

THE INDIGENOUS PEOPLES RIGHTS ACT (IPRA):
A VEHICLE FOR LIBERTY AND PROSPERITY

By:

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Looking back to the past, we cannot but recall with indignation the injustices our forefathers had gone through during the colonial rule, first under the Spaniards, and then under the Americans. The indigenous peoples (IPs), especially those in the Cordillera region, withdrew to some remote uplands, not as an act of surrender, but to avoid any association with the Spaniards. It was a little different under the American colonial rule because, as a form of appeasement, the Americans adopted a policy of benevolent assimilation² towards the Filipinos. But injustices still abounded.

History always leaves a mark behind. One of the most enduring influences our colonizers had imprinted on our legal system is the *Jura Regalia*³ or Regalian Doctrine. *Republic v. CA et al., No. L-43938, April 15, 1988, 160 SCRA 228*⁴, states the all-encompassing nature of the Regalian Doctrine in these words:

“The Regalian Doctrine reserves to the State all natural wealth that may be found in the bowels of the earth even

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² Pres. William McKinley issued on Dec. 21, 1998 Benevolent Assimilation Proclamation about the Philippines.

³ Also “*Jure Regalia*”.

⁴ Consolidated with *Benguet Consolidated, Inc. v. CA et al., No. L-44081*; and *Atok-Big Wedge Mining Co. v. CA et al., L-44092*.

if the land where the discovery is made be private.”⁵

To be sure, this doctrine, like Christianity itself, was brought to our shores by the Spanish conquistadores. The Spanish king is undoubtedly regarded to be the owner of all Spanish territories and colonies, including all things that are in them. Under this doctrine, the validity of a land title could be upheld only if it could be shown that it originated from a grant or sale from the Crown or, in our present time, the State. When the Americans came, they enacted several land laws based on the Regalian Doctrine to solidify their control over Philippine mineral and natural resources.

This doctrine, however, has proven to be very damaging to the indigenous peoples because their concept of landownership derives its existence not from the law, but from long-held tradition. Owning a land they can call their home is, for them, a birthright. Their affinity is to their land. Take away their land from them, and you take away life itself. The notion of separable or identifiable private property has not existed in their communities because they believe in the common use and enjoyment of their lands. *Jura Regalia* is not in conformity with their beliefs. It is simply contrary to what they hold to be agrarian justice.

The colonizers had long been gone, but the Regalian Doctrine that they left behind continues to put unjustifiable restrictions on landownership by the indigenous peoples. For example, Presidential Decree 705, issued by President Ferdinand Marcos during the martial law years, declares that “(N)o land of the public domain eighteen per cent (18%) in slope or over shall be classified as alienable and disposable” This means that all lands with a slope of 18% or more are public lands. This provision of law has gravely affected the IPs,

⁵ 160 SCRA 228, at p. 448.

especially in the Cordillera region where there is almost no land with a slope of less than 18%, since the region is, for the most part, mountainous. After Marcos was toppled down and a new regime was established, the Filipino people adopted a new constitution, but the Regalian Doctrine did not go away. It is still safely ensconced in Section 2, Article XII of the 1987 Constitution.

Meanwhile, the struggle of the IPs for recognition of their rights to their land has continued. Even with the clear intonation in Section 22, Article II of the 1987 Constitution that “(T)he State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development,” displacements of IPs from their lands continue unabated. To preserve their identity as a people, to protect their heritage and culture which are interwoven with landownership, they have learned to fight back and refuse to surrender their land which they believe rightfully belongs to them. *Bagi yu ti papel, ngem bagi mi ti daga* (loosely translated, “The title is yours, but the land is ours”) is a popular expression among the IPs of the Cordillera. These words became a slogan at the height of the Chico dam dispute during the Marcos years. Some Kalinga tribal leaders and elders were among the defenders of the Chico River, as they vigorously opposed the construction of a mega dam during the martial law regime. Those who were already old enough at that time were witnesses to the fact that the concerted efforts of the affected indigenous communities of Kalinga and Mountain Province, their single-minded audacity against the might of the central government, stopped the construction of the Chico River dam projects.

