether petitioners logged the *dita* tree is a question of fact beyond the jurisdiction of the Court *via* Rule 45 of the Rules of Court; (2) the Court of Appeals did not err in upholding the trial court's finding that conspiracy attended the commission of the offense charged; (3) there is no IP justification for cutting the *dita* tree which is special and distinct from other Filipinos; and (4) even if the logging of a tree is part of the IPs' rights to cultural integrity and ancestral domain and lands, the Iraya-Mangyan IPs

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[23] *Id.*
[24] *Id.* at 39-40.
[25] Supra note 1.
[26] *Id.*

failed to prove that **as for them,** there is indeed that particular IP justification to log a *dita* tree for building a communal toilet.[27]

In their Reply,[28] petitioners continue to claim that the area where the *dita* tree was located is owned by the Iraya-Mangyan indigenous cultural communities **(ICCs)** since time immemorial by virtue of their **"native title."** This "**native title**" has been formally recognized under *IPRA*. As a result, the DENR issued Certificate of Ancestral Domain (CADC) No. RO4-CADC-126 covering the ancestral domain and ancestral lands where petitioners cut the *dita* tree. There is a pending application for conversion of the CADC to a Certificate of Ancestral Domains Title (CADT) before the National Commission on Indigenous Peoples (NCIP).

Issues

Is there evidence beyond reasonable doubt, ***first,*** of petitioners' ethnicity as Iraya-Mangyan IPs, ***and second***, of the elements of violation of Section 77 of PD 705, as amended? As for the latter, is there evidence beyond reasonable doubt that:

1. the *dita* tree which petitioners had cut and collected is a specie of timber?;

2. the *dita* tree was cut and collected from a forest land, an alienable or disposable public land, or a private land, as contemplated in Section 77 of PD 705, as amended?; and,

3. the cutting of the *dita* tree was done without any authority granted by the State?

Ruling

We acquit.

Section 2 of Rule 133 of the *Rules of Court* defines the standard of **proof beyond reasonable doubt**:

> SECTION 2. Proof Beyond Reasonable Doubt. — In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof **beyond a 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**.

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[27] Supra note 10.
[28] *Rollo*, pp. 158-167.

In practice, there is *proof beyond a reasonable doubt* where the judge can conclude: "All the above, as **established during trial, lead to no other conclusion than the commission of the crime** as prescribed in the law."[29] It has been explained:

> 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**. In this respect, I agree with the United States Court of Appeals, District of Columbia Circuit, in *U.S. v. Dale,* 991 F.2d 819 *(1993)* at p.853: "The instruction ... fairly convey[s] that the **requisite doubt** must be **`based on reason' as distinguished from fancy, whim or conjecture.**"
>
> ....
>
> 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**.
>
> 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**.
>
> .....
>
> You must **not base your doubt** on the **proposition that nothing is certain or impossible or that anything is possible**. You are **not entitled to** set up a **standard of absolute certainty** and to say that the evidence does not measure up to that standard. In many things it is impossible to prove absolute certainty.[30]

First Issue: Petitioners are Iraya-Mangyan IPs who are a publicly known ICC inhabiting areas within Oriental Mindoro.

IPs in the Philippines inhabit the interiors and mountains of Luzon, Mindoro, Negros, Samar, Leyte, Palawan, Mindanao, and Sulu group of islands.[31] In ***Cruz v. Secretary of Natural Resources***,[32] the Court recognized the following ICCs residing in Region IV: Dumagats of Aurora, Rizal;

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[29] *Dinamling v. People*, 761 Phil. 356, 374 (2015).

[30] *R. v. Lifchus*, 1996 CanLII 6631 (MB CA), <http://canlii.ca/t/1npkc>, retrieved on 2020-08-25.

[31] See J. Puno's Separate Opinion (*Cruz v. Secretary of Environment and Natural Resources*, (Resolution, *Per Curiam*, En Banc), 400 Phil. 904, 947 (2000).

[32] *Id.*

Remontado of Aurora, Rizal, Quezon; **Alangan or *Mangyan*, Batangan, Buid or Buhid, Hanunuo, and *Iraya* of Oriental and Occidental Mindoro**; Tadyawan of Occidental Mindoro; Cuyonon, Palawanon, Tagbanua and Tao't bato of Palawan.[33]

In Oriental Mindoro, the **Iraya-Mangyan IPs** are publicly known to be residing and living in the mountains of the municipalities of Puerto Galera, San Teodoro, and Baco.[34]

The Information[35] stated that petitioners are residents of Barangay Baras, Baco, Oriental Mindoro. They supposedly logged a *dita* tree in Barangay Calangatan, San Teodoro, Oriental Mindoro. Notably, the municipalities of Baco and San Teodoro are areas where the Iraya-Mangyan IPs are publicly known to inhabit. They have continuously lived there since time immemorial.

The ***first evidence*** that petitioners are Iraya-Mangyan IPs is the testimony of Barangay Captain Aceveda of Baras, Baco, Oriental Mindoro. He testified in clear and categorical language that petitioners are Mangyans and the *dita* tree was grown on the land occupied by the Mangyans:

> 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 are accompanied by three (Mangyan) persons ma'am.**
>
> Q: **And could you identify before this Court who these three (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 the 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 the land owned by the Mangyans ma'am.**
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> Q: Where in particular, Mr. Witness?
> A: **Sitio Matahimik, Barangay Baras, Baco ma'am.**[36]

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[33] *Id.*
[34] *See* http://www.mangyan.org/content/iraya (last accessed: January 22, 2020).
[35] *Rollo*, pp. 48-49.
[36] *Id.* at 69; See also *id.* at 84-85.

As barangay captain of Barangay Baras, Baco, Oriental Mindoro where petitioners and the Iraya-Mangyan IPs live, Aceveda is competent to testify that **petitioners are Iraya-Mangyan IPs** and **the *dita* tree was grown and found in the land where these IPs have inhabited since time immemorial.** For he has personally known the people living within his barangay, including petitioners and other Iraya-Mangyan IPs. When asked about petitioners, he positively identified these persons by their names and confirmed they are Iraya-Mangyan IPs.[37] He is fully knowledgeable of the territory and the people of his barangay. He too is a member of the Iraya-Mangyan IPs. **These matters were not refuted by the prosecution.**

The ***second evidence*** that petitioners are indeed Iraya-Mangyan IPs is the fact that the NCIP - Legal Affairs Office has been representing them from the initiation of this case until the present.[38] Records show that the NCIP-Legal Affairs Office signed the motions and pleadings filed in petitioners' defense before the trial court, the Court of Appeals, and this Court, *viz.*: (1) Motion to Quash Information[39] dated July 31, 2007; (2) Motion for Reconsideration[40] of the adverse Decision dated September 08, 2010 of the RTC – Calapan City; (3) Supplement to the Motion for Reconsideration[41] dated January 17, 2009; (4) Motion for Reconsideration[42] dated July 06, 2015 of the adverse Decision of the Court of Appeals; (5) Petition for Review[43] dated May 16, 2014; and (6) Reply[44] dated March 02, 2017.

Under the *IPRA*, the NCIP is the lead government agency[45] for the protection, promotion, and preservation of IP/ICC identities and rights in the context of national unity.[46] As a result of its expertise, it has the primary jurisdiction to identify ICCs and IPs. Its Legal Affairs Office is mandated to represent and provide legal assistance to them:

> Section 46 (g) *Legal Affairs Office* — There shall be a Legal Affairs Office which shall advice the NCIP on **all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community**

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[37] *Id.*

[38] *See* Petitioners' Motion for Reconsideration to the RTC Decision dated September 08, 2010 signed by Atty. Jeanette A. Florita of the NCIP – Legal Affairs Office, *id.* at 63-71; *See also* Court of Appeals' Notice of Resolution dated April 11, 2016 addressed to Atty. Jeanette A. Florita of the NCIP – Legal Affairs Office as counsel for Accused-Appellants, *id.* at 38-40; *See also* Petition for Review dated May 16, 2014 signed by the Atty. Jeanette A. Florita of the NCIP – Legal Affairs Office, *id.* at 14-37.

[39] *Id.* at 52-55; signed by Atty. Leovigilda V. Guioguio.

[40] *Id.* at 63-71; signed by Jeanette A. Florita.

[41] *Id.* at 78-76; signed by Jeanette A. Florita.

[42] *Id.* at 90-109; signed by Atty. Jeanette A. Florita.

[43] *Id.* at 14-37; signed by Attys. Jeanette A. Florita and Rizzabel A. Madangeng.

[44] *Id.* at 158-169; signed by Atty. Jeanette A. Florita.

[45] RA 8371 (1997), *The Indigenous Peoples' Rights Act of 1997*. CHAPTER VII - National Commission on Indigenous Peoples (NCIP), Section 38: National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP).— To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP),which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as the rights thereto. See infra for a discussion of the constitutional principle of preservation within the context of national unity.

[46] See infra for a discussion of the constitutional principle of preservation within the context of national unity.

> **interest**. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.[47]

In ***Unduran v. Aberasturi***,[48] the Court held that the NCIP may acquire jurisdiction over claims and disputes involving lands of ancestral domain only when they arise between or among parties belonging to the same ICCs or IPs. If the dispute includes parties who are non-ICCs or IPs, the regular courts shall have jurisdiction.

Thus, on the basis of the evidence on record, there is **no reason to doubt** that petitioners are Iraya-Mangyan IPs.

Second Issue: The prosecution was not able to prove the guilt of petitioners for violation of Section 77, PD 705, as amended, beyond reasonable doubt.

