Republic of the Philippines
Supreme Court
Baguio City

EN BANC

LOLOY UNDURAN, BARANGAY CAPTAIN ROMEO PACANA, NESTOR MACAPAYAG, RUPERTO DOGIA, JIMMY TALINO, ERMELITO ANGEL, PETOY BESTO, VICTORINO ANGEL, RUEL BOLING, JERMY ANGEL, BERTING SULOD, RIO BESTO, BENDIJO SIMBALAN, and MARK BRAZIL, Petitioners, *- versus –* **RAMON ABERASTURI, CRISTINA C. LOPEZ, CESAR LOPEZ JR., DIONISIO A. LOPEZ, MERCEDES L. GASTON, AGNES H. LOPEZ, EUSEBIO S. LOPEZ, JOSE MARIA S. LOPEZ, ANTON B. ABERASTURI, MA. RAISSA A. VELEZ, ZOILO ANTONIO A. VELEZ, CRISTINA ABERASTURI, EDUARDO LOPEZ, JR., ROSARIO S. LOPEZ, JUAN S. LOPEZ, CESAR ANTHONY R. LOPEZ, VENANCIO L. GASTON, ROSEMARIE S. LOPEZ, JAY A. ASUNCION, NICOLO ABERASTURI, LISA A. ASUNCION, INEZ A. VERAY, HERNAN A. ASUNCION, ASUNCION LOPEZ, THOMAS A. VELEZ, LUIS ENRIQUE VELEZ,**	**G.R. No. 181284** **Present:** SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES, and TIJAM, *JJ.*

ANTONIO H. LOPEZ, CHARLES H. LOPEZ, ANA L. ZAYCO, PILAR L. QUIROS, CRISTINA L. PICAZO, RENATO SANTOS, GERALDINE AGUIRRE, MARIA CARMENCITA T. LOPEZ, and as represented by attorney-in-fact RAMON ABERASTURI,
Respondents.

Promulgated:
April 18, 2017

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RESOLUTION

PERALTA, *J.*:

For resolution are petitioners' Motion for Reconsideration and Supplemental Motion for Reconsideration of the Court's *en banc* Decision dated October 20, 2015, the dispositive portion of which states:

> **WHEREFORE**, the petition is **DENIED** and the Court of Appeals Decision dated August 17, 2006, and its Resolution dated July 4, 2007, in CA-G.R. SP No. 00204-MIN, are **AFFIRMED**.
>
> **SO ORDERED**.

In their Motion for Reconsideration, petitioners maintain that it is the National Commission on Indigenous Peoples (*NCIP*), not the regular courts, which has jurisdiction over disputes and controversies involving ancestral domain of the Indigenous Cultural Communities (*ICCs*) and Indigenous Peoples (*IPs*) regardless of the parties involved.

Petitioners argue that the rule that jurisdiction over the subject matter is determined by the allegations of the complaint, admits of exceptions and can be relaxed in view of the special and unique circumstances obtaining this case, *i.e.*, the actual issue, as shown by their motion to dismiss, involves a conflicting claim over an ancestral domain. They seek to apply by analogy the principles in *Ignacio v. CFI Bulacan*,[1] *Ferrer v. Villamor*,[2] *Nonan v. Plan*,[3] among others, where it was held that the allegations of tenancy by the defendant in its answer may be used in the determination of the jurisdiction of the court, and if indeed tenancy exists, the same should be lodged before the Court of Industrial Relations (now the Department of Agrarian Reform and Adjudication Board). They also invoke *Leoquinco v. Canada Dry*

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1 149 Phil. 137 (1971).
2 158 Phil. 322 (1974).
3 159 Phil. 859 (1975).

Bottling Co.,[4] and *Mindanao Rapid Co. v. Omandam*[5] where it was ruled that if allegations of labor disputes or employer-employee relations are alleged by defendants in their answer and the same is shown to exist, the Industrial Court (now the National Labor Relations Commission) takes cognizance of the case.

Petitioners also argue that the Court's interpretation of Section 66[6] of Republic Act No. 8371, or the *Indigenous Peoples' Rights Act of 1997*," (*IPRA*)to the effect that the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group, is contrary to law and the Constitution. They posit that the State recognizes that each ICC or IP group is, and has been since time immemorial, governed by their own customary laws, culture, traditions and governance systems, and has the right to preserve and develop them as they may deem fit and necessary. Thus, each ICC and IP group did not, and does not, need an act of Congress such as the IPRA, to enforce their customary laws among themselves and their respective communities, and more so in further developing them.

Petitioners insist that claims and disputes within ICCs/IPs and/or between ICCs/IPs shall be resolved using customary laws, consistent with the State policy under the Constitution and the IPRA to recognize, respect and protect the customs, traditions and cultural integrity and institutions of the ICCs/IPs. They claim that cases of disputes between IPs within the same ICC/IP group are always resolved completely and with finality in accordance with their customary laws and practice, hence, the interpretation that the NCIP shall have jurisdiction in cases of disputes among IPs within the same ICC/IP group is not only absurd but unconstitutional. They aver that even disputes between different ICCs/IPs shall also fall within the jurisdiction of whatever their customary laws and practice provide since Section 65[7] of the IPRA does not so distinguish. They presume that after co-existing for centuries in adjacent ancestral domains, some of the ICCs/IPs have developed their own indigenous means of settling disputes between other ICCs/IPs.

With respect to unresolved claims and disputes between different ICCs/IP groups and between ICCs/IPs and non-IPs, petitioners theorize that they fall under the jurisdiction of the NCIP pursuant to the provisions of the IPRA. They cite the concurring opinion of Justice Presbitero J. Velasco, Jr.

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4 147 Phil. 488 (1971).

5 149 Phil. 358 (1971).

6 Section 66. *Jurisdiction of the NCIP.*—The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICC/IPs: *Provided, however,* that no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elder/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

7 Section 65. *Primacy of Customary Laws and Practices.* – When disputes involve ICCs/IPs, customary laws and practices shall be used in resolving the dispute.

that the second and third parts of Section 66 of the law only provide for a condition precedent that is merely procedural and does not limit the NCIP jurisdiction over disputes involving the rights of ICC/IPs. They contend that such interpretation is consistent with other provisions of the IPRA which lay out NCIP's jurisdiction under Sections 46(g),[8] 62,[9] 69,[10] 70[11] and 72[12] of the IPRA.

Petitioners further point out that Section 72 of the IPRA permits the imposition of penalties under customary law even to non-IPs, and does not distinguish as to whom customary law may apply. According to them, any natural or juridical person, IPs or not, found to have violated provisions of

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[8] Section 46. *Offices within the NCIP.* — The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided:

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 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.

[9] Section 62. *Resolution of Conflicts.* — In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which cannot be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: *Provided*, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: *Provided, further*, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

[10] Section 69. *Quasi-Judicial Powers of the NCIP.* — The NCIP shall have the power and authority:

a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;

c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

[11] Section 70. *No Restraining Order or Preliminary Injunction.* — No inferior court of the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

[12] Section 72. *Punishable Acts and Applicable Penalties.* — Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: *Provided*, That no such penalty shall be cruel, degrading or inhuman punishment: *Provided, further*, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (₱100,000) nor more than Five hundred thousand pesos (₱500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

then IPRA, particularly those identified in Section 72, may be dealt with by imposing penalties found in the corresponding customary laws. They submit that Section 72 does not require as a condition precedent familiarity of the person to be penalized to the existing customary law of the affected community nor does it require for the said customary law to have been published to allow for its imposition to any person who committed the violation. Thus, they assert that Section 72 negates the ruling that NCIP's jurisdiction applies only to Sections 52, 54, 62 and 66, insofar as the dispute involves opposing parties belonging to the same tribe.

