ANCESTRAL DOMAIN:

TENURIAL RIGHTS OF INDIGENOUS PEOPLES*

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Introduction

The Philippine legal system is a pervading culture. Its laws affect the people from all walks of life. It traverses the path where its power is claimed to prevail, even if its touch would disturb the rights of those who regard the land as their life and confound the people whose lives are inextricably linked with the land.

The historical documentation of the life and cultures of the indigenous peoples of the Philippines shows that they and their ancestors have been occupying and possessing various parts of the upland regions of the Archipelago for generations. Long before the first colonizers arrived, they had been inhabiting and continuously working on the land, thereby enjoying the fruits of their labor, unrestricted by any law other than their own customs and traditions.

The advent of the colonial era brought forth a national system of land registration conceived by a people who had an entirely different cultural and social experience.[1] Slowly but steadily, the efforts of the colonial power successfully penetrated the indigenous peoples' way of life. The indigenous peoples soon found themselves no longer the owners of the land they had been occupying and cultivating for generations. Suddenly, something as incomprehensible, as profound, and as alien as a national government or State claimed to be the sole owner of all the lands of the Philippine Archipelago.

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[1]The Spanish Royal Decree of 1880, and Act No. 406 (1902).

As the authority from where all rights to land emanate, the State required the registration of lands and/or application for government grants as a precondition for the recognition of proprietary rights. Proof of title other than that mandated by the State was disregarded.[2] By the time the consequences of this phenomenon on their rights finally dawned on them, the indigenous peoples found themselves having to defend what they truly believed to be their land and their life.

The bulk of existing materials concerning the indigenous peoples and the pertinent laws affecting them focus on a critique of national land legislation *vis-a-vis* the tenurial security of the indigenous peoples by identifying the inadequacies of present legislation in recognizing their tenurial rights and by proposing reforms.

Such inadequacies of the present legislation have been made the subject matter of numerous legal opuses of Prof. Owen Lynch. In his article on the "Invisible Peoples and a Hidden Agenda: the Origins of Contemporary Philippine Land Laws (1900 - 1913)[3]", Lynch surveyed the historical premises which provide the popular and legal bases for ancestral land usurpation. He also discussed the status of contemporary national laws concerning ancestral land.

In his article on "Agrarian Reform and the Philippine Public Domain: The Constitutional Imperative to Recognize Existing Private Rights", [4] Lynch demonstrated his position that Philippine citizens within the so-called "public domain" are often, with State sanction, unconstitutionally divested of their private property rights.

In another article, [5] Prof. Lynch presented a critique of five fundamental legal issues concerning people and land resources

[2]Oh Cho v. Director of Lands, 75 Philippine Reports 890 (1946).

[3]Philippine Law Lournal 249 (1988).

[4]VII Enviroscope 1 (1987).

[5]Owen Lynch, "Agrarian Reform and the Philippine Public Domain: A Legal Framework", a paper prepared for the Department of Environment and Natural Resources Policy Advisory Group Task Force on Land Resources Allocation and Management (1987).

within the public domain, namely, the colonial foundation of contemporary national laws; property rights which emanate from national laws; the overlapping allocation of the Executive Branch bureaucracies' legal jurisdiction over the public domain; the origins and expansion of the Executive Branch's public domain classification powers; and the local laws and customs which pertain to natural resources allocation.

In yet another article, Lynch made an introductory survey of the native title, private right, and tribal land laws of the indigenous peoples.[6] This survey dealt with the rights and laws of the indigenous peoples from the perspective of the indigenous communities. Similarly, in his paper on "Whither the People? Demographic, Tenurial and Agricultural Aspects of the Tropical Forestry Action Plan", Lynch underscored the significance of demographic studies, land tenure, swidden agriculture, and common or communal property systems of resource management in the processes of managing our tropical forests. [7]

Meanwhile, other articles analyzed the legal implications of the constitutionally espoused Regalian Doctrine and the laws which sprung from it on the "vested" rights of the indigenous peoples.[8] These articles demonstrate how the State, as owner of our country's vast natural resources, justifies its act of implementing laws and measures on the lands of the public domain to the detriment of the tenurial right of the indigenous peoples.