Section 77 of PD 705, as amended, punishes, among others, "[a]ny person who shall cut, gather, collect, removed timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority ... shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code...."

This provision has evolved from the following iterations:

> PD 705 (1975): "SEC. 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 . . ."
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> PD 1559 (1978) amending PD 705: "SEC. 68. Cutting, gathering and/or collecting timber or other products without license. — Any person shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable or disposable public land or from private land **whose title has no limitation on the disposition of forest products found therein**, without any authority **under a license agreement, lease, license or permit**, shall be **punished with the penalty imposed under Arts. 309 and 310** of the Revised Penal Code..."
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> EO 277 (1987) amending PD 705: "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

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[47] The Indigenous Peoples' Rights Act of 1997, Republic Act No. 8371, October 29, 1997.
[48] 771 Phil. 536, 569 (2015); See also *Unduran v. Aberasturi,* 808 Phil. 795, 800 (2017).

> 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...."

Section 7 of RA 7161 (1991) **repealed** what was **then** Section 77 of PD 705, as amended and **renumbered Section 68** of PD 705 **to Section 77** thereof *and* **replaced** the repealed Section 77. Note that the **repealed Section 77** was a carry-over from Section 297 of the *National Internal Revenue Code of 1977,* as amended which was **then incorporated** into PD 705 as Section 77 by EO 273 (1987) and RA 7161. This repealed Section 77, formerly Section 297 of the *National Internal Revenue Code of 1977*, read:

> Illegal cutting and removal of forest products. — [a] Any person who unlawfully cuts or gathers forest products in any forest lands without license or if under license, in violation of the terms hereof, shall, upon conviction for each act or omission, be fined for not less than ten thousand pesos but not more than one hundred thousand pesos or imprisoned for a term of not less than four years and one day but not more than six years, or both.

Construing the **original** iteration of **Section 77**, as **then Section 68** of the **original** version of PD 705, ***People v. CFI of Quezon (Branch VII)***[49] held that the elements of this offense are: 1) the accused **cut, gathered, collected or removed timber** or other forest products; 2) *the timber or other forest products cut, gathered, collected or removed* **belongs to** *the government or to any private individual;* and 3) the cutting, gathering, collecting or removing was **without any authority** granted by the State. Note that ***CFI of Quezon (Branch VII)*** included the **ownership** of the timber or other forest products **as** the **second element** of this offense. In the same decision, however, the Court also **ruled** that –

> Ownership is not an essential element of the offense as defined in Section [68] of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government.

Hence, we **do not consider** the **ownership** of subject timber or other forest products as an **element** of the offense under Section 68 of PD 705, now Section 77 of PD 705, as amended.

We **include one more element**: the timber or other forest product must have been cut, gathered, collected, or removed **from any forest land, or timber, from alienable or disposable public land or from private land**. This is **based on the language of the offense** as defined in either Section 68 or Section 77 which **expressly requires** the **source** of the timber or other forest products to be **from** these types of land.

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[49] 283 Phil. 78, 84 (1992).

1. Is the dita tree cut and collected by petitioners a specie of timber?

There is no issue that petitioners **did cut and collect a *dita* tree**. As a rule, we are bound by the factual findings of the trial court and the Court of Appeals. Petitioners themselves have not seriously challenged this factual finding. In fact, their sole witness confirmed that they had cut and collected the *dita* tree.

As for the nature of the *dita* tree, we rule that it constitutes timber. ***Merida v. People***[50] has explained that **timber** in PD 705 refers to:

> ... **"wood used for or suitable for building or for carpentry or joinery."** Indeed, tree saplings or tiny tree stems that are too small for use as posts, panelling, beams, tables, or chairs cannot be considered timber.... Undoubtedly, the narra tree petitioner felled and converted to lumber was "timber" fit "for building or for carpentry or joinery" and thus falls under the ambit of Section 68 of PD 705, as amended.

Here, the *dita* tree was **intended for constructing** a **communal toilet**. It therefore qualifies **beyond reasonable doubt** as **timber** pursuant to Section 77.

2. Was the dita tree a specie of timber cut and collected from a forest land, an alienable or disposable public land, or a private land, as contemplated in Section 77 of PD 705, as amended?

Section 3(d) of PD 705, as amended defines **forest lands** as including the public forest,[51] the permanent forest or forest reserves,[52] and forest reservations.[53] Section 3(c) defines **alienable and disposable lands** as "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."

Section 3 (mm) defines **private lands** indirectly as those lands with titled rights of ownership under existing laws, and **in the case of national minority, lands subject to rights of possession existing at the time a license is granted** under PD 705, **which possession may include places of abode and worship, burial grounds, and old clearings**, *but exclude* productive

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[50] 577 Phil. 243, 256-257 (2008).

[51] PD 705 as amended, Section 3 (a): Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.

[52] PD 705 as amended, Section 3 (b): Permanent forest or forest reserves refers 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.

[53] PD 705 as amended, Section 3 (g): Forest reservations refer to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes.

forests inclusive of logged-over areas, commercial forests, and established plantations of the forest trees and trees of economic values.[54]

As outlined, Section 77 requires **prior authority** for any of the acts of cutting, gathering, collecting, removing timber or other forest products **even from those lands possessed by IPs** falling **within the ambit** of the statute's definition of **private lands**.

Therefore, the **language** of Section 77 **incriminates** petitioners as they cut, gathered, collected, and removed **timber** from a *dita* tree from the land which they have called their own since time immemorial, which could either be a **forest land**, or an **alienable or disposable public land**, or a **private land,** as defined under PD 705, as amended, **without the requisite authority** pursuant to PD 705's licensing regime.

Justice Caguioa firmly opines, however, that ancestral domains and lands are **outside the ambit of Section 77** as these are **neither** forest land, alienable or disposable public land, **nor** private land.

He is **correct** that **ancestral domains and lands** are **unique, different,** and **a class of their own**. They have been referred to repeatedly as ***sui generis* property**, which sets into motion the construct or paradigm for determining the existence, nature, and consequences of IP rights.[55]

Nonetheless, the **text** of Section 77, as amended is **very clear**. It does not exempt from its coverage ancestral domains and lands. Too, as Chief Justice Peralta aptly points out, the term **"private land,"** which Section 77 **expressly** covers, **includes lands possessed by "national minorities"** such as their sacred and communal grounds. This term **should mean no other than** what we sensitively and correctly call today as the **IPs' ancestral domains and lands**.

To be sure, Section 77's reference to **forest lands** and even **alienable and disposable public lands** *could have also* **encompassed** ancestral domains and lands. This is **because** laws were **subsequently passed converting** some of the lands through the open, continuous, exclusive, and notorious occupation and cultivation of IPs *(then stereotypically referred to as members of the national cultural communities)* by themselves or through their ancestors **into** alienable and disposable lands of the public domain.[56]

Three more things.

First, Section 77 of PD 705 had been **amended a number of times** when IP rights were **burgeoning as an affirmative action component** – in

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[54] *Revised Forestry Code of the Philippines*, Presidential Decree No. 705, May 19, 1975.

[55] John Borrows and Leonard Rotman, *The Sui Generis Nature of Aboriginal Rights: Does it Make a Difference*, 1997 36-1 Alberta Law Review 9, 1997 CanLIIDocs 142, <http://www.canlii.org/t/skv8>, retrieved on 2020-09-13.

[56] *E.g.* PD 410 (1974).

1987 (EO 277) and then again in 1991 (RA 7161), **but never** did the authorities **change** the **explicit coverage** of the **text** of **Section 77**. There was **not even an attempt** to **clarify** that *ancestral domains and lands are beyond Section 77's contemplation*, which the authorities could have easily done so.

Second, Section 77 was the **product of a less-than enlightened age**. The era of PD 705 even as amended **did not politely** call IP lands and communities the IPs' ancestral domains or ancestral lands but **tribal grounds** or **archaeological areas** of, or **lands occupied and cultivated** by, **members of the national cultural communities**, or **public or communal forests**. Section 77 was born and nurtured at a time when IPs were referred to as **"national minorities"** and the enlightened path then was to achieve their **redemption** through **assimilation** into the cultural bourgeoisie of the majority.

Justice Leonen's ***Ha Datu Tawahig v. Lapinid***[57] eloquently narrates this sorry stage in our legal history. So does Justice Lopez whose citations refer to our case law when we still called IPs **cultural minorities** whose status as such is derisively and condescendingly seen as a mitigating circumstance, or the IPs of the Cordilleras as uncivilized Igorots whose alleged backwardness was patronizingly used to lessen the criminal punishment meted. As observed by Justice Kapunan in ***Cruz v. Secretary of Natural Resources***,[58] "Philippine legal history, however, has not been kind to the indigenous peoples, characterized them as 'uncivilized,' 'backward people,' with 'barbarous practices' and 'a low order of intelligence'."

This *was* the **construct** that permeated either the original or amended iterations of Section 77. This construct **rendered it unlikely**, to say the least, **the exclusion** from criminalization of the IPs or ICCs' cultural and customary practices within their ancestral domains and lands.

This context means that **Section 77 could not have *intended* to exclude** as **its language does not exclude** ancestral domains and lands.

The **rise of aboriginal or IP law and jurisprudence** has **not** come about smoothly or even peacefully. This was because of the **need to correspond to traditional legal conceptions of property rights to receive the law's protection**.[59] Indeed, prior to the *IPRA*, ancestral domains and lands were conceived in this manner:

> It seems to be common ground that the ownership of the lands was "tribal" or "communal," but what precisely that means remains to be ascertained. In any case it was necessary that the argument should go the length of showing that **the rights**, whatever they exactly were, **belonged to the category of rights of private property**.[60]

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[57] G.R. No. 221139, March 20, 2019.
[58] Supra note 31 at 1025.
[59] John Borrows and Leonard Rotman, supra note 55.
[60] Re Southern Rhodesia, [1919] A.C. 211 (P.C.).