Petitioners likewise aver that Sections 46(g), 62, 69, 70 and 72 of the IPRA, taken together and in harmony with each other, clearly show that conflicts and disputes within and between ICCs/IPs are first under the jurisdiction of whatever their customary law provides, but disputes that are not covered by their customary laws, either between different ICCs/IPs or between an ICC/IP and a non-IP are also within the jurisdiction within the NCIP. Petitioners invoke *The City Government of Baguio City v. Masweng*[13] and *Baguio Regreening Movement, Inc. v. Masweng*[14] to support their theory that NCIP has original and exclusive jurisdiction over a case involving a dispute or controversy over ancestral domains even if one of the parties is a non-ICC/IP or does not belong to the same ICC/IP group.

In essence, petitioners argue that (1) the IPRA was not enacted to protect an IP from another IP whether from the same or different group, because they have their own means of resolving a dispute arising between them, through customary laws or compromises, as had been done for a very long time even before the passage of the law; (2) the IPRA is meant to address the greater prejudice that IPs experience from non-IPs or the majority group; and (3) the limited interpretation of Section 66 of the IPRA to its minute details without looking into the intent of the law will result in an unimaginable situation where the jurisdiction of the NCIP is only limited to those where both parties belong to the same ICCs/IPs; and (4) the application of the provisions of the IPRA, as a national law and a landmark social justice legislation, is encompassing and not limited to a particular group, *i.e.*, ICCs/IPs.

In their Supplemental Motion for Reconsideration, petitioners stress that (1) the NCIP and not the regular courts has jurisdiction over the case under the principle that jurisdiction over the subject matter of the case is determined by the allegations in the complaint, and pursuant to jurisprudence allowing exemptions thereto; (2) the jurisdiction over the subject matter of the case rests upon the NCIP as conferred by the IPRA; (3) the IPRA is a social legislation that seeks to protect the IPs not so much from themselves or fellow IPs but more from non-IPs; (4) the IPRA created the NCIP as the agency of government mandated to realize the rights of IPs;

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13 597 Phil. 668 (2009).
14 705 Phil. 103 (2013).

(5) in the exercise of its mandate, the NCIP was created as a quasi-judicial body with jurisdiction to resolve claims and disputes involving the rights of IPs; (6) the jurisdiction of the NCIP in resolving claims and disputes involving the rights of IPs is not limited to IPs of the same tribe; (7) harmonizing the related provisions of the IPRA supports the argument that the NCIP has jurisdiction over cases involving IP rights whether or not the parties are IPs or non-ICCs/IPs; (8) the NCIP as quasi-judicial agency provides IPs mechanisms for access to justice in the fulfillment of the State's obligations to respect, protect and fulfill IP's human rights; (9) the NCIP has the competence and skill that would greatly advance the administration of justice with respect to protection and fulfillment of ICC/IP rights/human rights; and (10) recognition and enforcement of customary laws and indigenous justice systems fulfill the State's obligations as duty bearers in the enforcement of human rights.

While the petitioners' Motion for Reconsideration and the Supplemental Motion for Reconsideration fail to persuade, there is a need to clarify the NCIP's jurisdiction over claims and disputes involving rights of ICC/IPs.

The Court finds no merit in petitioners' contention that jurisdiction of the court over the subject matter of a case is not merely based on the allegations of the complaint in certain cases where the actual issues are evidenced by subsequent pleadings. It is well settled that the jurisdiction of the court cannot be made to depend on the defenses raised by the defendant in the answer or a motion to dismiss; otherwise, the question of jurisdiction would depend almost entirely on the defendant.[15] Suffice it also to state that the Court is unanimous[16] in denying the petition for review on *certiorari* on the ground that the CA correctly ruled that the subject matter of the original and amended complaint based on the allegations therein is within the jurisdiction of the RTC.

In his Concurring Opinion, Justice Presbitero J. Velasco, Jr. concurred with the *ponencia* that the RTC has jurisdiction over the case:

> Both original and amended complaints, *accion reivindicatoria* and injunction, respectively, are incapable of pecuniary estimation; thus falling within the jurisdiction of the RTC. As correctly pointed out by the *ponencia*, "jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of

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15 *Spouses Atuel v. Sps. Valdez*, 451 Phil. 631, 645 (2003).

16 Penned by Associate Justice Diosdado M. Peralta and concurred in by Chief Justice Maria Lourdes P. A. Sereno and Associate Justices Presbitero J. Velasco, Jr. (Concurring Opinion), Teresita J. Leonardo-De Castro, Arturo D. Brion (Separate Opinion), Lucas P. Bersamin, Martin S. Villarama, Jr., Jose Portugal Perez (Concurring Opinion), Jose Catral Mendoza, Bienvenido L. Reyes, Estela M. Perlas-Bernabe, Marvic M.V.F. Leonen (Separate Concurring), and Francis H. Jardeleza. Associate Justices Antonio T. Carpio and Mariano C. Del Castillo, on official leave.

> action." It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by acquiescence of the court.[17]

In his Separate Opinion, Justice Arturo D. Brion also concurred with the *ponencia's* conclusion that the RTC has jurisdiction over the case because (1) the CA correctly ruled that the RTC's February 14, 2005 Order is not tainted with grave abuse of discretion, (2) jurisdiction over the subject matter is determined by law and the allegations of the complaint; and (3) the NCIP's jurisdiction over disputes is limited to cases where both parties are members of the same ICC/IP group.

In his Concurring Opinion, Justice Jose Portugal Perez agreed with the *ponencia* that jurisdiction over the original and amended complaint, *accion reivindicatoria* and injunction, correctly lies with the RTC, based on the principle that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.

In his Concurring Opinion, Justice Marvic M.V.F. Leonen likewise voted to dismiss the petition for review on *certiorari*, and to affirm the assailed decision and resolution of the CA. He concurred with the *ponencia* in holding that respondents' action, alleged to be involving a claim over the ancestral domain of an ICC/IP, does not fall within the exclusive jurisdiction of the NCIP.

In sum, the Court finds no substantial argument in petitioners' motions for reconsideration to justify a reversal of its ruling that jurisdiction over the subject matter of respondents' original and amended complaint based on the allegations therein lies with the RTC.

The crucial issue in this case, however, revolves around the complex nature of the jurisdiction of the NCIP, as shown by the different but well-reasoned opinions of the Associate Justices concerned *vis-à-vis* the arguments in petitioners' motions for reconsideration.

To recall, the *ponencia* has held that pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the case shall fall under the jurisdiction of the regular courts, instead of the NCIP. Thus, even if the real issue involves dispute over a land which appear to be located within the ancestral domain of an ICC/IP, it is not the NCIP but the RTC which has the power to hear, try and decide the case. In exceptional cases under Sections 52, 54 and 62 of the IPRA, the NCIP shall still have

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17 Citations omitted.

jurisdiction over such claims and disputes even if the parties involved do not belong to the same ICC/IP group.

Justice Velasco's position is that the NCIP has jurisdiction over all claims and disputes involving rights of ICCs/IPs, regardless of whether or not they belong to the same IP/IC group. According to him, all cases and disputes where both parties are ICCs/IPs fall under the exclusive jurisdiction of the NCIP; all cases and disputes where one of the parties is a non-ICC/IP are covered by the jurisdiction of the regular courts regardless of the subject matter even if it involves ancestral domains or lands of ICCs/IPs; and regular courts have jurisdiction over cases and disputes as long as there are parties who are non-ICCs/IPs.