The case of *Cariño vs. Insular Government* [212 U.S., 449] is undeniably a breakthrough in the fight for recognition of indigenous peoples’ rights to their land. In 1901, Mateo Cariño, an Ibaloi, filed a petition for the titling of a parcel of land with an

area of 148 hectares that he, by himself and through his predecessors, had been occupying as owners since time immemorial. This parcel of land included most of the John Hay military reservation in Baguio City. The Court of First Instance denied registration because, according to it, the land was within the US military reservation. The Supreme Court of the Philippines affirmed the dismissal. But in a decision that was to become a landmark, or a turning point, in Philippine jurisprudence, the United States Supreme Court reversed the Philippine Supreme Court and held that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.

The decision in this case, which came to be known as the Mateo Cariño Doctrine or the Native Title Doctrine, was the start of official recognition of the rights of indigenous peoples over their lands. This doctrine has produced ripple effects across the globe as indigenous cultural communities in other countries have adopted it as their own.

The Mateo Cariño Doctrine puts into serious doubt the applicability of the Regalian Doctrine because it holds that land regarded by the tribal people as their own by native customs and long association had ceased to be public land. Said the US Supreme Court:

“It is hard to believe that the United States was ready to declare in the next breath that ‘any person’ did not embrace the inhabitants of Benguet, or that it meant by ‘property’ only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it

proposed to treat as public land what they, by native custom and by long association, - one of the profoundest factors in human thought, - regarded as their own.”

As to the effect of possession of land under a claim of private ownership, *Cariño* teaches:

“Every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt.”

That was more than a century ago. Since then, several cases have been decided by the Supreme Court, either citing *Cariño* or reinforcing the doctrine enunciated therein. These cases may fittingly be referred to as progenies of *Mateo Cariño*.

Among such cases is *J. H. Ankron v. The Government of the Philippine Islands*, No. 14213, Aug. 23, 1919, 40 Phil. 10, where the Supreme Court, through Associate Justice E. Finley Johnson, held that “the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown.”⁶ Thus,

⁶ 40 Phil. 10, at p. 17.

where the land is agricultural public land, it may be the subject of a petition for registration.

Abaoag v. Director of Lands, No. 20875, Dec. 13, 1923, 45 Phil. 518, is closer to home, if the basis is the physical proximity of its location, then known as Alava, to the Cordillera region. In 1884, about 30 “Bagos” or Igorots or non-Christians, some of them were the appellants in this case and the others their descendants, were given by the *gobernadorcillo* and *principalia* an unoccupied and unimproved public land with an area of 77 hectares, 40 ares, in the town of Alava (now Sison, Pangasinan) for them to occupy and cultivate. Since 1884, they and their ancestors had been in open, continuous, exclusive, and notorious possession and occupation of the land, believing in good faith that they were the owners thereof. On February 28, 1919, they filed a petition in the Court of First Instance of Pangasinan for registration of their land under the Torrens system. On motion of the oppositors, alleging that petitioners had not presented proof sufficient to show that they were entitled to the registration of the land, the CFI dismissed their petition. Reversing the CFI, the Supreme Court held:

“In view of the doctrine announced by the Supreme Court of the United States in the case of *Cariño vs. Insular Government*, we are forced to the conclusion that the lower court committed the errors complained of by the appellants in dismissing the petition.”

Then, there is *Valentin Susi v. Angela Razon et al., No. 24066, Dec. 9, 1925, 48 Phil. 424*. Although this action is for annulment of the sale made by the Director of Lands in favor of Angela Razon, it stresses more forcefully the doctrine laid down in *Cariño vs. Insular Government*. The land in question was

located in Pampanga. In 1880, Nemesio Pinlac sold the land to Apolonio Garcia and Basilio Mendoza who, after having been in possession thereof for eight years, in turn, sold it to Valentin Susi. On August 15, 1914, Angela Razon applied to the Director of Lands for the purchase of the land. Despite Susi's opposition, the Director of Lands sold the land to Razon. By virtue of the sale, the Register of Deeds of Pampanga issued a certificate of title to Razon. Susi then filed an action in the Court of First Instance of Pampanga, praying for judgment: (a) declaring him the sole and absolute owner of the land; (b) annulling the sale made by the Director of Lands in favor of Angela Razon; and (c) ordering the cancellation of the certificate of title issued to Angela Razon. After trial, the CFI rendered judgment granting the reliefs prayed for in the complaint. The Director of Lands appealed, but the Supreme Court ruled against the Director of Lands and held, "... the doctrine laid down by the Supreme Court of the United States in the case of *Cariño vs. Insular Government* [212 U.S., 449] is applicable here."⁷ Echoing the eloquence of *Cariño*, the Supreme Court said:

"... when Angela Razon applied for the grant in her favor, Valentin Susi had already acquired, by operation of law, not only a right to a grant, but a grant of the Government, for it is not necessary that certificate of title should be issued in order that said grant may be sanctioned by the courts, an application therefor is sufficient, under the provisions of section 47 of Act No. 2874. If by legal fiction, Valentin Susi had acquired the land in question by a grant of the State, it had already ceased

⁷ 48 Phil. 424, at pp. 427-228.

to be of the public domain and had become private property, at least by presumption, of Valentin Susi, beyond the control of the Director of Lands. Consequently, in selling the land in question to Angela Razon, the Director of Lands disposed of a land over which he had no longer any title or control, and the sale thus made was void and of no effect, and Angela Razon did not thereby acquire any right.”⁸

Andres Manarpaac et al. v. Rosalino Cabanatan et al., No. L-23300, Oct. 31, 1967, 21 SCRA 743, is a direct appeal to the Supreme Court from the order of dismissal issued by the Court of First Instance of Ilocos Norte. Twenty-four plaintiffs, all surnamed Manarpaac, filed an action for the annulment of the free patent and certificate of title issued to Rosalino Cabanatan. Defendant Cabanatan filed a motion to dismiss on the ground that plaintiffs’ action had already prescribed. The trial court granted the motion and dismissed the action. Relying on *Cariño* and *Susi*, the Supreme Court set aside the order of dismissal and ruled:

“... it clearly appears that the plaintiffs have been, *since time immemorial in possession as owners of the disputed land, have declared the land for tax purposes in the names of two of them and have built their houses on the land*, but that through fraud and irregularity, defendant Rosalino Cabanatan succeeded in securing for himself, the certificate of title in

⁸ 48 Phil. 242, at p. 428.

question. The foregoing recital of facts in the complaint are sufficient averment of ownership. Possession since time immemorial, carries the presumption that the land had never been part of the public domain, or, that it had been a private property even before the Spanish conquest.”⁹ (Italics in the original text)

Again, in *Herico vs. Dar, No. L-23265, Jan. 28, 1980, 95 SCRA 437*, the Supreme Court upheld *Cariño* and reiterated its ruling in *Susi* in this wise:

“x x x under the provisions of Republic Act No. 1942, which the respondent court held to be inapplicable to the petitioner’s case, with the latter’s proven occupation and cultivation for more than 30 years since 1914, by himself and by his predecessors-in-interest, title over the land has vested on petitioner as to segregate the land from the mass of public land. Thereafter, it is no longer disposable under the Public Land Act as by free patent: This is as provided in Republic Act No. 1942, which took effect on June 22, 1957, amending Section 48-b of Commonwealth Act No. 141 ...

As interpreted in several cases when the condition as specified in the foregoing provision are complied with, the possessor is deemed to have

⁹ 21 SCRA 743, at p. 747.

acquired, *by operation of law*, a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of.”¹⁰

The Native Title Doctrine, however, encountered rough sailing in *Manila Electric Company v. Castro-Bartolome*, No. L-49623, June 29, 1982, 114 SCRA 799, where there was a serious disagreement regarding the application of the jurisprudential rule laid down in *Cariño* and *Susi*. In this case, Meralco, a domestic corporation, filed an application with the Court of First Instance of Rizal for the confirmation of its title to two lots with a total area of 165 square meters. After trial, the trial court dismissed Meralco’s application on the ground that Meralco was not qualified to apply for the registration of the land since under section 48(b) of the Public Land Law only Filipino citizens or natural persons can apply for judicial confirmation of their imperfect titles to public land. The trial court assumed that the land subject of the application was a public land. Meralco contended that the land had become a private land through long possession in the concept of an owner for more than 30 years by its predecessors-in-interest, namely: Olimpia Ramos, Rafael Piguing and Minerva Inocencio. To backstop its argument, it pointed to the decisional rule laid down in *Cariño* and *Susi*. But the majority ruled that *Cariño* and *Susi* were not applicable because Meralco “does not pretend that the Piguing spouses and their predecessor had been in possession of the land since time immemorial.”¹¹ The High Tribunal further stated that “... until the certificate of title is issued, a piece of land, over which an

¹⁰ 95 SCRA 437, at p. 443.