Finally, articles were written in an attempt to resolve the confusion regarding the ownership of "public lands" by tracing their origins and development in the context of the various executive and legislative enactments made in history. These articles likewise touch on the transition from a pro-agricultural to pro-forest presumption of classifying lands of the public domain. In

[6] Lynch, "Native Title, Private Right and Tribal Land Law: An Introductory Survey", 57 Philippine Law Journal No. 1 (1982).

[7]A Paper prepared for the World Resources Institute (1989).

[8]Royo, "Regalian Doctrine: Whither the Vested Rights?", 1 Philippine National Resources Journal 2 (1988); See also La Viña, "Democratizing Access to Forest Resources: A Legal Critique of National Forest Policy", 3 Philippine National Resources Journal 1,2 (1980).

effect, these articles show how the vested rights of the indigenous peoples in the "public lands" are historically undermined by such legal classification.[9]

In sum, the above articles pose the argument that the indigenous peoples possessed vested ownership rights over lands occupied by them for generations but which lands are now classified as part of the public domain. It would seem that the present legal system operates to divest the indigenous peoples of such title through laws and doctrines which are either manifestly inadequate or are in utter disregard of such rights.

While we recognize the persuasiveness of the arguments raised by the foregoing authors regarding their respective analyses and critique of the pertinent legislations and doctrines affecting the tenurial rights of the indigenous peoples in the upland region, we find it important, at this juncture, to inquire into the tenurial rights of the indigenous peoples on the basis of the existing laws. Indeed, no attempt has yet been made[10] in looking for creative solutions to this problem on the basis of what our laws provide and in developing what is already within our hands in order to give the indigenous peoples more rights which they deserve.

While we admit a bias for recognizing the title of the indigenous peoples to their ancestral lands by lobbying for concrete reforms of the law , this paper simply endeavors to examine the relevant laws and jurisprudence pertaining to the tenurial rights of the indigenous peoples in the uplands. It aims to inquire into the precise nature and character of tenurial rights afforded by our legal system to the indigenous peoples. Within this context, this paper endeavors to explore the possibility of formulating a fresh perspective on the existing laws and jurisprudence on the tenurial rights of indigenous peoples in the uplands with the end in view of giving them more rights.

[9]Bernardo,"Public Land Laws (1900 - 1945): A Critique of the Classification of our Most Vital Resource", 1 Philippine National Journal 1, 2 (1988).

[10] "On Legal Myths and Indigenous Peoples:", paper presented by Prof. Mario Victor Leon", Seminar on Environmental Regulation in Pacific Rim Nations, Hongkong, Feb. 28, 1991. Leonen challenged the reader to look for creative solutions from what the legal texts provide and to lobby for reforms.

The Inhabitants of the Uplands

The term "uplands" has not been concretely defined in Philippine statutes. However, in practice, the term "uplands" has been used to refer to the mountain and foothill portions of the country which are above the eighteen percent (18%) slope criterion set forth in the law as public and inalienable lands.[11]

On the basis of the eighteen percent (18%) slope threshold, the uplands comprise about 15.5 to 16.8 million hectares or fifty four percent (54%) to fifty six percent (56%) of the national territory.[12] About 15.0 million hectares of the country have been classified as forest land, while about 0.9 million hectares have remained unclassified and inalienable. It has been reported that about 3.6 million hectares of the uplands have been classified as alienable and disposable. This is about twenty three percent (23%) of the total area of the uplands or about twenty seven percent (27%) of the total area of alienable and disposable lands.[13]

With respect to the number of people living within the upland areas, there is a notable difference in the statistics available. The official estimate was 1.33 million people as of 1986. [14] In the DENR Masterplan, it discounted the estimate made by a researcher who pegged the upland population at around 17.88 million in 1988 by stating that researches made by the Department showed some discrepancy and resolved that actual upland population is only seventy percent (70%) to eighty percent (80%) of such estimate.[15] An independent researcher using official census data concluded, by contrast, that the upland population was 14.4

[11]DENR, Masterplan for Forestry Development, 70 (1990). See also World Bank Document, Philippines: Forestry, Fisheries and Agricultural Resource Management Study, 9 (1989).