For Justice Brion, the IPRA's intent is neither to grant the NCIP sole jurisdiction over disputes involving ICCs/IPs, nor to disregard the rights of non-ICCs/IPs under national laws. However, he stresses that the NCIP maintains primary jurisdiction over: (1) adverse claims and border disputes arising from delineation of ancestral domains/lands; (2) cancellation of fraudulently issued Certificate of Ancestral Domain Titles (*CADTs*); and (3) disputes and violations of ICCs/IPs rights between members of the same ICC/IP group.

Justice Perez opines that neither does the IPRA confer original and exclusive jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs. He adds that the NCIP is only vested with jurisdiction to determine the rights of ICCs/IPs based on customs and customary law in a given controversy against another ICC/IP, but not the applicable law for each and every kind of ICC/IP controversy even against an opposing non-ICC/IP. He concludes that under Section 66 of the IPRA, the jurisdiction of the NCIP is limited, and confined only to cases involving rights of IPs/ICCs, where both such parties belong to the same ICC/IP group.

Justice Leonen is of the view that the jurisdiction of the NCIP is limited to disputes where both parties are members of ICC/IP group and come from the same ethnolinguistic group. He states that the requirements for the proper exercise of the NCIP's jurisdiction over a dispute, pursuant to Section 66 of the IPRA, are as follows: (1) the claim or dispute must involve the rights of ICCs/IPs; (2) both parties must belong to the same ICC/IP group; (3) these parties must have exhausted remedies under their ICC/IP's customary laws; and (4) compliance with this requirement of exhausting remedies under customary laws must be evidenced by a certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute, to the effect that the dispute has not been resolved.

Meanwhile, in *Lim v. Gamosa*,[18] which was penned by Justice Perez, the Court held that the limited jurisdiction of the NCIP is at best concurrent with that of the regular trial courts:

> As previously adverted to, we are not unaware of *The City Government of Baguio City, et al. v. Atty. Masweng, et al.* and similar cases where we made an implicit affirmation of the NCIP's jurisdiction over cases where one of the parties are non-ICCs/IPs. Such holding, however, and all the succeeding exercises of jurisdiction by the NCIP, cannot tie our hands and declare a grant of primary and/or original jurisdiction, where there is no such explicit conferment by the IPRA. At best, the limited jurisdiction of the NCIP is concurrent with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies.[19]

Guided by the foregoing ruling, the Court held in *Begnaen v. Spouses Caligtan*[20] that the NCIP-Regional Hearing Office (*RHO*), being the agency that first took cognizance of petitioner-appellant's complaint, has jurisdiction over the same to the exclusion of the MCTC. In said case where both parties are members of the same ICC and the subject of their dispute was an ancestral land, petitioner-appellant first invoked the NCIP's jurisdiction by filing with the RHO his complaint against respondents for "Land Dispute and Enforcement of Rights." When the RHO dismissed the complaint without prejudice for his failure to first bring the matter for settlement before the Council of Elders as mandated by the IPRA, petitioner-appellant filed instead a complaint for forcible entry before the MCTC. Aside from its ruling that the NCIP has excluded the MCTC of its jurisdiction over the same subject matter, the Court said that petitioner is estopped from belatedly impugning the jurisdiction of the NCIP-RHO after initiating a complaint before it and receiving an adverse ruling.

Based on the diverse views on the nature and scope of the NCIP's jurisdiction over claims and disputes involving the rights of ICCs/IPs, the recent jurisprudence[21] on the matter, as well as petitioners' arguments in their motions for reconsideration, the Court is confronted again with the issue of whether the NCIP's jurisdiction is limited to cases where both parties are ICCs/IPs, or primary and concurrent with regular courts, and/or original and exclusive to the exclusion of said courts, on all matters involving the rights of ICCs/IPs.

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18 *Lim, et al. v. Hon. Gamosa*, G.R. No. 193964, December 2, 2015.

19 Citations omitted and emphasis added.

20 *Begnaen v. Spouses Caligtan*, G.R. No. 189852, August 17, 2016. Penned by Chief Justice Sereno, with Associate Justices Leonardo-de Castro, Bersamin, Perlas-Bernabe and Alfredo Benjamin S. Caguioa, concurring.

21 *Lim, et al. v. Hon. Gamosa, supra* note 18, and *Begnaen v. Spouses Caligtan, supra* note 20. Penned by Associate Justice Perez, with Chief Justice Sereno, and Associate Justices Leonardo-de Castro, Bersamin, Perlas-Bernabe, and Caguioa, concurring.

After a circumspect review of the relevant laws and jurisprudence, the Court maintains that the jurisdiction of the NCIP under Section 66 of the IPRA is limited to claims and disputes involving rights of IPs/ICCs where both parties belong to the same ICC/IP group, but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction.

To begin with, jurisdiction over the subject matter is conferred by the Constitution or by law. A court of general jurisdiction has the power or authority to hear and decide cases whose subject matter does not fall within the exclusive original jurisdiction of any court, tribunal or body exercising judicial or quasi-judicial function.[22] In contrast, a court of limited jurisdiction, or a court acting under special powers, has only the jurisdiction expressly delegated.[23] An administrative agency, acting in its quasi-judicial capacity, is a tribunal of limited jurisdiction which could wield only such powers that are specifically granted to it by the enabling statutes.[24] Limited or special jurisdiction is that which is confined to particular causes or which can be exercised only under limitations and circumstances prescribed by the statute.[25]

As held in the main decision, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group because of the qualifying provision under Section 66 of the IPRA that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws." Bearing in mind that the primary purpose of a *proviso* is to limit or restrict the general language or operation of the statute,[26] and that what determines whether a clause is a *proviso* is the legislative intent,[27] the Court stated that said qualifying provision requires the presence of two conditions before such claims and disputes may be brought before the NCIP, *i.e.*, exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved. The Court thus noted that the two conditions cannot be complied with if the parties to a case either (1) belong to different ICCs/IP groups which are recognized to have their own separate and distinct customary laws, or (2) if one of such parties was a non-ICC/IP member who is neither bound by customary laws or a Council of Elders/Leaders, for it would be contrary to the principles of fair play and due process for parties who do not belong to the same ICC/IP group to be subjected to its own distinct customary laws and Council of Elders/Leaders. In which case, the Court ruled that the regular courts shall have jurisdiction, and that the

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22 *Bank of Commerce v. Planters Development Bank, et al.*, 695 Phil. 627, 653 (2012).
23 21 C.J.S. Courts § 16 (1940).
24 *Bank of Commerce v. Planters Development Bank, et al., supra* note 22, at 653.
25 21 C.J.S. Courts § 16 (1940).
26 *Chartered Bank of India v. Imperial*, 48 Phil. 931, 949 (1921).
27 *Manila Electric Co. v. Public Utilities Employees Association*, 79 Phil. 409, 411 (1947).

NCIP's quasi-judicial jurisdiction is, in effect, limited to cases where the opposing parties belong to the same ICC/IP group.

That the NCIP's quasi-judicial jurisdiction is limited can be further gathered from Justice Perez' discussion in *Lim v. Gamosa*,[28] thus:

> Section 83 of the IPRA, the repealing clause, only specifies Presidential Decree No. 410, Executive Order Nos. 122B and 122C as expressly repealed. While the same section does state that "all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly," such an implied repeal is predicated upon the condition that a substantial and an irreconcilable conflict must be found in existing and prior Acts. The two laws refer to different subject matters, albeit the IPRA includes the jurisdiction of the NCIP. As such, resolution of conflicts between parties who are not both ICCs/IPs may still fall within the general jurisdiction of regular courts dependent on the allegations in the complaint or petition and the status of the parties.
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> There is no clear irreconcilable conflict from the investiture of jurisdiction to the NCIP in instances where, among others, all the parties are ICCs/IPs and the claim or dispute involves their rights, and the specific wording of Batas Pambansa Bilang 129, Sections 19-21 on the exclusive and original jurisdiction of the Regional Trial Courts, and Sections 33-35 on the exclusive and original jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.
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> We should not, and cannot, adopt the theory of implied repeal except upon a clear and unequivocal expression of the will of the Congress, which is not manifest from the language of **Section 66 of the IPRA** which, to reiterate: (1) **did not use the words "primary" and/or "original and exclusive" to describe the jurisdiction of the NCIP over "all claims and disputes involving rights of ICCs/IPs"** and (2) contained a proviso requiring certification that the parties have exhausted their remedies provided under customary laws.
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> We are quick to clarify herein that even as we declare that in some instances the regular courts may exercise jurisdiction over cases which involve rights of ICCs/IPs, the governing law for these kinds of disputes necessarily include the IPRA and the rights the law bestows on ICCs/IPs.