This statement clearly exudes the **bias of a colonialist regime**. The notion that land ownership existed **only where it adhered to civil or common law concepts** implied their acceptance **at the expense of** indigenous principles of ownership. While indigenous laws were not completely rejected under this formulation, **only those forms of ownership which shared sufficient similarity** with the civil or common law were deemed capable of securing legal protection.

The original and amended versions of the current Section 77 were enacted under **this exact legal framework**. Hence, Section 77 **could not have been so enlightened and progressive** as to accord utmost respect to IP rights by excluding them from its criminal prohibition. It was **only later** that **we were enlightened** that the **proper method** of ascertaining IP rights necessitated a study of particular IP customs and laws. Under this test, IP rights and title are best understood by Iraya-Mangyan IPs **considering indigenous history and patterns of cultural practices and land usage**, rather than importing the preconceived notions of property rights under civil or common law. This enlightened view was **not** the **text of**, let alone, the **intent behind** Section 77.

Third, as held in ***CFI of Quezon (Branch VII)***, the **intent** behind the original iteration of Section 77 as then Section 68 **rejected as an element of this offense**, the **ownership** of **the land** from which the timber or other forest products were cut, removed, gathered, or collected, **or** the **timber or other forest products** themselves as accessories of the land. This means that Section 68 or even Section 77 **covers any type of land** so long as timber or other forest products were taken therefrom, **regardless of an accused's property interests in the land**, when the **taking** was done **without any authority granted by the State**. It may also be inferred that **mere ownership** of the land does **not** amount to an **authority granted by the State** to justify the cutting, collection, removal. or gathering of timber or other forest products. As elucidated in ***CFI of Quezon (Branch VII)***:

> The **failure of the information to allege** that the **logs taken** were **owned by the state** is **not fatal**. It should be noted that the logs subject of the complaint were taken not from a public forest but from a private woodland registered in the name of complainant's deceased father, Macario Prudente. The fact that **only the state can grant a license agreement, license or lease does not make the state the owner of all the logs and timber products** produced in the Philippines **including those produced in private woodlands**. The case of *Santiago v. Basilan Company*, G.R. No. L-15532, October 31, 1963, 9 SCRA 349, clarified the matter on **ownership of timber in private lands**. This Court held therein:
>
> "The defendant has appealed, claiming that it should not be held liable to the plaintiff because the timber which it cut and gathered on the land in question belongs to the government and not to the plaintiff, **the latter having failed to comply with a requirement of the law with respect to his property**.

"The provision of law referred to by appellant is a section of the Revised Administrative Code, as amended, which reads:

'SEC. 1829. Registration of title to private forest land. — **Every private owner of land containing timber, firewood and other minor forest products shall register his title to the same** with the Director of Forestry. A list of such owners, with a statement of the boundaries of their property, shall be furnished by said Director to the Collector of Internal Revenue, and the same shall be supplemented from time to time as occasion may require.'

'Upon application of the Director of Forestry the fiscal of the province in which any such land lies shall render assistance in the examination of the title thereof with a view to its registration in the Bureau of Forestry.'

"In the above provision of law, there is **no statement to the effect that noncompliance with the requirement would divest the owner of the land of his rights thereof and that said rights of ownership would be transferred to the government**. Of course, the **land which had been registered and titled in the name of the plaintiff** under that Land Registration Act **could no longer be the object of a forester license** issued by the Director of Forestry because **ownership of said land includes also ownership of everything found on its surface** (Art. 437, New Civil Code).

"Obviously, the **purpose of the registration** required in section 1829 of the Administrative Code is **to exempt the title owner of the land from the payment of forestry charges** as provided for under Section 266 of the National Internal Revenue Code, to wit:

'Charges collective on forest products cut, gathered and removed from **unregistered private lands**. — The charges above prescribed shall be collected on all **forest products cut, gathered and removed from any private land the title to which is not registered** with the Director of Forestry as required by the Forest Law; Provided, however, that **in the absence of such registration, the owner who desires to cut, gather and remove timber and other forest products from such land shall secure a license from the Director of Forestry** Law and Regulations. The **cutting, gathering and removing of timber and the other forest products from said private lands without license shall be considered as unlawful cutting**, gathering and removing of forest products from public forests and **shall be subject to the charges** prescribed in such cases in this chapter.'

"xxx xxx xxx.

"On the other hand, while it is admitted that the **plaintiff has failed to register the timber in his land as a private woodland** in accordance with the oft-repeated provision of the Revised Administrative Code, he **still retained his rights of ownership, among which are his rights to the fruits of the land and to exclude** any person from the enjoyment and disposal thereof (Art. 429. New Civil Code) — the very rights violated by the defendant Basilan Lumber Company."

While it is only the state which can grant a license or authority to cut, gather, collect or remove forest products it does not follow that all forest products belong to the state. In the just cited case, **private**

> **ownership of forest products grown in private lands is retained under the principle in civil law that ownership of the land includes everything found on its surface.**
>
> **Ownership is not an essential element of the offense as defined in Section [68] of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government.**

The concept of **ownership** adverted to in ***CFI of Quezon (Branch VII)*** is the civilist notion of ownership, that is, the one defined and expounded in our *Civil Code*.

We **hold** that this ruling in ***CFI of Quezon (Branch VII)*** **remains true** to the **amended** iterations of Section 68, now Section 77. **Ownership** of the land from which the timber or other forest products are taken is **neither** an element of the offense **nor** a defense to this offense – so long as **timber** or other forest products were **cut, collected**, gathered, or removed **from a forest land, an alienable or disposable public land, or private land** as defined in PD 705, as amended, **without any authority** granted by the State. As well, **ownership *per se*** of either the land or the timber or other forest products, as this right is understood in our *Civil Code*, **does not amount** to an **authority** granted by the State **to justify** the otherwise forbidden acts.

The **reason** for this ruling is the **relevant part** of Section 68 that **has remained unchanged** in its present version – the *actus reus* ("cut, gather, collect, remove"), the object of the *actus reus* (timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land), and the penalties for this offense ("shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code…."). The role of **ownership** in the determination of criminal liability for this offense **has not evolved**. In fact, if one were to examine the original Section 68, **ownership ought** to have been an **essential element** because **Section 68** was **then expressly treated** as a **specie of qualified theft**, a felony where ownership is an essential element.[61] Nonetheless, despite this penal typology of Section 68 then, ownership **was not considered** an element of this offense. With more reason, there having been **no change** in the wording of the law, on one hand, and there having been a **shift** in its **classification** into an offense **distinct from qualified theft**, on the other, **ownership** must **continue** to be a **non-essential consideration** in obtaining a conviction for this offense.

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[61] See *e.g. People v. Molde*, G.R. No. 228262, January 21, 2019: "The elements of qualified theft are: "(a) taking of personal property; (b) **that the said property belongs to another**; (c) that the said taking be done with intent to gain; (d) that it be done without the owner's consent; (e) that it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and] (f) that it be done with grave abuse of confidence."

Another reason lies in the **purpose** that Section 68 and the entirety of PD 705, as amended seek to achieve. As stated in the **preamble** of PD 705, as amended:

> 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....

Verily, State **regulation** of the utilization of forest lands **cuts above** ownership rights. This is in line with the **police power** of the State and its obligation to the entire nation to promote, protect, and defend its **right to a healthy and clean environment and ecology** as a third generation collective right.[62]

Maynilad Water Services Inc. v. Secretary of the Department of Environment and Natural Resources[63] has confirmed the **public trust doctrine** that permeates the State's obligation *vis-à-vis* all natural resources such as water, and **by logical extension, timber and other forest products**:

> The **vastness of this patrimony precludes the State from managing the same entirely by itself**. In the interest of quality and efficiency, **it thus outsources assistance from private entities, but this must be delimited and controlled for the protection of the general welfare**. Then comes into relevance **police power**, one of the inherent powers of the State. Police power is described in *Gerochi v. Department of Energy*:
>
> [P]olice power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin *maxim salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). **As an inherent attribute of sovereignty**

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[62] See *Sumudu Atappatu*, "The Right to Healthy Life or the Right to Die Polluted: The Emergence of a Human Right to a Healthy Environment under International Law," 16 Tulane Environmental Law Journal 65 (2002) at file:///C:/Users/SUPREME%20COURT/Downloads/2083-Article%20Text-7012-1-10-20190403%20(1).pdf, last accessed November 4, 2020.

[63] G.R. No. 202897, August 6, 2019.

which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that **the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons**.

Hand-in-hand with police power in the promotion of general welfare is the doctrine of *parens patriae*. It focuses on the **role of the state as a "sovereign" and expresses the inherent power and authority of the state to provide protection** of the person and property of a person *non sui juris*. Under the doctrine, **the state has the sovereign power of guardianship over persons of disability, and in the execution of the doctrine the legislature is possessed of inherent power to provide protection to persons *non sui juris* and to make and enforce rules and regulations as it deems proper for the management of their property**. *Parens patriae* means "father of his country," and **refers to the State as a last-ditch provider of protection to those unable to care and fend for themselves**. It can be said that Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and overwhelmed by business pursuits.

While the Regalian doctrine is state ownership over natural resources, police power is state regulation through legislation, and *parens patriae* is the default state responsibility to look after the defenseless, there remains a limbo on a **flexible state policy bringing these doctrines into a cohesive whole, enshrining the objects of public interest, and backing the security of the people, rights, and resources from general neglect, private greed, and even from the own excesses of the State**. We fill this void through the **Public Trust Doctrine**.