[12]These are estimates found in the DENR Masterplan and the WB Document.

[13] DENR Forestry Masterplan.

[14]DENR, Forestry Management Bureau (FMB), Statistics, 1986.

[15]DENR Forestry Masterplan, 1990.

million and that by 1990 it would have grown to about 18.6 million. [16]

There are three major groups of people found in the uplands, namely: (1) timber lessees; (2) pasture lessees; and (3) upland farmers. [17]

Timber lessees are those granted with access to upland areas for timber production on a sustained yield basis through a selective logging system. As of 1989, 82 timber licensees had access to 3.7 million hectares of forest lands. [18] Pasture lessees, on the other hand, are those who were allowed to pasture in the uplands. The estimated 1,115 permit holders used 431,000 hectares of the uplands in 1989. [19]

Upland farmers constitute the largest group of people found in the uplands. This group is estimated to number from 6 to 18 million in 1988. They are further classified into indigenous peoples, long term migrants and peasant settlers. [20]

The Indigenous Peoples

The term indigenous peoples is used interchangeably, though less appropriately, with the concepts of national cultural minorities, tribal communities, tribal Filipinos, ethnic groups, primitive people, and native tribes. The term emphasizes their length of habitation in a given area, distinct cultural and linguistic traditions passed on by ancestors for many generations, and a strong sense of ethnic

[16] Ma. Concepcion Cruz, et.al., "Population Pressure and Migration: Implications for Upland Development," UPLB, Center for Policy and Development Studies, 1986. p.41.

[17] De los Angeles, "Economic Policies and Sustainable Development," in SYMBIOSIS, (July to December 1990, Vol. 3 #1, p.23).

[18] Ibid.

[19] Ibid.

[20] Ibid.

self-identity. [21]

In the Philippines, the indigenous peoples refer to the various groups of people found in the remote interiors of Luzon, Mindanao, and some islands of the Visayas. [22] They are described to have been least influenced by Christianity and Hispanization and have maintained the closest link to their ancestral past. [23] Approximately 6.5 to 7.5 million in population, they form a diverse collection of over 40 ethnolinguistic groups, each with a distinct language and culture. [24]

At present, the indigenous communities can be conveniently classified into the following groups: [25]

Cordillera Peoples — occupy the Cordillera mountain range which covers five provinces in the middle of Northern Luzon. The major ethnolinguistic groups, numbering a total of 988,000, are the Ifugao, Bontoc, Kankanai, Yapayao, Kalinga, Ibaloi, Tingguian, and Isneg Tribes.

Caraballo Tribes — these peoples inhabit the Caraballo mountain range in Eastern Central Luzon. They are composed of five ethnolinguistic groups, namely, the Ibanag, Ilongot, Gaddang, Ikalahan, and Isinal tribes.

Agta and Aeta — they are the short, dark-skinned and kinky-haired peoples who live in the scattered hills of Central Luzon. Those who occupy the nearby hills of Mount Pinatubo in Zambales and Pampanga were recently displaced due to volcanic eruption in 1991.

[21] Lynch, *Philippine and Indonesian Indigenous Peoples*, 1989.

[22] Tribal Filipinos and Ancestral Domain: Struggle Against Development Aggression, 1990, xvii.

[23] "Katutubong Alyansa ng Mamamayang Pilipino (KAMP), Indigenous People's Situationer," (1990).

[24] Supra and note 16.

[25] *Tabak*, 1990, vviii xiv. See also Gloria, "Three Ethnic Groups of Davao in Cross-Cultural Perspectives." *TAMBARA* 2 (1990).

Mangyan of Mindoro — this group represents six ethnolinguistic groupings, the Batangan, Iraya, Hanunuo, Alangan, Ratagnon, Buhid, and Tadyawan, who inhabit the mountains and foothills of Mindoro.