In *Begnaen v. Spouses Caligtan*,[29] the Court affirmed and emphasized the afore-quoted ruling in *Lim v. Gamosa*[30] where it struck down as void an administrative rule that expanded the jurisdiction of the NCIP beyond the boundaries of the IPRA.

However, exception must be taken to the pronouncement in *Begnaen v. Spouses Caligtan*[31] that "[a]t best, the limited jurisdiction of the NCIP is

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28 *Supra* note 18.
29 *Supra* note 20.
30 *Supra* note 18.
31 *Supra* note 20.

concurrent with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies."

Concurrent or coordinate jurisdiction is that which is "exercised by different courts at the same time over the same subject matter and within the same territory, and wherein litigants may in the first instance resort to either court indifferently, that of several different tribunals, each authorized to deal with the same subject matter, and when a proceeding in respect of a certain subject matter can be brought in any one of several different courts, they are said to have concurrent jurisdiction."[32] While courts of concurrent jurisdiction are courts of equal dignity as to matters concurrently cognizable, neither having supervisory power over process from the other,[33] the rule is that the court which first takes cognizance of an action over which it has jurisdiction and power to afford complete relief has the exclusive right to dispose of the controversy without interference from other courts of concurrent jurisdiction in which similar actions are subsequently instituted between the same parties seeking similar remedies and involving the same questions.[34] Such rule is referred to as the principle of priority or the rule of exclusive concurrent jurisdiction. Although comity is sometimes a motive for the courts to abide by the priority principle, it is a legal duty of a court to abide by such principle to reduce the possibility of the conflicting exercise of concurrent jurisdiction, especially to reduce the possibility that a case involving the same subject matter and the same parties is simultaneously acted on in more than one court.[35]

After a careful perusal of the provisions of the entire IPRA, the Court discerns nothing therein that expressly or impliedly confers concurrent jurisdiction to the NCIP and the regular courts over claims and disputes involving rights of ICCs/IPs between and among parties belonging to the same ICC/IP group. What the Court finds instead is that the NCIP's limited jurisdiction is vested under Section 66 of the IPRA, while its primary jurisdiction is bestowed under Section 52(h) and 53, in relation to Section 62 of the IPRA, and Section 54 thereof.

Having discussed why the NCIP's jurisdiction under Section 66 of the IPRA is limited, but not concurrent with the regular courts, the Court will now expound on the NCIP's primary jurisdiction over claims regardless of whether the parties are non-ICCs/IPs, or members of different ICCs/IP groups, namely:(1) adverse claims and border disputes arising from the delineation of ancestral domains/lands,(2) cancellation of fraudulently issued CADTs, and (3) disputes and violations of ICCs/IPs rights between members of the same ICC/IP.

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32 21 C.J.S. Courts § 18 (1940).
33 *Id.* § 488.
34 *Id.* § 492.
35 20 Am Jur 2d Courts§ 91 (1995).

Primary jurisdiction is the power and authority vested by the Constitution or by statute upon an administrative body to act upon a matter by virtue of its specific competence.[36] Given that the provisions of the enabling statute are the yardsticks by which the Court would measure the quantum of quasi-judicial powers that an administrative agency may exercise, as defined in the enabling act of such agency,[37] it is apt to underscore the provisions of the IPRA which invest primary jurisdiction over claims and disputes involving rights of ICCs/IP groups to the NCIP, as the primary government agency responsible for the recognition of their ancestral domain and rights thereto:[38]

1. Section 52(h) of the IPRA anent the power of the NCIP Ancestral Domain Office (*ADO*) to deny application for CADTs, in relation to Section 62, regarding the power of the NCIP to hear and decide unresolved adverse claims:

> SECTION 52. *Delineation Process.* — The identification and delineation of ancestral domains shall be done in accordance with the following procedures:
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> h) *Endorsement to NCIP.* — Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: *Provided,* That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: *Provided, further*, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: *Provided, furthermore*, That **in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below.**
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> xxxx
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> SECTION 62. *Resolution of Conflicts.* — In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which cannot be resolved, **the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: *Provided*, That if the**

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36 *Unduran v. Aberasturi*, October 20, 2015.

37 *Id.* citing *Bank of Commerce v. Planters Development Bank, supra* note 22, at 660.

38 Sec. 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 domain as well as their rights thereto.

> **dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed**. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: *Provided, further*, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.[39]

2. Section 53 on the NCIP-ADO's power to deny applications for CALTs and on the NCIP's power to grant meritorious claims and resolve conflicting claims:

> SECTION 53. *Identification, Delineation and Certification of Ancestral Lands*. —
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> e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: *Provided*, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: *Provided, further*, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;
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> f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. **In case of conflicting claims among individuals or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act.** In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and
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> g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. **If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and**

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39 Emphasis and underscoring added.

> **certifying the claim of <u>each individual or corporate (family or clan) claimant over ancestral lands</u>.**[40]

3. Section 54 as to the power of the NCIP to resolve fraudulent claims over ancestral domains and lands:

> SECTION 54. *Fraudulent Claims.* — The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. **Any claim found to be fraudulently acquired by, and issued to, <u>any person or community</u> may be cancelled by the NCIP after due notice and hearing of all parties concerned.**[41]

As can be gleaned from the foregoing provisions, the NCIP has primary jurisdiction over these cases even if one of the parties is a non-ICC/IP, or where the opposing parties are members of different ICCs/IPs groups. Indeed, the questions involved in said cases demand the exercise of sound administrative discretion requiring special knowledge, experience, and services of the NCIP to determine technical and intricate matters of fact.[42] No less than the IPRA states that the NCIP is 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 domain as well as their rights thereto,[43] with due regard to their beliefs, customs, traditions and institutions.[44] At this juncture, it is not amiss to state that the NCIP's decision shall be appealable to the Court of Appeals by way of a petition for review under Rule 43 of the Rules of Court.[45]

Meanwhile, the fatal flaw in petitioners' insistence that the NCIP's quasi-judicial jurisdiction is exclusive and original, can be gathered from records of the Bicameral Conference Committee cited in Justice Brion's Separate Opinion:

> The word "jurisdiction" in the first part of Section 66 is unqualified. Section 66 (then Section 71) of Senate Bill 1728 was originally worded *exclusive and original jurisdiction.* During the Bicameral Conference, the lower house objected to giving the NCIP *exclusive and original jurisdiction*:
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> |---|---|
> | Sen. Juan Flavier: (Chairman of the Senate Panel) | There is exclusive original. And so what do you suggest? |
> | | .... |

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40 Emphasis and underscoring added.

41 Emphasis and underscoring added.

42 *Phil Pharmawealth, Inc. v. Pfizer, Inc.*, 649 Phil. 423, 438 (2010), citing *Fabia v. Court of Appeals*, 437 Phil. 389, 402-403 (2002).