¹¹ 114 SCRA 799, at p. 807.

imperfect title is sought to be confirmed, remains public land.”¹²
In his dissent, Justice Teehankee wrote:

“This dissent is based on the failure of the majority to adhere to established doctrine since the 1909 case of *Cariño* and the 1925 case of *Susi* down to the 1980 case of *Herico, infra*, pursuant to the Public Land Act, as amended, that where a possessor has held the open, exclusive and unchallenged possession of alienable public land for the statutory period provided by law (30 years now under amendatory Rep. Act No. 1942, approved on June 22, 1957), the law itself mandates that the possessor ‘shall be *conclusively presumed* to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title’ and ‘*by legal fiction* [the land] has already *ceased to be of the public domain and has become private property.*”¹³ (Italics in the original text)

The majority ruling in *Manila Electric Company v. Castro-Bartolome*, shaky at best, is decidedly a throwback to the Regalian Doctrine. But less than five years later, it was abandoned when the Supreme Court promulgated its decision in *Director of Lands v. IAC and ACME Plywood & Veneer Co., Inc., No. L-73002, Dec. 29, 1986. 146 SCRA509*. In this case of *ACME*, Mariano and Acer Infiel, both members of the national cultural minorities, sold to *ACME* in 1962 five parcels of

¹² *Ibid.*

¹³ *Id.*, at p. 813.

land with a total area of 481,390 square meters located in Isabela. It was alleged that possession by the Infiels of these parcels of land started before the Philippines was discovered by Magellan as the ancestors of the Infiels had possessed and occupied the land from generation to generation. The Court of First Instance of Isabela rendered a decision in favor of ACME ordering registration of the land. This decision was later affirmed by the Intermediate Appellate Court (now the Court of Appeals). But the Director of Lands appealed to the Supreme Court. In dismissing the appeal, the Supreme Court held:

“... the question before this Court is whether or not the title that the Infiels had transferred to Acme in 1962 could be confirmed in favor of the latter in proceedings instituted by it in 1981 when the 1973 Constitution was already in effect, having in mind the prohibition therein against private corporations holding lands of the public domain except in lease not exceeding 1,000 hectares.

The question turns upon a determination of the character of the lands at the time of institution of the registration proceedings in 1981. If they were still part of the public domain, it must be answered in the negative. If, on the other hand, they were then already private lands, the constitutional prohibition against their acquisition by private corporations or associations obviously does not apply.”¹⁴

¹⁴ 146 SCRA 509, at p. 516.

Reiterating the decisional rules laid down in *Cariño* in 1909, *Susi* in 1925, *Herico* in 1980, and other cases such as *Manarpac*, the Supreme Court pithily declared:

“The Court, in the light of the foregoing, is of the view, and so holds, that the majority ruling in *Meralco* must be reconsidered and no longer deemed to be binding precedent. The correct rule, as enunciated in the line of cases already referred to, is that alienable public land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period of (30 years under The Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, *ipso jure*.”¹⁵

Stressing the importance of *Cariño* as a jurisprudential trailblazer, the Supreme Court gave these very kind words in *ACME*: “The main theme (referring to conversion of public land into private land by long possession) was given birth, so to speak, in *Cariño* ...”¹⁶ These words are unquestionably a tribute to Mateo Cariño and to all IPs.

The present time is a witness to history, as more cases dealing on the same subject keep on stressing the doctrine enunciated in *Cariño* that one wonders whether the Regalian Doctrine still holds some validity.

In the relatively recent case of *Pineda, et al. vs. CA, G. R. 39492, March 23, 1990, 183 SCRA 602, at p. 607*, the Supreme

¹⁵ *Id.*, at p. 522.

¹⁶ *Id.*, at p. 518.

Court again ruled that alienable public land held by a possessor, personally, or through his predecessor-in-interest, openly, continuously and exclusively for the prescribed period (30 years under Section 48(b) of Com. Act 141, as amended by Rep. Act 1942 and Rep. Act 3872) is converted to private property by mere lapse or completion of said period *ipso jure*.