The Public Trust Doctrine, while derived from English common law and American jurisprudence, has firm Constitutional and statutory moorings in our jurisdiction. The doctrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water. Thus, "**[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust.**" In *National Audubon Society v. Superior Court of Alpine County*, a California Supreme Court decision, it worded the doctrine as that which —

....

Academic literature further imparts that **"[p]art of this consciousness involves restoring the view of public and state ownership of certain natural resources that benefit all. [. . .]" The "doctrine further holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole.** A clear declaration of public ownership, the doctrine reaffirms **the superiority of public rights over private rights for critical resources**. It impresses upon **states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations** and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability."

> **In this framework, a relationship is formed — "the [s]tate is the trustee, which manages specific natural resources — the trust principal — for the trust principal — for the benefit of the current and future generations — the beneficiaries."** "[T]he [S]tate has an **affirmative duty to take the public trust into account in the planning and allocation** of water resources, and to protect public trust uses whenever feasible." But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public's interest.
>
> These **exigencies forced** the **public trust doctrine** to **evolve from a mere principle** to a **resource management term** and **tool flexible** enough **to adapt to changing social priorities** and **address** the **correlative and consequent dangers** thereof. The **public** is regarded as the **beneficial owner of trust resources**, and **courts can enforce** the **public trust doctrine even against the government itself.**

In the exercise of its police power regulation, "the State **restricts the use of private property**, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. **Use of the property by the owner was limited**, but no aspect of the property is used by or for the public. The **deprivation of use can in fact be total** and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein."[64]

To conclude, the *dita* tree, as a specie of timber, was cut and collected **beyond reasonable doubt** from a **private land,** as contemplated in Section 77 of PD 705, as amended, or at the very least, a **forest land** or an **alienable or disposable public land** converted from ancestral lands, is covered, too, by PD 705, as amended. This notwithstanding that the land is also petitioners' ancestral domain or land which they own ***sui generis***.

3. Was the dita tree cut and collected without authority granted by the State?

There is, however, **reasonable doubt** that the *dita* tree was cut and collected **without any authority** granted by the State.

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 77 of PD 705, as amended punishes the

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[64] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*, 520 Phil. 457, 478 (2006); *Philippine Ports Authority v. Cipres Stevedoring and Arrastre Services, Inc.*, 501 Phil. 646, 663 (2005): "As 'police power is so far-reaching in scope, that it has become almost impossible to limit its sweep,' 48 whatever proprietary right that respondent may have acquired must necessarily give way to a valid exercise of police power, thus: 4. In the interplay between such a fundamental right and police power, especially so where the assailed governmental action deals with the use of one's property, the latter is accorded much leeway. That is settled law . . ."

cutting, collecting, or removing of timber or other forest products **only when** any of these acts is done **without lawful authority** from the State.

In ***Saguin v. People***,[65] the prohibited act of non-remittance of Pag-Ibig contributions is punishable **only when** this act was done **"without lawful cause"** or "with fraudulent intent." According to this case law, **lawful cause** may result from a **confusing** state of affairs engendered by **new legal developments** that **re-ordered** the way things had been previously done. In ***Saguin***, the **cause** of the **confusion** was the **devolution** of some powers in the health sector to the local governments. The **devolution** was **ruled** as a "**valid justification**" constituting the "**lawful cause**" for the inability of the accused to remit the Pag-Ibig contributions. The **devolution** gave rise to **reasonable doubt** as to the **existence** of the offense's element of **lack of lawful cause**.

This doctrine in ***Saguin*** is reiterated in ***Matalam v. People***.[66] ***Matalam*** affirmed the doctrine that when an act is ***malum prohibitum***, "[i]t is the **commission of that act** as defined by the law, and **not the character or effect thereof**, that determines whether or not the provision has been violated." Citing ***ABS-CBN Corporation v. Gozon***,[67] ***Matalam*** **clarified** what this doctrine entails by **distinguishing** between the **intent** requirements of a ***malum in se*** felony and a ***malum prohibitum*** offense:

> The general rule is that acts punished under a special law are ***malum prohibitum***. "An act which is declared *malum prohibitum*, **malice** or ***criminal*** **intent** is **completely immaterial**."
>
> In contrast, crimes *mala in se* concern inherently immoral acts:
>
> ....
>
> "Implicit in the concept of ***mala in se*** is that of ***mens rea***." ***Mens rea*** is defined as "the **nonphysical element** which, combined with the act of the accused, makes up the crime charged. Most frequently it is **the criminal intent, or the guilty mind**[.]"
>
> **Crimes *mala in se* presuppose** that the **person who did the felonious act had *criminal* intent** to do so, while **crimes *mala prohibita*** do **not require knowledge** or **criminal intent**:
>
> In the case of ***mala in se*** it is necessary, to constitute a punishable offense, for the person doing the act to **have *knowledge* of the *nature* of his act** and to **have a *criminal* intent**; in the case of ***mala prohibita***, unless such words as "knowingly" and "willfully" are contained in the statute, **neither knowledge nor *criminal* intent is necessary**. In other words, **a person morally quite innocent and with *every intention of being a law-abiding citizen* becomes a criminal**, and liable to criminal penalties, **if he does an act prohibited by these statutes**.

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[65] 773 Phil. 614, 628 (2015).

[66] 783 Phil. 711, 728 (2016): "In *Saguin v. People*, we have said that non-remittance of Pag-IBIG Fund premiums without lawful cause or with fraudulent intent is punishable under the penal clause of Section 23 of Presidential Decree No. 1752. However, the petitioners in Saguin **were justified in not remitting the premiums on time** as the hospital they were working in **devolved to the provincial government** and there was **confusion** as to who had the duty to remit."

[67] 755 Phil. 709, 763-764 (2015).

> Hence, "**[i]ntent** ***to commit the crime*** and **intent** ***to perpetrate the act*** must be **distinguished**. A person may **not have consciously intended to commit a crime**; **but he did intend to commit an act**, and **that act is**, by the very nature of things, **the crime itself[**.]" When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.
>
> **Volition**, or **intent to commit the act**, is **different from criminal intent**. **Volition or voluntariness** refers to ***knowledge*** **of the** ***act being done*** [in contrast to ***knowledge*** **of the** ***nature*** **of his act**]. On the other hand, **criminal intent** — which is **different from motive**, or the **moving power for the commission of the crime** — refers to the **state of mind beyond voluntariness.** It is **this intent** that is being **punished** by crimes ***mala in se***.

Matalam recognized **that** the **character** or **effect** of the commission of the prohibited act, which is **not required** in proving a ***malum prohibitum*** case, is **different from** the **intent** and **volition to commit** the act which itself is prohibited if done **without lawful cause**. Justice Zalameda elucidates:

> The *malum prohibitum* nature of an offense, however, does not automatically result in a conviction. The prosecution must still establish that the accused had intent to perpetrate the act.
>
> Intent to perpetrate has been associated with the actor's volition, or intent to commit the act. Volition or voluntariness refers to knowledge of the act being done. In previous cases, this Court has determined the accused's volition on a case to case basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances.
>
> ....
>
> **[I]t is clear that to determine the presence of an accused's intent to perpetrate a prohibited act, courts may look into the meaning and scope of the prohibition beyond the literal wording of the law. Although in *malum prohibitum* offenses, the act itself constitutes the crime, courts must still be mindful of practical exclusions to the law's coverage, particularly when a superficial and narrow reading of the same with result to absurd consequences. Further, as in *People v. De Gracia* and *Mendoza v. People*, temporary, incidental, casual, or harmless commission of prohibited acts were considered as an indication of the absence of an intent to perpetrate the offense.** (Emphasis in the original)

Here, as in ***Saguin***, as reiterated in ***Matalam***, there was **confusion** arising from the **new legal developments**, particularly, the recognition of the **indigenous peoples' (IPs) human rights normative system**, in our country. To paraphrase and import the words used in ***Saguin***, while *doubtless there was* voluntary and knowing act of cutting, removing, collecting, or harvesting of timber, we nonetheless consider the **reasonable doubt** engendered by the **new normative system** that the act was **done without State authority**, as required by Section 77 of PD 705, as amended.

The **confusion** and the resulting **reasonable doubt** on whether petitioners were authorized by the State **have surfaced** from the following circumstances:

One. In light of the **amendments to Section 77**, the **lawful authority** seems to be *probably* **more expansive** now than it previously was. Presently, the **authority** could be **reasonably** interpreted as being **inclusive** of **other modes of authority** such as the **exercise of IP rights**. As observed by Senior Associate Justice Perlas-Bernabe:

> Further, it must be noted that the original iteration of Section 77 (then Section 68 of Presidential Decree No. 705 [1975]) was passed under the 1973 Constitution and specifically described "authority" as being "*under a license agreement, lease, license or permit.*" However, soon after the enactment of the 1987 Constitution or in July 1987, then President Corazon Aquino issued Executive Order No. 277 (EO 277) amending Section 77, which, among others, removed the above-mentioned descriptor, hence, leaving the phrase "*without any authority,*" generally-worded. To my mind, **the amendment of Section 77 should be read in light of the new legal regime which gives significant emphasis on the State's protection of our IP's rights, which includes the preservation of their cultural identity. Given that there was no explanation in EO 277 as to the "authority" required,** it may then be reasonably argued that the amendment accommodates the legitimate exercise of IP's rights within their ancestral domains. (Emphasis in the original)

The evolution of the penal provision shows that **authority** has actually become **more expansive and inclusive**. As presently couched, it no longer qualifies the "authority" required **but includes ANY authority**. As sharply noted by Senior Associate Justice Perlas-Bernabe, the phrasing of the law **has evolved from** requiring a "permit **from the Director**" in 1974 under PD 389, **to** a mere "license agreement, lease, license or permit" under PDs 705 and 1559 from 1975 to 1987, and to "**any** authority" from 1987 thereafter. Without any qualifier, the word **"authority" is now inclusive** of forms other than permits or licenses from the DENR. This doubt is **reasonable** as it arose from a **principled reading** of the amendments to Section 77, and this **doubt** ought to be **construed in petitioners' favor**.