43 IPRA, Section 38.

44 IPRA, Section 39.

45 IPRA, Section 67.

Rep. Zapata (Chairman of the Panel for the House of Representatives)	Chairman, may I butt in?
Sen. Flavier	Yes, please.
Rep. Zapata	This was considered. The original, we were willing in the house. But the "exclusive", we objected to the word "exclusive" because it would only be the commission that would exclude the court and the Commission may not be able to undertake all the review nationwide. **And so we remove the word "exclusive" so that they will have original jurisdiction but with the removal of the word "exclusive" that would mean that they may bring the case to the ordinary courts of justice.**
Sen. Flavier	Without passing through the commission?
Rep. Zapata	Yes, Anyway, if they go to the regular courts, they will have to litigate in court, because if its (sic) exclusive, that would be good.
Sen. Flavier	But what he is saying is that…
Rep. Zapata	But they may not have the facility.
Rep. _____	Senado *na lang.*
Rep. Zapata	*Oo, iyong original na lang.*
Sen. Flavier	**In other words, it's not only the Commission that can originate it, *pwedeng mag-originate sa courts.***
Rep. Zapata	Or else, we just remove "exclusive original" so that they will say, the National will have jurisdiction over claims. So we remove both "exclusive and original".
Sen. Flavier	So what version are you batting for, Mr. Chairman?
Rep. Zapata	Just to remove the word "exclusive original." **The**

	Commission will still have jurisdiction only that, if the parties will opt to go to courts of justice, then this have (sic) **the proper jurisdiction, then they may do so because we have courts nationwide.** Here there may be not enough courts of the commission.
Sen. Flavier	So we are going to adopt the senate version minus the words "exclusive original"?
Rep. Zapata	Yes, Mr. Chairman, that's my proposal
Sen. Flavier	No, problem. Okay, approved.
	xxxx[46]

> The Bicameral Committee's removal of the words "exclusive and original" mean that the NCIP shares concurrent jurisdiction with the regular courts. Thus, I agree with the revised *ponencia* that it would be *ultra vires* for the NCIP to promulgate rules and regulations stating that it has exclusive jurisdiction.[47]

Another cogent reason why the NCIP's quasi-judicial jurisdiction over claims and disputes involving rights of ICCs/IPs under Section 66 of the IPRA cannot be exclusive and original, is because of the so-called "Contentious Areas/Issues" identified in the Joint Department of Agriculture-Land Registration Authority-Department of Environment and Natural Resources-National Commission on Indigenous Peoples (*DAR-DENR-LRA-NCIP*) Administrative Order No. 01, Series of 2012.[48] Such contentious matters arose in the course of the implementation of the Comprehensive Agrarian Reform Law,[49] the IPRA, the Public Land Act,[50] and the Land Registration Act,[51] as amended by the Property Registration Decree,[52] which created not only issues of overlapping jurisdiction between the DAR, DENR and NCIP, but also operational issues and conflicting claims in the implementation of their respective programs.

Section 12 of the Joint DAR-DENR-LRA-NCIP Administrative Order defines those contentious areas/issues which are subject of operational issues

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46 Citing October 9, 1997 Bicameral Conference Meeting on the Disagreeing Provisions of SBN 1728 and 9125. (Emphasis in the original)

47 Emphasis added; underscoring in the original.

48 Subject: Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Land Registration Authority (LRA) and the National Commission on Indigenous Peoples (NCIP) in Order to Address Jurisdictional and Operational Issues Between and Among the Agencies.

49 Republic Act No. 6657.

50 Commonwealth Act No 141, as amended.

51 Act No. 496.

52 Presidential Decree No. 1529.

and conflicting claims between and among the DAR, the DENR and the NCIP, as follows:

a. Untitled lands being claimed by the ICCs/IPs to be part of their AD/AL which are covered by approved survey plans and also being claimed by the DAR and/or the DENR.

b. Titled lands with registered Certificate of Land Ownership Awards (*CLOAs*), Emancipation Patents (*EPs*), and Patents within Certificate of Ancestral Domain Title (*CADT*)/Certificate of Ancestral Land Title (*CALT*)/Certificate of Ancestral Domain Claim (*CADC*)/Certificate of Ancestral Land Claim (*CALC*).

c. Resource access/development instruments issued by the DENR over lands within Ancestral Land/Domain Claims such as, but not limited to, Community-Based Forest Management Agreement (*CBFMA*), Integrated Forest Management Agreement (*IFMA*), Socialized Forest Management Agreement (*SIFMA*), Protected Area Community-Based Resources Management Agreement (*PACBRMA*), Forest Land Grazing Management Agreement (*FLGMA*), Co-Management Agreement, Certificate of Stewardship Contract (*CSC*), Certificate of Forest Stewardship Agreement (*CFSA*), Wood Processing Plant Permit (*WPPP*), Special Land Use Permit (SLUP), Private Land Timber Permit (*PLTP*), Special Private Land Timber Permit (*SPLTP*), and Foreshore Lease Agreement/Permit (*FLA/FLP*).

d. Exploration Permit (*EP*), Financial or Technical Assistance Agreement (*FTAA*); Mineral Agreement (either Production Sharing, Co-Production or Joint Venture) issued within CARP-covered areas.

e. Reservations, proclamations and other special law-declared areas a portion or the entirety of which is subsequently issued a CADT/CALT.

f. Areas with existing and/or vested rights after the registration of the CADTs/CALTs but for any reason not segregated/excluded.

g. Other jurisdictional and operational issues that may arise between and amongst the DAR, the DENR and the NCIP as may be determined by the National/Regional/Provincial Joint Committees, as created under Section 19 of the Joint Administrative Order.

h. Formal complaints filed by concerned ICCs/IPs or by the NCIP in behalf of the ICCs/IPs over those identified titled areas found within the AD/AL.

It is inevitable that disputes will arise involving the above-stated contentious areas/issues, and affecting the rights of parties who are non-IPs or those who belong to different ICCs/IPs groups. As a matter of fair play and due process, however, such parties cannot be compelled to comply with the two conditions[53] before such disputes may be brought before the NCIP under Section 66 of the IPRA, since IPs/ICCs are recognized to have their own separate and distinct customary laws and Council of Elders/Leaders. Hence, the Court cannot sustain the view that the NCIP shall have exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs.

Moreover, having in mind the principle that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force and effect of law, and are entitled to great respect,[54] the Court cannot ignore that Sections 14 and 16 of the Joint DAR-DENR-LRA-NCIP Administrative Order provide for the proper forum where the contentious areas/issues involve lands with prior and vested property rights, thus:

> **Section 14. Exclusion/Segregation of Lands Covered by Judicially Decreed Titles and Titles Administratively issued by DENR and DAR.** In the delineation and titling of ADs/ALs, the NCIP must exclude and segregate all lands covered by titles. For this purpose, the registered owner of the land may opt to submit to the NCIP a copy of the title of the property to facilitate segregation or exclusion pursuant to existing guidelines and other pertinent issuances.
>
> The ICCs/IPs, however, are not precluded from questioning the validity of these titles in a proper forum as hereunder enumerated:
>
> 1. DAR Secretary for registered EPs or CLOAs; and
> 2. Regional Trial Court for registered patents/judicially-decreed titles.
>
> On the other hand, the DAR and DENR shall not process titles pursuant to their mandate on lands certified by NCIP as ancestral domain or ancestral lands except in areas with prior and vested rights. Provided, however, that the certification by NCIP on lands as Ancestral Domains or Ancestral Lands pursuant to Section 52(i) of IPRA presupposes that the provision of Section 13 hereof on the projection of survey plans and issuance of Certification of Non-Overlap have already been complied with.
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> **Section 16. CARP Coverage of Titled Properties.** Titled lands under the Torrens System issued prior to IPRA are deemed vested rights pursuant to the provision of Section 56 of IPRA. Accordingly, the DAR shall proceed with the CARP coverage of said lands, unless a Restraining Order is issued by the Supreme Court without prejudice, however, to the

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[53] Exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved.