Palawan Hilltribes — the tribal people of Palawan island which roughly consists of the Tagbanua, Batak, Kalamianes, Cuyonin, and Ken-uy.

Mindanao Lumad — refers to the approximately 18 ethnic groups living in the hilly portions of the provinces of Davao, Bukidnon, Agusan, Surigao, Zamboanga, Misamis, Cotabato, and other provinces of Mindanao. These non-Muslim hilltribes of Mindanao include the Subanon, Manobo, B'laan, T'boli, Mandaya, Mansaka, Tiruray, Higaonon, Bagobo, Bukidnon, Tagakaulo, Banwaon, Dibabawon, Tala-andig, Mamanua, and Manguangan.

Whatever the statistics may be regarding the number of indigenous communities in the uplands, it is undeniable that the peculiar situation of these peoples will remain relevant in the drafting of legislations that pertain to tenurial rights in the uplands.

The Variance of Perspectives on the Concept of Land

The concept of land has been thoroughly examined by Paul Bohanan in one of his essays. [26] He made a distinction between the concept of Westerners and that of non-Westerners, in this case, the African people. According to him the Westerners "...divide the earth's surface by an imaginary grid whose coordinates are determined by the location of certain celestial bodies." This grid and its coordinates are then plotted on a piece of paper referred to as a "map". In cases of disputes, precise instruments are used to define the land astrally. [27]

[26] P. Bohanan, "Land, Tenure and Land Tenure in African Agrarian Systems" (1963).

[27] Ibid.

Because of this concept, land, for the Westerners, becomes a measureable entity, divisible into thing-like parcels. As such, these parcels become marketable commodities which can be bought and sold by individuals.

Land tenure, on the other hand, implies a relationship between a person or community and land. [28] This Western concept of land and land tenure is embodied in our present legal system.

The Legal Perspective

Under the present Law on Property, ownership is described as something which is "exercised over things or rights". [29] It gives the owners several rights, such as the right to enjoy and dispose of the thing, the right to exclude others from enjoying or disposing of it, and the right to receive its fruits, among others. [30]

Ownership has been defined as the "independent and general power of a person over a thing for purposes recognized by law and within limits established thereby." [31] It has also been understood as a "relationship in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another." [32]

The right to enjoy includes the following rights: the *jus utendi* or the right to use the thing; *jus fruendi* or the right to receive the fruits from the thing that it produces; the *jus abutendi* or the *jus disponendi* which is the power to alienate, encumber, transform, and even destroy the thing owned. Ownership also includes the *jus vindicandi* or the right to exclude from the

[28] Ibid.

[29] Civil Code, art. 427.

[30] II A. Tolentino, Civil Code of the Philippines 4th edition, (1987).

[31] Ibid.

[32] Ibid.

possession of the thing owned any other person to whom the owner has not transmitted such thing. [33]

This concept of ownership with respect to the lands of the public domain is enshrined in our Constitution, thus:

> All lands of the public domain xxx are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production sharing agreements with Filipino citizens, or corporations or associations at least 60 percent of whose capital is owned by such citizens. [34]

The first part of the provision embodies the doctrine of *Jura Regalia*, commonly known as the Regalian Doctrine. [35] Under this doctrine, the State, as owner of all the public lands, has the sole power to exercise all the rights of an owner with respect to such land. Hence, it has the option to choose which lands can be alienated to and explored, developed or utilized by individuals or groups. Concommitantly, private ownership or title to such lands must emanate from the State. [36]

The Indigenous Perspective

On the other hand, land , as perceived by the indigenous peoples, is not a commodity which one can own. Their concept of land can be best described in the following passage:

[33] Ibid.

[34] Constitution, art. XII, sec. 2. Similar provisions are laid down in the 1973 and 1935 Constitutions.

[35] Royo, supra note 20, citing PEÑA, Land Titles and Deeds (1982) and Lotilla, "The Regalian Question", unpublished paper, Philippine Indigenous Law Course, Indigenous Law Collection, U.P. Law Library.