Justice Caguioa vigorously posits as well that "[c]onsidering the foregoing, I have, from the very beginning, and still am, of the view that the 'authority' contemplated in PD 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." He cogently reasons out:

> To have a strict interpretation of the term "authority" under Sec. 77 of P.D. 705 despite the clear evolution of its text would amount to construing a penal law ***strictly against*** the accused, which cannot be countenanced. To stress, "[o]nly those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all

> questions in doubt will be resolved in favor of those from whom the penalty is sought."
>
> More importantly, to construe the word "authority" in Sec. 77, P.D. 705 as excluding the rights of ICCs/IPs already recognized in the IPRA would unduly undermine both the text and the purpose of this novel piece of legislation and significantly narrow down the rights recognized therein. (Emphasis in the original)

Two. It is an admitted fact that petitioners **relied upon** their **elders**, the **non-government organization** that was helping them, and **the NCIP**, that **they supposedly possessed the State authority** to cut and collect the *dita* tree as IPs for their indigenous community's communal toilet. Thus, **subjectively**,[68] their **intent** and **volition to commit** the **prohibited** act, that is **without lawful authority**, was rendered **reasonably doubtful** by these pieces of evidence showing their **reliance** upon these separate assurances of a State authority. As Justice Zalameda explains:

> **The peculiar circumstances of this case require the same liberal approach.** The Court simply cannot brush aside petitioners' cultural heritage in the determination of their criminal liability. Unlike the accused in *People v. De Gracia*, petitioners cannot be presumed to know the import and legal consequence of their act. Their circumstances, specifically their access to information, and their customs as members of a cultural minority, are substantial factors that distinguish them from the rest of the population.
>
> ....
>
> As for the Mangyans, their challenges in availing learning facilities and accessing information are well documented. The location of their settlements in the mountainous regions of Mindoro, though relatively close to the nation's capital, is not easily reached by convenient modes of transportation and communication. Further, the lack of financial resources discourages indigenous families to avail and/or sustain their children's education. Certainly, by these circumstances alone, Mangyans cannot reasonably be compared to those in the lowlands in terms of world view and behavior.
>
> In the Mangyans' worldview, the forest is considered as common property of all the residents of their respective settlements. This means that they can catch forest animals, gather wood, bamboo, nuts, and other wild plants in the forest without the permission of other residents. They can generally hunt and eat animals in the forest, except those they consider inedible, such as pythons, snakes and large lizards. They employ swiddens or the kaingin system to cultivate the land within their settlements.
>
> Based on the foregoing, to hold petitioners to the same standards for adjudging a violation of PD 705 as non-indigenous peoples would be to force upon them a belief system to which they do not subscribe. The fact that petitioners finished up to Grade 4 of primary education does not negate their distinct way of life nor justifies lumping IPs with the rest of the

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[68] See *e.g., Nunavut Teachers' Association v. Nunavut*, 2010 NUCJ 13 (CanLII), <http://canlii.ca/t/2c4sl>, retrieved on 2020-10-3: "The subjective element concerns a party's motive and intent.... The subjective element in the context of assessing good faith concerns the motive and intent of the parties....

> Filipino people. Formal education and customary practices are not mutually exclusive, but is in fact, as some studies note, co-exist in Mangyan communities as they thrive in the modern society. It may be opportune to consider that in indigenous communities, customs and cultural practices are normally transferred through oral tradition. Hence, it is inaccurate to conclude that a few years in elementary school results to IP's total acculturation.
>
> As already discussed, Mangyans perceive all the resources found in their ancestral domain to be communal. They are accustomed to using and enjoying these resources without asking permission, even from other tribes, much less from government functionaries with whom they do not normally interact. Moreover, by the location of their settlements, links to local government units, or information sources are different from those residing in the lowlands. As such, the Court may reasonably infer that petitioners are unaware of the prohibition set forth in Sec. 77 of P.D. No. 705.
>
> To my mind, an acknowledgment of the Mangyan's unique way of life negates any finding on the petitioners' intent to perpetrate the prohibited act. Taken with the fact that petitioners were caught cutting only one (1) dita tree at the time they were apprehended, and that it was done in obedience to the orders of their elders, it is clear that the cutting of the tree was a casual, incidental, and harmless act done within the context of their customary tradition.
>
> ....
>
> In my opinion, P.D. 705, which took effect in 1975, should be viewed under the prism of the 1987 Constitution which recognizes the right of indigenous cultural communities. The noble objectives of P.D. 705 in protecting our forest lands should be viewed in conjunction with the Constitution's mandate of recognizing our indigenous groups as integral to our nation's existence. I submit that under our present Constitutional regime, courts cannot summarily ignore allegations or factual circumstances that pertain to indigenous rights or traditions, but must instead carefully weigh and evaluate whether these are material to the resolution of the case.
>
> This does not mean, however, that the Court is creating a novel exempting circumstance in criminal prosecutions. It merely behooves the courts to make a case-to-case determination whether an accused's ties to an indigenous cultural community affects the prosecution's accusations or the defense of the accused. Simply put, the courts should not ignore indigeneity in favor of absolute reliance to the traditional purpose of criminal prosecution, which are deterrence and retribution.
>
> In sum, the peculiar circumstances of this case compel me to take petitioners' side. I am convinced that petitioners' intent to perpetrate the offense has not been established by the prosecution with moral certainty. For this reason, I vote for petitioners' acquittal.

Objectively,[69] their reliance **cannot be faulted** because IP rights have long been **recognized** at **different levels** of our legal system – the

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[69] *Nunavut Teachers' Association v. Nunavut*, 2010 NUCJ 13 (CanLII), <http://canlii.ca/t/2c4sl>, retrieved on 2020-10-3: "... the objective element relates to the party's bargaining with a view to concluding a collective agreement. The Board approved the words from ROK Tree (1999) Ltd. (Re), [2000] N.B.L.E.B.D. No. 14, 57 C.L.R.B.R. (2d) 293, that the efforts made to conclude a collective agreement are

Constitution, the **statutes** like *IPRA* and a host of others like the ones mentioned by Justice Leonen in his *Opinion*, the sundry **administrative regulations** (one of which Chief Justice Peralta and Justice Caguioa have taken pains to outline) which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' ***sui generis*** ownership of ancestral domains and lands, the **international covenants** like the *United Nations Declaration on the Rights of Indigenous Peoples*, of which our country is a signatory, and **Philippine** and **international jurisprudence** which identifies the forms and contents of IP rights.

We hasten to add though that this **recognition** has **not** transformed into a **definitive** and **categorical** rule of law on its **impact** as a **defense** in criminal cases against IPs arising from the exercise of their IP rights. The ensuing **unfortunate confusion** as to true and inescapable merits of these rights in criminal cases **justifies** the claim that petitioners' guilt for this ***malum prohibitum*** offense is **reasonably doubtful**.

As succinctly tackled by Justice Caguioa in his opinion: "In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not the petitioners were well-within their rights when they cut the *dita* tree, such doubt must be resolved to stay the Court's hand from affirming their conviction." He further opines that the invocation of IP rights in the case at bar has "risen to the heights of contested constitutional interpretations...." While we do not share Justice Caguioa's opinion in full, we agree with him at least that there is **reasonable doubt** as regards the accused' guilt of the offense charged. Thus:

> On this note, it may be well to remember that the case of *Cruz* which dealt with the constitutionality of the provisions of the IPRA was decided by an equally divided Court. This only goes to show that there are still nuances concerning the rights of IPs within their ancestral land and domain that are very much open to varying interpretations. Prescinding from this jurisprudential history, perhaps the instant case may not provide the most sufficient and adequate venue to resolve the issues brought about by this novel piece of legislation. It would be the height of unfairness to burden the instant case against petitioners with the need to resolve the intricate Constitutional matters brought about by their mere membership in the IP community especially since a criminal case, being personal in nature, affects their liberty as the accused.
>
> The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, *vis-à-vis* forestry laws, has

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to be "measured against an objective standard, that of a rational and informed discussion within the framework of the statutory regime.... good faith bargaining includes rational discussion, consultation and reasonable efforts. Judging the objective component of good faith bargaining requires the judge to assess how the parties carried on the rational discussion, consultation and reasonable efforts."