[54] *Estate of Nelson Dulay v. Aboitiz Jebsen Maritime Inc., et al.*, 687 Phil. 153, 162 (2012).

> rights of the ICCs/IPs to question the validity of these titles before a court or body of competent jurisdiction.[55]

Note that the "property rights" referred to in Section 56[56] of the IPRA belong to those acquired by individuals, whether indigenous or non-indigenous peoples, as said provision makes no distinction as to the ethnic origins of the ownership of these rights.[57] Considering the rule on statutory construction that courts should not distinguish where the law does not do so, the IPRA thus recognizes and respects "vested rights" regardless of whether they pertain to IPs or non-IPs, and it only requires that these "property rights" already exist and/or vested upon its effectivity.[58]

On petitioners' assertion that Section 72[59] of the IPRA negates the ruling that the NCIP has jurisdiction only over claims and disputes under Sections 52, 54, and 62 thereof, even if the parties involved do not belong to the same ICC/IP, the Court finds the same as misplaced.

Note that under Section 72 of the IPRA, any person who commits violation of any of the provisions of the IPRA may be punished either(1) in accordance with the customary laws of the ICCs/IPs concerned, provided that the penalty shall not be a cruel, degrading or inhuman punishment, and that neither death penalty nor excessive fines shall be imposed; or (2) upon conviction, by imprisonment of not less than 9 months but not more than 12 years, or a fine of not less than ₱100,000.00 nor more than ₱500,000.00, or both such fine and imprisonment upon the discretion of the court. Again, it would be contrary to the principles of fair play and due process for those parties who do not belong to the same ICC/IP group to be subjected to its separate and distinct customary laws, and to be punished in accordance therewith. The Court thus rules that the NCIP shall have primary jurisdiction over violations of IPRA provisions only when they arise between or among parties belonging to the same ICC/IP group. When the parties belong to different ICC/IP group or where one of the parties is a non-ICC/IP,

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55 Emphasis in the original; underscoring added.

56 Sec. 56. *Existing Property Rights Regimes.*—Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

57 *Cruz v. Secretary of Environment & Natural Resources*, 400 Phil. 904, 1080 (2000), Separate Opinion of Justice Santiago M. Kapunan.

58 *Id.*

59 Section 72. *Punishable Acts and Applicable Penalties.* — **Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned**: *Provided*, That no such penalty shall be cruel, degrading or inhuman punishment: *Provided, further*, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act. (Emphasis and underscoring added)

jurisdiction over such violations shall fall under the proper Regional Trial Court.

Justice Brion has aptly discussed that even if Section 72 of the IPRA is a special penal law that applies to all persons, including non-ICCs/IPs, the NCIP jurisdiction over violations of ICC/IP rights is limited to those committed by and against members of the same ICC/IP group, thus:

> Section 72 of the IPRA provides that *any person* who violates the rights of ICCs/IPs shall be punished "in accordance with the customary laws of the ICCs/IPs concerned. . . . *without prejudice* to the right of the ICC/IP concerned to avail of the protection of "*existing laws*. . .*[i]n which case*," the penalty shall be imprisonment and/or fine, and damages, *"upon the discretion of the court*."
>
> "Existing laws" refer to national laws as opposed to customary laws; while "the court" refers to the regular courts as opposed to administrative bodies like the NCIP.
>
> Under Section 72, ICCs/IPs can avail of the protection under *national laws* and file an action before the *regular courts*, in which case, the penalty shall be imprisonment and/or fine, and damages. ***From this perspective, Section 72 is a special penal law that applies to ALL persons, including non-ICCs/IPs***.
>
> The phrase "without prejudice," however, means without limiting the course of action that one can take. Thus, a recourse under customary laws does not take away the right of ICCs/IPs to secure *punishment under existing national laws*. An express caveat under the customary law option is that the penalty must not be cruel, degrading, or inhuman, nor shall it consist of the death penalty or excessive fines.
>
> Since the regular courts, not the NCIP, have jurisdiction over national laws, then the NCIP's jurisdiction is limited to punishment under customary laws.
>
> *The NCIP's power to impose penalties under customary laws presents two important issues:* ***first****, whether it is legally possible to punish non-ICCs/IPs with penalties under customary laws; and* ***second****, whether a member of a particular ICC/IP could be punished in accordance with the customary laws of another ICC/IP.*
>
> Laws that provide for fines, forfeitures, or *penalties* for their violation or otherwise impose a burden on the people, such as tax and revenue measures, must be published.
>
> Most customary laws are not written, much less published. Hence, it is highly unlikely that the NCIP or even the regular courts have the power to penalize non-ICCs/IPs with these *penalties* under customary laws. A contrary ruling would be constitutionally infirm for lack of due process.

> Similarly, an ICC/IP cannot be punished under the customary law of another. Otherwise, the former would be forced to observe a non-binding customary law.
>
> *Therefore, while the NCIP has jurisdiction over violations of ICC/IP rights, its jurisdiction is limited to those committed by and against members of the same ICC/IP.*
>
> This view does not detract from the IPRA's policy to "protect the rights of ICCs/IPs." ICCs/IPs, whose rights are violated by non-ICCs/IPs or by members of a different ICC/IP, can still file criminal charges before the regular courts. In this situation, the NCIP's role is not to adjudicate but to provide ICCs/IPs with "legal assistance in litigation involving community interest."[60]

There is also no merit in petitioners' argument that the Court's interpretation of the NCIP's jurisdiction under Section 66 of the IPRA runs counter to its purpose to protect the rights, customs, customary laws and cultural integrity of the ICCs/IPs. To stress, even as Section 66 grants jurisdiction to the NCIP over claims and disputes involving rights of ICCs/IPs, it is required that the opposing parties are both ICCs/IPs who have exhausted all their remedies under their customs and customary law before bringing their claim and dispute to the NCIP.[61] And, in some instances that the regular courts may exercise jurisdiction over cases involving rights of ICCs/IPs, the governing law for such disputes necessarily include the IPRA and the rights the law bestows on ICCs/IPs.[62]

It also bears emphasis that the right of ICCs/IPs to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanism under Section 15[63] of the IPRA pertains only to those customary laws and practices within their respective communities, as may be compatible with the national legal system and with internationally recognized human rights. In this regard, it is fitting to quote the Separate Opinion of Justice Santiago M. Kapunan in *Cruz v. Secretary of Environment & Natural Resources*[64] on the constitutionality of Sections 63, 65 and other related provisions, like Section 15, of the IPRA:

> Anent the use of customary laws in determining the ownership and extent of ancestral domains, suffice it to say that such is allowed under paragraph 2, Section 5 of Article XII of the Constitution. Said provision states, "The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and

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60 Citations omitted; Italics and emphasis in the original.

61 *Lim v. Gamosa, supra* note 18.

62 *Id.*

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

64 *Supra* note 57.

extent of the ancestral domains." Notably, the use of customary laws under IPRA is not absolute, for the law speaks merely of *primacy of use*. xxx

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The application of customary law is *limited to disputes concerning property rights or relations in determining the ownership and extent of the ancestral domains*, where all the parties involved are members of indigenous peoples, specifically, of the same indigenous group. It therefore follows that when one of the parties to a dispute is a non-member of an indigenous group, or when the indigenous peoples involved belong to different groups, the application of customary law is not required.

Like any other law, the objective of IPRA in prescribing the primacy of customary law in disputes concerning ancestral lands and domains where all parties involved are indigenous peoples is justice. The utilization of customary laws is in line with the constitutional policy of recognizing the application thereof through legislation passed by Congress.