[36] La Viña, supra note 20.

> How can you buy or sell the sky, the warmth of the land? The idea is strange to us. We do not own the freshness of the air or the sparkle of the water. How can you buy them from us? Every part of the earth is sacred to my people. Every shining pine needle, clearing and humming insect is holy in the memory and experience of my people... We are part of the earth, and it is part of us...This we know: all things are connected like the blood which unites one family. Man did not weave the web of life; he is merely a strand of it. Whatever he does to the web he does to himself. [37]

While there may be variations among the ethnolinguistic groupings with respect to their notion of land and land ownership,[38] it could be fairly synthesized in the following words:

> `Ownership' more accurately applies to the tribal right to use the land or to territorial control. Ownership is tantamount to work. If one ceases to work, he loses his claim to ownership. At best, the people consider themselves as `secondary owners' or stewards of the land, since the beings of the spirit world are considered as the true and primary or reciprocal owners of the land.
>
> 'Property' usually applies only to the things which involve labor, or the things produced from labor.
>
> 'Communal', as a description of man-land relationship, carries with it extra connotations that the land is used by anybody, but actually, is limited only to the recognized members of the tribe, and is a collective right to freely use the particular territory.
>
> There is also the concept of 'trusteeship' since not only the present generation, but also the future ones, possess

[37] *Ugat*, Human Rights and Ancestral Lands: A Source Book 66 (1983).

[38] Maceda, "Survey of Landed Property Concepts and Practices Among the Marginal Agriculturists of the Philippines", *Philippine Quarterly of Culture and Society*. See also Brett, *Bontoc Land Tenure* (1984).

the right to the land. [39]

Thus, while ordinary persons regard the land as property which one can own, as one owns a pair of shoes, with the corresponding rights over such land, the indigenous peoples view land as a part of themselves and appended to their very existence. Our perspective of tenurial rights over land is clearly beyond the culture and understanding of indigenous peoples. Yet, these differing concepts have something in common, that is, the idea that the various rights with respect to land may be held by different persons simultaneously.

An inquiry into the tenurial rights of the indigenous peoples requires a prior appreciation of the classification of land rights. According to Crocombe, land rights may be classified into the following six categories: [40]

1. *Rights of or Claims to Direct Use,* which include the rights to plant, to harvest, to gather or to build. There may be various rights of direct use that may be held by various persons in respect of the same parcel of land. Apart from the above rights which govern production from the land, subsidiary rights of users may also be recognized, which include rights of access and rights to the use of water.

2. *Rights of Indirect Economic Gain,* such as those pertaining to tribute or to rental income.

3. *Rights of Control.* Rights of use are said to be invariably limited by rights of control, which are held by persons other than the user. An example would be a person having an exclusive right to plant on land but is in turn required to plant a specific crop or to conform to certain technical requirements of husbandry or to erect a

[39] Cordillera Studies Program, "Land Use and Ownership and Public Policy in the Cordilleras" (1982).

[40] Ron Crocombe, (ed). "An Approach to the Analysis of Land Tenure Systems", in *Land Tenure in the Pacific* (1971).

specific type of house. Control may also be taken negatively by restraining the user from allowing the land to be used for purposes other than what is agreed upon. Other rights of control include those held by land courts, chiefs, or others with authority over land.

4. *Rights of Transfer,* which the effective power to transmit rights, either those over the land itself or those over other property attached to the land, by will, sale, mortgage, gift or other conveyance.

5. *Residual Rights* include the reversionary interest acquired in the event of death of the former right-holders without descendants or collateral heirs; of non-compliance with specified conditions, as when persons are evicted for breaches of social norms; and of extreme need by the holder of the residual rights, such as the power of eminent domain which is held by the government.

6. *Symbolic Rights or Rights of Identification.* These rights stem from clearly recognized relationships between men and land which have no apparent economic or material function. These rights may be sources of prestige or personal satisfaction. Instances of these rights are: naming particular places after parts of their bodies; a church built on land which was informally given to the people a century ago; and the possession of colonial or dependent territories.