> failed or delivered on its fundamental promise. **That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether or not they are guilty of an offense, but whether or not there was even an offense to speak of.** At most, this doubt only further burdens the fate of the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity.
>
> **At the very least, this doubt must merit their acquittal.** (Emphases in the original)

To be precise, the **IP rights** we are alluding to are the rights to maintain their **cultural integrity** and to benefit from the **economic benefits** of their ancestral domains and lands, **provided** the **exercise** of these rights is **consistent with protecting** and **promoting equal rights of the future generations** of IPs. To stress, it is the **confusion** arising from the **novelty** of the **content, reach,** and **limitation** of the **exercise of these rights** by the accused in **criminal cases** which **justifies** their acquittal for their **otherwise prohibited** act.

i. Constitutional basis of IP rights

Ha Datu Tawahig v. Lapinid[70] explains the expansive breadth of the legal recognition of IP rights by our ***Constitution***:

> In turn, the Indigenous Peoples' Rights Act's provisions on self-governance and empowerment, along with those on the right to ancestral domains, social justice and human rights, and cultural integrity, collectively reflect and bring to fruition the 1987 Constitution's aims of preservation.
>
> The 1987 Constitution devotes six (6) provisions "which insure the right of tribal Filipinos to preserve their way of life":
>
> ARTICLE II
> Declaration of Principles and State Policies
>
> SECTION 22. The State **recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development**.
>
> xxx xxx xxx
>
> ARTICLE VI
> The Legislative Department
>
> xxx xxx xxx
>
> SECTION 5. . . .
> xxx xxx xxx
>
> (2) The **party-list representatives** shall constitute twenty per centum of the total number of representatives including those under the

[70] Supra note 57.

party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, **indigenous cultural communities**, women, youth, and such other sectors as may be provided by law, except the religious sector.

xxx xxx xxx

ARTICLE XII
National Economy and Patrimony

xxx xxx xxx

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

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

xxx xxx xxx

ARTICLE XIII
Social Justice and Human Rights

xxx xxx xxx

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

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

xxx xxx xxx

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

xxx xxx xxx

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

xxx xxx xxx

ARTICLE XVI
General Provisions

xxx xxx xxx

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

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

SECTION 2. Declaration of State Policies. — The State shall **recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs)** hereunder enumerated **within the framework of the Constitution**:

a) The State shall **recognize and promote the rights of ICCs/IPs within the framework of national unity and development**;

b) The State shall **protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being** and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall **recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions**. It shall **consider these rights in the formulation of national laws and policies**;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;

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

f) The State **recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs**, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall **institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains**.

The **1987 Constitution's attitude toward indigenous peoples, with its emphasis on preservation**, is a **marked departure from** regimes under the 1935 and 1973 constitutions, which were typified by **integration**. **Integration**, however, was still "**like the colonial policy of assimilation** understood in the **context of a guardian-ward relationship**." Like **assimilation**, it was **eager to have indigenous peoples attune themselves**

to the mainstream. This **eagerness inevitably tended to measures that eroded indigenous peoples' identities.**

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

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

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

> REPUBLIC ACT No. 1888
>
> AN ACT TO EFFECTUATE IN A MORE RAPID AND COMPLETE MANNER THE ECONOMIC, SOCIAL, MORAL AND POLITICAL AND ADVANCEMENT OF THE NON-CHRISTIAN FILIPINOS OR NATIONAL CULTURAL MINORITIES AND TO RENDER REAL, COMPLETE AND PERMANENT THE INTEGRATION OF ALL SAID NATIONAL CULTURAL MINORITIES INTO THE BODY POLITIC, CREATING THE COMMISSION ON NATIONAL INTEGRATION CHARGED WITH SAID FUNCTIONS
>
> SECTION 1. It is hereby declared to be the policy of Congress to foster, accelerate and accomplish by all adequate means and in a systematic, rapid and complete manner the moral, material, economic, social and political advancement of the Non-Christian Filipinos, hereinafter called National Cultural Minorities, and to render real, complete and permanent the integration of all the said National Cultural Minorities into the body politic.

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

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

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

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

The 1987 Constitution reorients the State toward enabling indigenous peoples to maintain their identity. It declines articulating policies of integration and assimilation and transcends the 1973 Constitution's undertaking to "consider." **Instead, it commits to not only recognize, but also promote, "the rights of indigenous cultural communities."** It **expressly aims to "preserve and develop their cultures, traditions, and institutions.** It **elevates to the level of constitutional text terms such as "ancestral lands" and "customary laws."** Because the Constitution is the "fundamental and organic law of the land," **these terms' inclusion in the Constitution renders them integral to the Republic's being. Through the same inclusion, the State manifestly assents to the distinctiveness of indigenous peoples, and undertakes obligations concomitant to such assent.**

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

....

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

ii. Spectrum of IP rights

Conceptually, **IP rights** fall along a **spectrum**, the **cornerstone** of which is **their degree of connection to the land**.[71] Land is the **central element** of their existence.[72] Civil law land titles do not exist in its economic and social system. The concept of individual land ownership under our civil law is different and distinct from their rules on land ownership.[73]

Thus, normatively, under ***IPRA***:

> SECTION 4. Concept of Ancestral Lands/Domains. — Ancestral lands/domains shall **include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas** which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

And:

> SECTION 5. Indigenous Concept of Ownership. — **Indigenous concept of ownership** sustains the view that **ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity**. . . .

At **one end**, there are those **IP rights** which are ***practices, customs, and traditions integral to the distinctive IP culture*** of the group claiming the right.[74] The **"occupation and use of the land"** where the **activity is taking place**, however, is ***not "sufficient to support a claim of title*** to the land."[75] Nevertheless, **these activities receive constitutional protection**.[76]

In the **middle**, there are **activities** which, **out of necessity, take place on land** and indeed, **might be intimately related to a particular piece of land**.[77] Although a particular indigenous cultural community **(ICC)** may **not be able to demonstrate title to the land**, it may nevertheless have **a *site-specific right to engage in a particular activity***.[78] Even where an IP right exists on a tract of land to which the ICC in question does not have title, that ***right may well be site specific*, with the result that it can be *exercised only upon that specific tract* of land**.[79] For **example**, if an ICC demonstrates that **hunting on a specific tract of land** was an ***integral part of their distinctive culture*** then, even if the **right exists apart from title** to that tract of land, the IP right to hunt is nonetheless defined as, and limited to, the **right to hunt on the specific tract of land**.

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[71] *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, 2009 BCSC 1494 (CanLII), <http://canlii.ca/t/26fk1>, (last accessed on March 27, 2020); Prof. Mario Victor "Marvic" F, Leonen, "The Indigenous Peoples' Rights Act: An Overview of its Contents," PHILJA Judicial Journal (2002).
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] Supra note 57.
[77] *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, supra.
[78] *Id.*
[79] *Id.*

At the **other end of the spectrum**, there is the **IP title itself.**[80] **IP title** confers **more than the right to engage in site-specific activities** which are **aspects of the practices, customs, and traditions** of distinctive IP cultures.[81] **IP site-specific rights** can be made out even if **IP title** cannot; what **IP title** confers is the **right to the land itself.**[82]

iii. IP right to preserve cultural integrity as a free-standing right independent of IP claim or title to ancestral domains or lands

An **IP right to preserve cultural integrity** is **manifested** through an **activity** that is an **element** of a **practice, custom,** or **tradition** that is **integral to the distinctive culture** of the IPs claiming the right. This requires establishing the **existence of the ancestral practice, custom, or tradition advanced** as supporting the claimed right; confirming that the **ancestral practices, customs, or traditions** were **integral to** the **distinctive culture** of the **claimant's pre-contact in Philippine society**, *i.e.*, prior to contact with colonizers and non-IP Filipinos, *or* **subsequent thereto**, to the **survival** of the **distinctive culture** of the **claimant's ICC in Philippine society**; and proving that **reasonable continuity** exists **between** the **pre-contact** practice, or **post-contact** practice for the claimant's ICC's survival, **and** the **contemporary claim**.

An IP right to preserve cultural integrity **entitles** the right holder **to perform the practice** or **custom or tradition** in its **present form**. This means that **the same sort of activity** is **carried on** in the **modern economy by modern means**. To illustrate, the **right to harvest wood for the construction of temporary shelters** must be allowed to evolve into a **right to harvest wood *by modern means* to be used in the construction of *modern dwellings***. Here, petitioners strongly claim that their **IP right to preserve cultural integrity** entitled them to log the *dita* tree for building the communal toilet as a lawful exercise and manifestation of this IP right. As shown, this claim did not just come from thin air but from the bundle of their real constitutional and statutory right to cultural heritage.

iv. IP right to preserve cultural integrity in relation to or as a manifestation of IP claim or title to ancestral domains and lands

An **IP title** encompasses the **right to exclusive use and occupation of the land** held pursuant to that title **for a variety of purposes** including **non-**

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[80] *Id.*
[81] *Id.*
[82] *Id.*

traditional purposes.[83] **IP title** confers **ownership rights similar to** those associated with **fee simple**, including the **right to decide how the land will be used**; the **right of enjoyment and occupancy of the land**; the **right to possess the land**; the **right to the economic benefits of the land**; and **the right to pro-actively use and manage the land.**[84]

These rights and the other rights concomitant to an **IP title** are specified in the *IPRA*:

> CHAPTER III
> Rights to Ancestral Domains
>
> SECTION 7. Rights to Ancestral Domains. — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:
>
> 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;
>
> 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;
>
> c) Right to Stay in the Territories. — The **right to stay in the territory and not to be removed therefrom**. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;
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> ....

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[83] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (CanLII), [2014] 2 SCR 257, <http://canlii.ca/t/g7mt9>, retrieved on 2020-03-27.

[84] *Id.*

> e) Right to Regulate Entry of Migrants. — **Right to regulate the entry of migrant settlers and organizations into the domains**;
>
> ....
>
> g) Right to Claim Parts of Reservations. — The **right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common public welfare and service**; and
>
> h) Right to Resolve Conflict. — Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.
>
> SECTION 8. **Rights to Ancestral Lands**. — The right of ownership and possession of the ICCs/IPs to their ancestral lands shall be recognized and protected.
>
> a) Right to transfer land/property. — Such right shall include the **right to transfer land or property rights to/among members of the same ICCs/IPs**, subject to customary laws and traditions of the community concerned.
>
> b) Right to Redemption. — In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is **tainted by the vitiated consent** of the ICCs/IPs, or is transferred for an **unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer**.