Furthermore, the recognition and use of customary law is not a novel idea in this jurisdiction. Under the Civil Code, use of customary law is sanctioned, as long as it is proved as a fact according to the rules of evidence, and it is not contrary to law, public order or public policy. Moreover, the Local Government Code of 1991 calls for the recognition and application of customary laws to the resolution of issues involving members of indigenous peoples. This law admits the operation of customary laws in the settling of disputes if such are ordinarily used in *barangays* where majority of the inhabitants are members of indigenous peoples.[65]

Likewise, unavailing is petitioners' contention that unresolved claims and disputes between different ICCs/IPs groups, and those between ICCs/IPs and non-ICCs/IPs should fall under the jurisdiction of the NCIP. In this regard, the Court shares the view of Justice Perez:

That the proviso found in Section 66 of the IPRA is exclusionary, specifically excluding disputes involving rights of IPs/ICCs where the opposing party is non-ICC/IP, is reflected in the IPRA's emphasis of customs and customary law to govern in the lives of the ICCs/IPs.

Indeed, **non-ICCs/IPs cannot be subjected to the special and limited jurisdiction of the NCIP even if the dispute involves rights of ICCs/IPs since the NCIP has no power and authority to decide on a controversy involving as well rights of non-ICCs/IPs which may be brought before a court of general jurisdiction within the legal bounds of rights and remedies**. Even as a practical concern, non-IPs and non-members of ICCs ought to be excepted from the NCIP's competence since it cannot determine the right-duty correlative, and breach thereof, between opposing parties who are ICCs/IPs and non-ICCs/IPs, the controversy necessarily contemplating application of other laws, not only customs and customary law of the ICCs/IPs. In short, the NCIP is only vested with

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65 *Cruz v. Secretary of Environment and Natural Resources, supra,* at 1084-1085. (Citations omitted)

> jurisdiction to determine the rights of ICCs/IPs based on customs and customary law in a given controversy against another ICC/IP, but not the applicable law for each and every kind of ICC/IP controversy even against an opposing non-ICC/IP.[66]

Anent what Justice Perez described as the "implicit affirmation" done in *The City Government of Baguio City v. Masweng*[67] of the NCIP's jurisdiction over cases where one of the parties is not ICC/IPs, a careful review of that case would show that the Court merely cited Sections 3(k),[68] 38[69] and 66 of the IPRA and Section 5[70] of NCIP Administrative Circular No. 1-03 dated April 9, 2003, known as the Rules on Pleadings, Practice and Procedure Before the NCIP, as bases of its ruling to the effect that disputes or controversies over ancestral lands/domains of ICCs/IPs are within the original and exclusive jurisdiction of the NCIP-RHO. However, the Court did not identify and elaborate on the statutory basis of the NCIP's "original and exclusive jurisdiction" on disputes or controversies over ancestral lands/domains of ICCs/IPs. Hence, such description of the nature and scope of the NCIP's jurisdiction made without argument or full consideration of the point, can only be considered as an *obiter dictum*, which is a mere expression of an opinion with no binding force for purposes of *res judicata* and does not embody the determination of the court.[71]

On a final note, the Court restates that under Section 66 of the IPRA, the NCIP shall have limited jurisdiction over claims and disputes involving rights of IPs/ICCs only when they arise between or among parties belonging to the same ICC/IP group; but if such claims and disputes arise

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66 Emphasis in the original.

67 *Supra.*

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

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k) *National Commission on Indigenous Peoples (NCIP)* – refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;

69 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 domain as well as their rights thereto.

70 Section 5. *Jurisdiction of the NCIP.* – The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:

(1) *Original and Exclusive Jurisdiction of the Regional Hearing Office (RHO)*
   a. Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs;

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(2) *Original Jurisdiction of the Regional Hearing Officer:*
   a. Cases affecting property rights, claims of ownership, hereditary succession, and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws; and

   xxxx

(3) *Exclusive and Original Jurisdiction of the Commission:*
   a. Petition for cancellation of Certificate of Ancestral Domain Titles/Certificate of Ancestral Land Titles (CADTs/CALTs) alleged to have been fraudulently acquired by, and issued to, any person or community as provided for under Section 54 of R.A. 8371. Provided that such action is filed within one (1) year from the date of registration.

71 *Land Bank of the Philippines v. Suntay*, 678 Phil. 879, 913-914 (2011).

between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction. However, under Sections 52(h) and 53, in relation to Section 62 of the IPRA, as well as Section 54, the NCIP shall have primary jurisdiction over adverse claims and border disputes arising from the delineation of ancestral domains/lands, and cancellation of fraudulently-issued CADTs, regardless of whether the parties are non-ICCs/IPs, or members of different ICCs/IPs groups, as well as violations of ICCs/IPs rights under Section 72 of the IPRA where both parties belong to the same ICC/IP group.

WHEREFORE, the Motion for Reconsideration and the Supplemental Motion for Reconsideration are **DENIED** for lack of merit.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL G. TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

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SUPREME COURT

EN BANC

G.R. No. 181284 – LOLOY UNDURAN, BARANGAY CAPTAIN PACANA, NESTOR MACAPAYAG, ROBERTO DOGIA, JIMMY TALINO, ERMELITO ANGEL, PETOY BESTO, VICTORINO ANGEL, RUEL BOLING, JERMY ANGEL, BERTING SULOD, RIO VESTO, BENDIJO SIMBALAN, and MARK BRAZIL, Petitioners, **v. RAMON ABERASTURI, CRISTINA C. LOPEZ, CESAR LOPEZ JR., DIONISIO A. LOPEZ, MERCEDES L. GASTON, AGNES H. LOPEZ, JOSE MARIA S. LOPEZ, ANTON B. ABERASTURI, MA. RAISSA A. VELEZ, ZOILO ANTONIO A. VELEZ, CRISTINA ABERASTURI, EDUARDO LOPEZ JR., ROSARIO S. LOPEZ, JUAN S. LOPEZ, CESAR ANTHONY R. LOPEZ, VENANCIO L. GASTON, ROSEMARIE S. LOPEZ, JAY A. ASUNCION, NICOLO ABERASTURI, LISA A. ASUNCION, INEZ A. VERAY, HERNAN A. ASUNCION, ASUNCION LOPEZ, THOMAS A. VELEZ, LUIS ENRIQUE VELEZ, ANTONIO, H. LOPEZ, CHARLES H. LOPEZ, ANA. L. ZAYCO, PILAR L. QUIROS, CRISTINA L. PICAZO, RENATO SANTOS, GERALDIN AGUIRRE, MARIA CARMENCITA T. LOPEZ, and as represented by attorney-in-fact RAMON ABERASTURI,** Respondents

Promulgated:

April 18, 2017

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CONCURRING OPINION

LEONEN, *J.*:

I maintain my concurrence with the well written opinion of Justice Diosdado M. Peralta clarifying the application of Section 66[1] of Republic Act No. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997. I can do no better than to reiterate his words:

> After a circumspect review of the relevant laws and jurisprudence, the Court maintains that the jurisdiction of the NCIP under Section 66 of the IPRA is limited [to] claims and disputes involving rights of IPs/ICCs where both parties belong to the same ICC/IP group, but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction.[2]

In my concurrence to the original decision, I pointed out that this was

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1 Rep. Act No. 8371 sec. 66 provides:
Section 66. *Jurisdiction of the NCIP.* – The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: *Provided, however*, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

2 Ponencia, p. 9.

premised on Section 66 of the Indigenous Peoples' Rights Act, which has required that "no [claims and disputes involving rights of indigenous cultural communities/indigenous peoples] shall be brought to the National Commission on Indigenous Peoples (NCIP) unless the parties have exhausted all remedies provided under their customary laws."[3] The primacy given to customary laws assumes membership in the same ethnolinguistic group that have been and still are practicing the same customary norms not contrary to law.