And in the more recent case of *Republic of the Philippines et al. v. CA, et al.*, G.R. No. 48327, Aug. 21, 1991, 201 SCRA 1, private respondents, who were the applicants for land registration in the court below, were members of the Ibaloi tribe. The land subject of their application is located in Beckel, La Trinidad, Benguet. This case called into application the provision of Sec. 48(c) of C.A. No. 141, which was added on June 18, 1964 by R.A. No. 3872, making a distinction between applications for judicial confirmation of imperfect titles by members of the national cultural minorities and applications by other qualified persons in general. Said the Supreme Court:

“Members of cultural minorities may apply for confirmation of their title to lands of the public domain, whether disposable or not; they may therefore apply for public lands even though such lands are legally forest lands or mineral lands of the public domain, so long as such lands are in fact suitable for agriculture. The rest of the community, however, ‘Christians’ or members of mainstream society may apply only in respect of ‘agricultural lands of the public domain,’ that is, ‘disposable lands of the public domain’ which would of course exclude lands embraced within

forest reservation or mineral land reservations.”¹⁷

Given the pronouncements of the High Tribunal in all the cases already mentioned, it is clear that the Mateo Cariño Doctrine is on a collision course with the Regalian Doctrine. While the Regalian Doctrine holds that all lands, and all things found in them, belong to the State, the Mateo Cariño Doctrine embraces the principle that possession by a private individual since time immemorial carries the presumption that the land had never been part of the public domain, or, that it had been a private property even before the Spanish conquest.

Then, in 1997, in one bold stroke, Congress enacted R.A. No. 8371, otherwise known as *The Indigenous Peoples Rights Act of 1997*, or simply IPRA. While this enactment may not properly be called a progeny of *Mateo Cariño* because its source is the legislature, it stresses more forcefully the meaning of “native title” as it recognizes the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domains and ancestral lands. Native title, according to this law, “refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest.”¹⁸ Thus, the ICCs/IPs may be issued certificates of ancestral domain title (CADTs) and certificates of ancestral land title (CALTs).

Note that a CADT is issued in the name of the community concerned.¹⁹ Although ancestral domains are private, they are the community property of the ICCs/IPs and, therefore, they

¹⁷ 201 SCRA 1, at pp. 10-11.

¹⁸ R.A. No. 8371, Chapter II, Sec. 3(l)

¹⁹ R.A. No. 8371, Chapter VIII, Sec. 52(j)

cannot be sold or disposed of.²⁰ On the other hand, ancestral lands may be sold or transferred to members of the same ICCs/IPs or even to a non-member. If sold or transferred to a non-member, the seller or transferor may redeem it within a period of 15 years from the date of transfer on ground of vitiated consent or unconscionable consideration.²¹ Thus, even if the sale is to a non-member, but the consent of the seller is not vitiated or the consideration is not unconscionable, there can be no redemption.

More significantly, ICCs/IPs have the right to the utilization, control, development, management, and conservation of natural resources within their ancestral domain as stated in Sec. 7, Chapter III of R.A. No. 8371. And to ensure the preservation of the lands for themselves, Section 3 of the Revised Guidelines on Free and Prior Informed Consent requires their free and prior informed consent before a concession, license, permit or lease, production-sharing agreement, or other undertakings affecting ancestral domains may be granted or renewed.

It was not altogether unexpected that a petition was brought to the Supreme Court assailing the constitutionality of the IPRA and its Implementing Rules. The case, entitled *Cruz et al. v. Secretary of Environment and Natural Resources et al.*, G.R. No. 135385, Dec. 6, 2000, 347 SCRA 128, is a petition for prohibition and mandamus filed by Isagani Cruz and Cesar Europa who argued that the IPRA violates the concept of state ownership over all lands of the public domain. After deliberation, seven members of the Supreme Court voted to grant the petition, and seven voted to dismiss it. As the Supreme Court was evenly divided even after its re-deliberation, the petition was dismissed pursuant to Rule 56, Sec. 7 of the 1997 Rules of Civil Procedure. Thus, the IPRA survived the

²⁰ R.A. No. 8371, Chapter III, Sec. 5.

²¹ *Ibid.*, Sec. 8.

constitutional challenge by the skin of its teeth, to use a familiar phrase.