But **IP title** is **not** the **same** as the concept of **ownership in the *Civil Code***. In his 2002 Philippine Judicial Academy (PHILJA) Judicial Journal article entitled "Introducing the Indigenous Peoples' Rights Act (IPRA)," one of the leading constitutionalists in the country, Professor Sedfrey M. Candelaria, clarified that the **civil law concept of land ownership** is **non-existent within the IP sector**.

Traditionally, **under civil law**, ownership over property carries with it a bundle of rights comprised of *jus possidendi*, *jus abutendi*, *jus dispodendi*, *jus utendi*, *jus fruendi*, *jus vindicandi*, and *jus accessiones*. In contrast, **IP title** is ***sui generis*** as it carries an **important restriction** — it is **collective** and **communal title** held **not only for the present generation but for all succeeding generations**.[85] What IPs have is the **concept of mutual sharing of resources wherein no individual, regardless of status, is without sustenance**. This means the land and its resources **cannot be alienated or encumbered** except to the State *and* in ways that would **prevent future generations** of the group from using and enjoying it.[86] **Nor** can the **land be developed** or **misused** in a way that would **substantially deprive future generations** of the benefit of the land[87] though some changes even permanent

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[85] *Id.*
[86] *Id.*
[87] *Id.*

changes to the land may be possible. These uses must also be **reconciled with** the **ongoing communal nature** of the IPs or ICCs' attachment to the land.[88]

Professor (now Justice) Leonen, a highly esteemed scholar in constitutional law and the law on land and natural resources, **shares** this understanding about the foregoing limitations to the ***sui generis*** IP title. He **underscores** this **limitation** by **highlighting** the **indigenous concept of ownership** as expressed in Section 5 of *IPRA* that "ancestral domains and all resources found therein shall serve as the **material bases of [the IPs'] cultural integrity**," and **not generally for exploitative purposes**, and that ancestral domains including sustainable traditional resource rights are the IP's **private but community property** which **belongs to all generations** and therefore **cannot be sold, disposed** or **destroyed**.[89] He stressed that *IPRA* introduced a **new package of ownership rights distinct from those under civil law**. ***Subject to this limitation***, IP title entitles the **right** to **choose the uses** to which the land is put **and** to **enjoy its economic fruits**.[90]

This **IP concept of ownership** is based on **customary law** and traced its origin to time immemorial **"native title."** Section 5 of *IPRA* strengthened these customary practices by emphasizing that ancestral lands and domains are the ICCs' and IPs' **"private but community property which belongs to all generations."** Section 56 of the *IPRA* even recognized the IPs' vested rights based on their existing property regime. With the passage of *IPRA*, formal recognition of the IPs' **"native title"** was attributed to their ancestral lands and domains. A Certificate of Ancestral Domain Title (CADT) may now be issued by the NCIP to ICCs and IPs.

v. Reconciling IP rights to preserve cultural integrity *and* ***claim or title to ancestral domains and lands with the State's jura regalia and police power***

The State's ***jurā regalia*** is affirmed in Article XII, Section 2, of the ***Constitution***:

> 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

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[88] *Id.*

[89] Prof. Mario Victor "Marvic" F, Leonen, "The Indigenous Peoples' Rights Act: An Overview of its Contents," PHILJA Judicial Journal (2002).

[90] Supra note 83.

> 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.

This doctrine is a confirmation of the State's ownership of the lands of the public domain and the patrimony of the nation. By virtue of this doctrine, the State **acquired radical** or **underlying title** to all the lands in the country.[91] This **title**, however, is **burdened** by the **pre-existing legal rights of IPs** who had occupied and used the land prior to birth of the State. Hence, the **content** of the **State's underlying title** is **what is left** when **IP title is subtracted** from it.[92] **IP title** gives the **right to exclusive use and occupation** of the land for a variety of purposes **not confined** to traditional or distinctive uses.[93] It is a **beneficial interest** in the land – the **right to use it** and **profit from its economic development**. But **IP title** is subject to the **communal limitations** as discussed above.[94]

IP rights to preserve cultural integrity and claim or title to ancestral domains and land are **subject to** the **State's police power**. **Section 77** of PD 705, as amended is an **exercise of police power**, the **validity** of which is **not negated** by the fact that the objects thereof are **owned** by those charged with the offense. **Rather**, a police power measure is judged by the traditional **test** (1) "[t]he interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and (2) [t]he means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."[95] Police power **trumps** objections on the basis of ownership.

vi. Iraya-Mangyans' practice of logging a dita tree and building a communal toilet as probably indicative of the IP right to preserve cultural integrity and to claim or title to ancestral domains or lands

Iraya-Mangyans in general are **settled communities**. But their culture as IPs was **drastically affected** when they were **evicted** from their **ancestral domains** and **lands**. They became **nomads who had no permanent domains, until they were again re-settled** pursuant to the recognition of their ancestral domains and lands. Thus:

> **Project: Communal Toilets**
>
> The Mangyan people **used to be the dominant dwellers** of the entire island including the lowlands, but ever since **more and more foreign settlers got in and started claiming (if not grabbing)** majority of the land

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[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Acosta v. Ochoa*, G.R. No. 211559, October 15, 2019.

> area, **most of the Mangyans were driven** to the remote mountains and marshlands. Aside from **losing their ancestral lands** to the foreign settlers, the **island's natural resources** like the forests and rivers **got abused** causing the fast deterioration of vegetation and wildlife. These **adverse developments** throughout the history of the land **have affected the lifestyle** of the natural inhabitants – they **became scavengers** in their own land, they **became nomads** having **no permanent domain**, moving from place to place to survive the day.
>
> Being **nomadic**, their **temporary settlements (haron) developed in them a culture of less desirable hygiene**. This common practice in their household have cause epidemic diseases and death. But **this hygiene problem was not limited to** those Mangyan communities who are **still nomadic** because even **those other communities who were blessed to be awarded with protected domains** under the provision of National Council for Indigenous People (NCIP) and the local government were **not able to withdraw themselves from the bad practice**.
>
> [Drops of Faith Christian Missions has] seen the **importance of attending** to this perilous issue and so we **came up with a project to start building communal toilets in those Mangyan communities** which have secured dwelling permanency in their ancestral land.[96]

Taking account of petitioners' distinctive culture as IPs and their displacement from the ancestral domains and land, their **efforts to build communal toilets** came about most likely as part of the practice intended as a means for them to survive as an ICC as result of their displacement and thereafter re-settlement.[97]

But this activity did **not** arise solely because of the Mangyans' dispossession of their ancestral domains and lands, though as pointed out above this may have been *probably* the immediate cause for the need to erect communal toilets. It has always been the case that **communal structures including communal toilets have characterized the pre-colonization culture** of the Mangyans.[98] The **use of communal toilets** has always been a **cultural practice** because the **water source** is **communal** and it has **not** been **feasible** to build a toilet for every household.[99]

While the **established cultural practice** which continued from pre-contact and post-contact as a survival means is **communal building**, including those of **communal toilets**, the **logging of the *dita* tree**, pursuant to

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[96] Drops of Faith Christian Missions, at https://dfcmtribalmissions.wordpress.com/tag/mangyan-tribes/page/3/, (last accessed March 29, 2020).

[97] Kristine Askeland, Torill Bull, Maurice B. Mittelmark, Understanding how the poorest can thrive: A case study of the Mangyan women on Mindoro, Philippines (Master's Thesis, May 2010), at http://dspace.uib.no/bitstream/handle/1956/4277/69634922.pdf?sequence=1&isAllowed=y (last accessed on September 21, 2020).

[98] The Mangyans, Our Brothers, at http://www.newsflash.org/2004/02/tl/tl012695.htm (last accessed on September 21, 2020); Kapit-Bisig Laban sa Kahirapan-Comprehensive and Integrated Delivery of Social Services, at https://ncddp.dswd.gov.ph/site/feature_profile/237 (last accessed on September 21, 2020); Kristine Askeland, Torill Bull, Maurice B. Mittelmark, supra; The Iraya Mangyan Village in Puerto Galera, at http://www.mariaronabeltran.com/2019/01/the-iraya-mangyan-village-in-puerto.html, (last accessed on March 29, 2020).

[99] *Id.*

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the **communal** purpose and the instructions of petitioners' elders and the assurances of a **non-governmental organization** and the **NCIP**, are *more likely than not* **necessarily connected** to this **pre- and post-colonial cultural practices** and an **integral part** of its **continuity to the present**. The reason for this is that since time immemorial, *probably* this **has been how the Mangyans**, including petitioners herein, **have been able to source the materials** for their communal building activities.

To further support their claim that they were **justified** in **logging the *dita* tree**, petitioners contend as well that even prior to the effectivity of the *IPRA* on March 30, 1998, the Iraya-Mangyans had **already applied for a Certificate of Ancestral Domain Claim (CADC)**.[100] As of March 31, 2018, the NCIP data show that CADC No. R04-CADC-126 dated June 5, 1998 was issued to the Iraya-Mangyan IP and is **pending conversion to a Certificate of Ancestral Domain Title (CADT)**.[101] Although the conversion of the CADC to a CADT is still pending, we take **judicial notice** that the **nearly perfected claim** covers the municipalities of Baco, San Teodoro, and Puerto Galera in Oriental Mindoro with a land area of 33,334 hectares.[102]

A CADC is the State's formal recognition of an IP/ICCs' claim to a particular traditional territory which the IP/ICC has **possessed and occupied, communally or individually, in accordance with its customs and traditions** since time immemorial.[103] The issuance of a CADC involves a painstaking process of submitting documents and testimonies attesting to the **possession or occupation of the area since time immemorial by such indigenous community** in the concept of owners.[104]

The fact that a certificate of title or CADT has yet to be issued to the Iraya-Mangyan IPs does not diminish, much less, negate their **communal ownership** of the land in question. After all, a paper title is just proof of

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[100] Supra note 1.