Thus, Section 66 of the Indigenous Peoples' Rights Act will apply to parties belonging to the same Kankanaey group in Besao, Mountain Province. However, it cannot apply to disputes between a Hanunoo Mangyan from Mindoro and a B'laan from Tampakan in Sultan Kudarat. Its application to various tribes in Kalinga depends on whether they share the same customary norms. While the various indigenous communities in Kalinga may belong to the same ethnolinguistic grouping, they may not share the same norms. The same is equally true among the various subtribes of the Subanen in the Zamboanga Peninsula.

Definitely, Section 66 of the Indigenous Peoples' Rights Act does not apply in this case, where one of the parties do not belong to the same ethnolinguistic group as the other.

I

More importantly, the Indigenous Peoples' Rights Act cannot be interpreted as a charter that removes all minoritized Filipinos from the workings and application of the national legal system. Persons and groups belonging to what is still now considered as indigenous cultural communities/indigenous peoples interact with other cultures who consider themselves as Filipinos. To my knowledge, the Indigenous Peoples' Rights Act is an exemplary social legislation that should assist members of indigenous cultural communities to be empowered in all their relationships. The statute was not designed to facilitate their continued social and cultural isolation. The Indigenous Peoples' Rights Act should not cause their further marginalization.

To insist that the NCIP has the sole and exclusive jurisdiction in any conflict involving indigenous cultural communities/indigenous peoples is to insist on a dangerous and debilitating stereotype. It is to assume that no indigenous cultural communities/indigenous peoples have intellectual or moral resource to deal with outsiders on equal footing in regular courts of justice. It is also to insist that our regular judges should not inform themselves of the concerns of indigenous peoples or that they cannot acquire

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[3] Rep. Act No. 8371, sec. 66.

the cultural sensitivity to be able to resolve conflicts among indigenous peoples fully and fairly. Insisting that the NCIP should exclusively deal with all conflicts between and among indigenous cultural communities/indigenous peoples for so long as there is a member of an indigenous cultural communities/indigenous peoples involved creates an unnecessary artificial enclave that maintains the insidious caricatures of backward peoples insisted by our colonial past. Indigenous peoples are not that strange that they cannot deal with or be dealt with by regular courts. To insist otherwise is to betray the desire of empowerment implicit in the Indigenous Peoples' Rights Act.

II

There is also another equally important Constitutional principle at stake in our interpretation of Section 66 of the Indigenous Peoples' Rights Act. This pertains to the extent of the power of Congress to create enclaves of administrative bodies with quasi-judicial jurisdiction removing from the judiciary conflicts, which it should constitutionally adjudicate.

The traditional justification of the grant of quasi-judicial powers to administrative bodies under the control and supervision of the Executive was that it was necessary to be able to deal with the perceived complexities of modern life. There was recognition that the resolution of some conflicts required technical expertise for which judges in regular courts were not equipped.

However, there is a trend towards the specialization of regular courts of justice. Today, we have specialized Family Courts,[4] environmental salas,[5] and commercial courts, among others. Recently, we authorized the designation of specialized cybercrime courts.[6]

Furthermore, under the supervision of the Supreme Court, we have the Philippine Judicial Academy (PHILJA) that routinely holds courses on very specialized subjects. The requirements for taking the bar have been liberalized. Consequently, the basic training of judges is now different from what it was when this Court found the basis for quasi-judicial jurisdiction. Now, we have judges who are also trained engineers, molecular biologists, math majors, economists, and psychologists, apart from those who specialize in political science or philosophy. While administrative agencies with quasi-

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4 Rep. Act No. 8369, sec. 3 provides:
Section 3. *Establishment of Family Courts.* — There shall be established a Family Court in every province and city in the country. In case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population.

5 Supreme Court Adm. O. No. 23-08 (2008), Designation of Special Courts to Hear, Try and Decide Environmental Cases.

6 Adm. Matter No. 03-03-03-SC, Designating Certain Branches of the Regional Trial Courts to Try and Decide Cybercrime Cases Under Republic Act No. 10175.

judicial powers were an initial modality to deal with modernity, they would not be the only exclusive approach.

In my view, the power of the Judiciary to adjudicate remains vulnerable unless we shape the parameters for granting quasi-judicial jurisdiction to administrative agencies with greater clarity and precision. The grant of judicial power to the Judiciary cannot be undermined by Congressional action through the unbounded transfer of adjudicatory powers to quasi-judicial administrative agencies.

In my view, controversies may be adjudicated by administrative agencies only when the resolution of conflicts among parties are necessary in order that the Executive department can implement a program mandated by law. For instance, conflicting applications of two (2) applicants to the same bandwidth may be settled by an administrative body because it is necessary to comply with the standards and procedures for allocating a scarce resource. In the same manner, a controversy between two (2) mining companies over the same meridional blocks should be settled first by an administrative agency to allow the Executive to determine the company that will assist in the enjoyment and exploitation of our mineral resources under a production sharing or joint venture arrangement within the limitations provided by law. Conflicting claims between two (2) groups of farmers claiming tenancy rights or the status of agrarian reform beneficiaries must be settled by an administrative agency so that the owners of a Certificate of Land Ownership Award (CLOA) could be determined. This is instrumental to achieve the objectives of the agrarian reform program set by the Constitution and specified by law.

It is not only that the resolution of a conflict requires specialized knowledge. In order that adjudication can be constitutionally carved out of the judicial sphere and initially put within administrative purview, there must also be a clear showing that the resolution of the conflict is necessary to pursue the implementation of a program provided by law.

This will be absent if our interpretation of Section 66 of the Indigenous Peoples' Rights Act is that the NCIP should have jurisdiction in any and all conflicts for so long as one (1) party belongs to an indigenous cultural communities/indigenous peoples group. In many of these controversies, it may not even be specialized knowledge in customary law involved but simply general knowledge in existing law. This is the situation in the present case.

IV

This Court's decision in this case should only be limited to what is

necessary to resolve the conflict as presented by the facts. Any other interpretation of any other provision of the Indigenous Peoples' Rights Act or the implementing rules promulgated by the NCIP or jointly with any other department might foreclose the proper interpretation when facts, which we cannot now foresee, present themselves.

For instance, no provision of the Joint Administrative Order No. 1 of the DAR-DENR-LRA-NCIP on "contentious issues" is in controversy in this case. It would be premature to hazard any correct interpretation of any of its provisions absent an actual case. Our opinion may be construed as binding although only obiter. We cannot render advisory opinions risking our institutional inability to foresee all possible factual permutations.

Thus, where registered emancipation patents or CLOA's may be questioned should be the proper subject of another case where the facts will properly be laid. It is possible that a Torrens title has been issued or that extrinsic fraud will be present. We cannot yet state, as a rule, that the jurisdiction of the Department of Agrarian Reform Secretary is more definitive as compared with the jurisdiction of a Regional Trial Court applying the provisions of Presidential Decree 1529.

Furthermore, the penalties provided by the Indigenous Peoples' Rights Act is not in issue in this case. It may not have been properly pleaded. The danger is that it may foreclose future discussion as to the validity of any of its related provisions.

I recommend that we keep within the narrow bounds of the issues presented in this case. It is sufficient to state that Section 66 of the Indigenous Peoples' Rights Act is not basis to hold that the NCIP has jurisdiction over a conflict between a member of an indigenous cultural communities/indigenous peoples and a non-member of the same indigenous cultural communities/indigenous peoples.

ACCORDINGLY, I vote to deny the Motion for Reconsideration.

MARVIC M.V. F. LEONEN
Associate Justice

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