The *Cariño* ruling and the IPRA have seriously put into question the relevance and applicability of the Regalian Doctrine in this day and age. But if our romance with the Regalian Doctrine, which represents the past, cannot be repressed, then we must harmonize it with the *Cariño* ruling. I submit that the best way, if not the only way, to harmonize one with the other is to consider the *Cariño* ruling, reiterated in all its progenies and fleshed out in the IPRA, as an exception to the Regalian Doctrine. I fully subscribe to the view of Senator Juan Flavio Velez stated in *Cruz et al. v. Secretary of Environment and Natural Resources et al.* that:

“To recognize the rights of the indigenous peoples effectively, Senator Flavio Velez proposed a bill based on two postulates: (1) the concept of native title; and (2) the principle of *parens patriae*.

According to Senator Flavio Velez, ‘[w]hile our legal tradition subscribes to the Regalian Doctrine reinstated in Section 2, Article XII of the 1987 Constitution’ our ‘decisional laws’ and jurisprudence passed by the State have ‘made exception to the doctrine.’ This exception was first laid down in the case of *Cariño v. Insular Government* ...²²

The IPRA has been hailed the world over as landmark legislation because the Philippines is the first country that has enacted a law expressly recognizing the rights of indigenous peoples to their lands. It was signed into law on October 29,

²² 347 SCRA 128, at p. 193.

1997, and ten years later – or on September 13, 2007 – the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples. It is said, and this should give us a measure of pride, that the UN Declaration on the Rights of Indigenous Peoples has adopted several provisions of the IPRA. For example, while Section 26 of the UN Declaration provides that “(I)ndigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,” the IPRA ordains, as a matter of State policy, that “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.”

The IPRA, therefore, is meant to be a vehicle for liberty and prosperity for indigenous peoples as it seeks to address historical injustices against them by recognizing their customary laws on land acquisition and ownership. A Vehicle for Liberty, because, with IPRA, IPs now enjoy freedom from all the restrictions imposed by the Regalian Doctrine on land acquisition and ownership. A Vehicle for Prosperity, because the freedom from restrictions holds a promise for a better life that may be derived by the IPs from full and unrestricted utilization of their ancestral land and ancestral domain.

So it is that 1997, the year of IPRA’s enactment, was a year of great rejoicing. But barely ten years later, problems involving issuances of certificates of ancestral land title (CALTs) and certificates of ancestral domain title (CADTs) came into view. The law that was meant to promote liberty and prosperity for the IPs is now being used by land speculators for personal gain. If this practice is not stopped, there will come a time –

and it may be sooner than later – when the IPs will lose all their lands to these speculators, most of whom are non-IPs.

The flaw may be in the law itself. As already mentioned, the IPRA allows sale of ancestral lands even to non-IPs. Section 8, Chapter III of R.A. No. 8371 provides:

“Sec. 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.”

Thus, in not a few instances and as borne out by records in the Office of the Register of Deeds of Baguio City, lands for which a certificate of ancestral land title is issued have been sold to non-IPs to whom transfer certificates of title are given.

The transferees may also sell the land to another. And if the first transferee, or the subsequent transferee, is a purchaser for value and in good faith, then the IP or the government may not be able to recover the land from him anymore. Then, the original character of this land as ancestral land is lost forever. What is more, government reservations, public parks, and forest reserves may now become private properties which may already be used for residential or commercial purposes.

To solve this problem, some have suggested that land for which a CALT has been issued should be subject to a prohibition against alienation or encumbrance within five years from the issuance of the CALT – or such number of years as our lawmakers may find appropriate. This may sound like a good idea, but speculators can always find a way to go around the prohibition. I believe the better solution is to expand the right of redemption by giving the State the right to redeem in those instances where the IP or his heirs fail to repurchase the land that has been sold to a non-IP. This will scare speculators, and it will also curtail the practice of understating in the deed of conveyance the consideration for the transfer.

Except for the right of redemption on ground of vitiated consent or unconscionable consideration, R.A. No. 8371 does not provide for any remedy to an IP who falls victim to land speculation. While it is conceded that the right to dispose is an essential attribute of ownership, there should be a way to ensure that the IP, in selling his land, receives the full worth of his property. To do this, the NCIP must be clothed with an authority to approve the sale prior to, or simultaneously with, the execution of the deed of sale where the IP is illiterate or cannot understand the language in which the deed of conveyance is written. At this point, it is instructive to recall Section 20 of C.A. No. 141, otherwise known as the Public Land Act, which provides:

“Sec.120. Conveyance and encumbrance made by persons belonging to the so-called ‘non-Christian Filipinos’ or national cultural minorities, when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument or conveyance or encumbrances is written. Conveyances and encumbrances made by illiterate non-Christian or literate non-Christians where the instrument or conveyance is in a language not understood by the said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.”