[101] https://www.doe.gov.ph/sites/default/files/pdf/eicc/cadt-region04, (last accessed: January 22, 2020).

[102] Section 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, ***the official acts*** of legislative, ***executive*** and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. *(Rule 129 of the Revised Rules of Court)*

[103] DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims; DENR AO No. 29-96, Rules and Regulations for the Implementation of Executive Order 263, Otherwise Known as the Community-Based Forest Management Strategy (CBFMS); Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan; Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan; DENR AO No. 25-92, National Integrated Protected Areas System (NIPAS) Implementing Rules and Regulations; NCIP AO No. 04-12, Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands of 2012.

[104] See *e.g.*, DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims; Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan.

communal ownership not a source of ownership.[105] ***Lamsis v. Dong-E***[106] relevantly states:

> The application for issuance of a Certificate of Ancestral Land Title pending before the NCIP is akin to a registration proceeding. It also seeks an official recognition of one's claim to a particular land and is also *in rem*. **The titling of ancestral lands is for the purpose of "officially establishing" one's land as an ancestral land. Just like a registration proceeding, the titling of ancestral lands does not vest ownership upon the applicant but only recognizes ownership that has already vested in the applicant by virtue of his and his predecessor-in-interest's possession of the property since time immemorial.**[107]

Even without yet a paper title, the State has **already formally recognized** the rights of the Iraya-Mangyan IPs **approaching title** to use and enjoy their ancestral domains through their CADC.

The State has also affirmed that **holders of a CADC have substantial rights** and obligations, to wit:

> **A. Rights**
>
> 1. The right to occupy, cultivate and utilize the land and all natural resources found therein, as well as to reside peacefully within the domain, subject to existing laws, rules and regulations applicable thereto;
> 2. The right to benefit and to share the profits from the allocation and utilization of natural resources within the domain;
> 3. The right to regulate in coordination with the Local Government Units concerned, the entry of migrant settlers, non-government organizations and other similar entities into the domain;
> 4. The right to negotiate the terms and conditions for the exploitation of natural resources in the area for the purpose of ensuring the observance of ecological and environmental protection and conservation measures pursuant to national and customary laws, rules and regulations;
> 5. The right to actively and collectively participate in the formulation and implementation of government projects within the domain;
> 6. The right to lay claim on adjacent areas which may, after a more careful and thorough investigation, be proven to be in fact part of the ancestral domain;
> 7. The right to access and availment of technical, financial and other form of assistance provided for by the Department of Environment and Natural Resources and other government agencies;
> 8. The right to claim ownership of all improvements made by them at any time within the ancestral domain.
>
> **B. Responsibilities** — The community claimants shall have the responsibility to:
>
> 1. Prepare a Management Plan for the domain in consonance with the provisions of Article VI hereof;

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[105] See *Lim v. Gamosa*, 774 Phil. 31 (2015).
[106] 648 Phil. 372, 393-394 (2010).
[107] Citations omitted.

2. Establish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain;
3. Restore, preserve and maintain a balanced ecology in the ancestral domain by protecting flora, fauna, watershed areas, and other forest and mineral reserves;
4. Protect and conserve forest trees and other vegetation naturally growing on the land specially along rivers, streams and channels;
5. Preservation of natural features of the domain.[108]

A CADC **affirms practically the same rights** as those recognized in the *IPRA* as incidents of IP title. As **possessors of a CADC**, the Iraya-Mangyan IPs, including herein accused, have been **confirmed to have the right to the exclusive communal use and occupation of the ancestral domain** covering a designated territory within the municipality of San Teodoro for a variety of purposes, including limited non-traditional purposes and **the right to enjoy its economic fruits**.

There are however, as stated, **clear limitations** to these rights – the exclusive uses of the ancestral domain should be **consistent with the communal and ongoing nature of the IPs' attachment to the ancestral domain**, the **preservation of the IPs' cultural integrity**, and the **ability of future generations to benefit from it**. These limitations can be inferred from the IPs' responsibility above-mentioned to ***"[e]stablish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain,"*** together with *IPRA*'s indigenous concept of ownership 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.

While **ownership** itself is **not** a defense to a prosecution for violation of Section 77, PD 705 as amended, as **police power invariably trumps ownership**, the subject **IP rights** are **not** themselves the same as **the ownership proscribed as a defense** in this type of offense. The IP rights are to preserve their cultural integrity, primordially a **social** and **cultural** and also a **collective** right.

On the other hand, the **claim** or **title** to ancestral domains and land is ***sui generis* ownership** that is curiously **identical** to the **purpose** for which Section 77 as a police power measure was legislated – *the protection and promotion of a healthy and clean ecology and environment through sustainable use of timber and other forest products*.

Thus, the **purpose** for requiring State authority before one may cut and collect timber **is claimed to have been satisfied** by the ***sui generis* ownership** which IPs possess. This **parallelism** all the more **supports** our conclusion

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[108] DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims.

debunking on **reasonable doubt** the claim that petitioners **intended** and **voluntarily** cut and collected the *dita* tree **without lawful authority**. Justice Caguioa expresses the same view which we quote:

> .... the **self-limiting and tight window within which the indigenous peoples may cut trees** from their own ancestral domain without prior permission is **narrow enough as to sidestep any need to reconcile rights granted by IPRA *vis-à-vis* forestry regulations**. This supports the **primary aspiration that animates the IPRA, that is to restore ICCs/IPs to their land and affirm their right to cultural integrity and customary ways of life, with socio-cultural and legal space** to unfold as they have done since time immemorial....
>
> I submit that perhaps, if not with this case, a **tightrope** must eventually be walked with respect to the **issues of environmental sustainability and indigenous peoples' rights, without having to weaken one to enable the other**.
>
> For as affirmed by the IPRA, the **cultural identity of the indigenous peoples has long been inseparable from the environment** that surrounds it. There is, therefore, **no knowable benefit in an indigenous custom or cultural belief that truthfully permits plunder of the environment** that they hold synonymous with their collective identity. **No legally sound argument may be built to support the premise that we ought not affirm the freedom of these indigenous peoples because they might exercise such freedom to bulldoze their own rights.**
>
> That the experience on the ground shows abuses from unscrupulous non-members of ICCs/IPs of ancestral domains does not merit that the very same indigenous communities that have been taken advantage of be made to pay the highest cost of relinquishing what little control that was restored to them by law.

Indeed, there is reasonable doubt as to the existence of petitioners' IP right to log the *dita* tree for the construction of a communal toilet for the Iraya-Mangyan ICC. It is engendered by the **more expansive definition of authority under the law**, the bundle of **petitioners' IP rights both under the Constitution and IPRA,** and a host of others like the ones mentioned by Justice Leonen in his *Opinion*, the sundry **administrative regulations** which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' ***sui generis*** ownership of ancestral domains and lands, the **international covenants** like the *United Nations Declaration on the Rights of Indigenous Peoples*, of which our country is a signatory, and **Philippine** and **international jurisprudence** which identifies the forms and contents of IP rights. In addition, we have **the ever growing respect, recognition, protection, and preservation accorded by the State to the IPs, including their rights to cultural heritage and ancestral domains and lands**.

This finding of reasonable doubt **absolves not only petitioners but also accused Demetrio Masanglay *y* Aceveda** of criminal liability for the offense charged. Section 11(a), Rule 122 of the Rules of Court ordains:

Section 11. *Effect of appeal by any of several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

Considering the afore-cited rule, a favorable judgment - as here - shall benefit accused Demetrio who did not appeal. For as stated, an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties.[109] Thus, although it is only petitioners who persisted with the present appeal, the Court may still pass upon the issue of whether their co-accused Demetrio should also be exonerated, especially since the evidence and arguments against and the conviction of petitioners, on the one hand, and accused Demetrio, on the other, are inextricably linked.[110]

So must it be.

Disposition

ACCORDINGLY, the petition is **GRANTED**. The Decision dated May 29, 2015 and Resolution dated April 11, 2016 of the Court of Appeals in CA-G.R. CR No. 33906 are **REVERSED** and **SET ASIDE.** Petitioners **DIOSDADO SAMA *y* HINUPAS, BANDY MASANGLAY *y* ACEVEDA and accused** Demetrio Masanglay *y* Aceveda are **ACQUITTED on reasonable doubt** in Criminal Case No. CR-05-8066.

SO ORDERED.

AMY C. LAZARO- JAVIER
Associate Justice

WE CONCUR:

Pls. see dissenting opinion

DIOSDADO M. PERALTA
Chief Justice

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[109] See *People v. Merced*, 827 Phil. 473, 492 (2018).
[110] See *Lim v. Court of Appeals*, 524 Phil. 692 (2006)

Please see Separate Concurring Opinion

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

See separate concurring opinion

MARVIC M.V.F. LEONEN
Associate Justice

Please See Separate Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

I join the Dissent of Chief Justice Peralta

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

Please see separate Concurring Opinion

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

Pls. see dissenting opinion

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DE LOS SANTOS
Associate Justice

I join the separate concurring opinion of J Zalameda

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

DIOSDADO M. PERALTA
Chief Justice