The efficacy of this provision was put to a test in several cases, among which is *Celso Amarante Heirs, etc. v. CA, et al.*, *G.R. No. 76386, Oct. 26, 1987; 155 SCRA 46*. In this case, those who affixed their thumbmarks to the Absolute Deed of Sale covering Lot 1236 in favor of respondent Bolo were all illiterate mountain people, while Bolo was a schooled individual, apart from being a municipal councilor. Nullifying the sale, the Supreme Court held:

“Section 120 of the Public Land Act, Commonwealth Act No. 141, as amended, has extended the same kind of protection to all ‘non-christian Filipinos’ or ‘national cultural minorities’, whether in Mindanao and Sulu or elsewhere; conveyances and encumbrances made

by illiterate non-christian (or by literate non-christian if the deed is in a language not understood by them) need the approval of the Chairman of the Commission of National Integration [now, the Presidential Assistant for Cultural Minorities] to be valid.”

The first CALT issued by the National Commission on Indigenous Peoples (NCIP) covering an ancestral land in Baguio City was registered in the Registry of Deeds for Baguio City on November 3, 2008 as O-CALT No. 1. From November 3, 2008 up to the present, a period of less than five years, there are already a total of 168 CALTs issued by the NCIP involving lands located in Baguio City. Of these, 132 had already been registered in the Office of the Registry of Deeds.

Land speculation by those motivated mainly by profit has accelerated the filing of ancestral land claims with the NCIP. So it is that a large part of Baguio City is already covered by CALTs and CADTs. Sun Star Baguio, August 6, 2013 issue, reports that “One-Fifth of the 57-square-kilometer land area of Baguio City is now covered by CALTs and CADTs.” Even those that are traditionally known to be government reservations, public parks, or forest reserves, such as Camp John Hay, Forbes Park, Wright Park, Baguio Dairy Farm, Busol Watershed, and Session Road, are now covered by CALTs.

More than ten cases for reversion and cancellation of title had been filed with the Regional Trial Court in Baguio City by the Office of the Solicitor General on behalf of the Republic of the Philippines, but most of these cases had been dismissed on ground of lack of jurisdiction. Meanwhile, as the legal battle goes on in the courts, the problem persists. It is in the interest of all, IPs and non-IPs alike, that these problems be resolved the soonest.

I respectfully propose the following solutions:

1) Harmonization of the Regalian Doctrine with the Mateo Cariño Doctrine, by making Mateo Cariño Doctrine an exception to the Regalian Doctrine. Lands now covered by CALTs/CADTs, or lands for which CALTs/CADTs may in the future be issued, should be subject to reacquisition, in whole or in part, by the State or local government unit through sale, lease, usufruct, donation, or expropriation. Such reacquisition may be undertaken by the State or local government unit whenever it deems such land to be vital in the preservation of government reservations or the protection of the environment, or when it considers the land necessary for urban planning and development.

2) Expand the right of redemption by giving the State the right to redeem the land sold to a non-IP where the seller fails to exercise his right of redemption. This requires amendment of R.A. No. 8371 so as to include a provision that if the IP or his heirs fail for any reason to exercise their right of redemption, the government may redeem the property that was sold to a non-IP. The State may exercise its right of redemption within five years – or such number of years as our lawmakers may deem appropriate – from the expiration of the seller's right of redemption.

3) Amendment of R.A. No. 8371, to include a provision similar to Sec. 120 of Act No. 141 – so that where the sale by an IP of a land covered by a CALT requires prior written approval by the NCIP, but there is no such prior written approval, the sale should be declared void.'

4) Processing of CALT/CADT applications should be held in abeyance until the measures mentioned above are in place. Lands already covered by CALTs/CADTs should be plotted on a map to show their locations. The map should be displayed in

a public place for the information of everyone. There should also be an inventory of all pending CADT/CALT applications.