Significant in this approach to analyzing land tenure systems is the determination of the source of these rights and the machinery for their enforcement. Where land tenure rules are codified as laws, a distinction should be drawn between those that are quasi legal, and those that are outside statute law but still subject to customary constraints.

A Brief Historical Background of Philippine Tenurial Rights

To settle the issue of tenurial rights over lands held by the indigenous peoples, the first Philippine legislature, i.e. the Philippine Commission, enacted the first Public Land Act (Act No. 926) which took effect on October 8, 1903 to enable the indigenous peoples, among others, to apply for free patents after complying with or satisfying the requirements of the law. However, in 1909, the United States Supreme Court, in a case involving a parcel of land found to have been occupied and cultivated by an Igorot tribesman since time immemorial, had occasion to lay down the doctrine of aboriginal title whereby it ruled that lands which had been held under a claim of private ownership since time immemorial are presumed to have been held as such before the Spanish conquest and "never to have been public land". [41]

The second Public Land Act (Act No. 2874 of 1919) granted the indigenous peoples who, since July 4, 1907 or prior thereto, had continuously occupied and cultivated, either by himself or through his predecessors in interest, a tract of public agricultural land, the right to have his ownership to such land recognized.

The third Public Land Act (Com. Act No. 141) was subsequently enacted by the Commonwealth Government in 1936. At the time the law was passed the title of indigenous peoples that could be made the subject of confirmation proceedings was limited to alienable or disposable lands of the public domain. [42]

It was only in 1964 that the benefits of the law were extended to "lands of the public domain, suitable to agriculture, whether disposable or not" in open, continuous, exclusive and notorious possession or occupation by national cultural communities under a *bona fide* claim of ownership for at least thirty (30) years. [43]

[41] Cariño v. Insular Government, 41 Phil. 935 (1909).

[42] Com. Act No. 141 (1936), sec. 48 (b).

[43] Republic Act No. 3872 (1964).

This recognition was again restricted to disposable or alienable lands of the public domain by a subsequent amendment which took effect in 1977. [44] Nonetheless, the 1977 amendment did not stop the Philippine Supreme Court from ruling in the case of the *Director of Lands v. Intermediate Appellate Court and Acme Plywood and Veneer Corporation* [45] that upon completion of the thirty year requirement, the title recognizable by our legal system became vested on the indigenous peoples.

In 1989, the Supreme Court appears to have reversed itself in the case of the *Director of Land Management v. Court of Appeals* [46] when it decided that no imperfect title could be confirmed over lands not yet classified as disposable or alienable.

Meanwhile, President Marcos, exercising his legislative powers under Amendment No. 6 to the 1973 Constitution, promulgated "The Ancestral Land Decree of 1974" [47] which declared, among others, that "all unappropriated agricultural lands of the public domain occupied and cultivated by members of the national cultural communities for at least ten (10) years prior to the effectivity of the Decree form part of the `ancestral lands' of the national cultural community." [48] It defined "ancestral lands" as "lands of the public domain that have been in open, continuous, exclusive and notorious occupation and possession by a national cultural community by themselves or through their ancestors, under a *bona fide* claim of acquisition of ownership according to their customs and traditions for a period of at least thirty (30) years before the date of approval of this Decree." [49]

[44] Presidential Decree No. 1073 (1977), sec. 4.

[45] 146 Supreme Court Reports Annotated 509 (1986).

[46] Supreme Court Reports Annotated (1989).

[47] Presidential Decree No. 410 (1974).

[48] Ibid.

[49] Ibid.

When the Revised Forestry Code of the Philippines [50] was promulgated on May 19, 1975, upland areas, i.e., those lands with slopes of 18 percent (18%) or steeper, were declared not susceptible for classification as alienable and disposable, and those which had earlier been declared alienable and disposable were to be reverted to the classification of forest lands. However, there are two exceptions: (1) those already covered by existing titles or approved public land application; and (2) those actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of the Code, where the occupant is qualified for a free patent under the Public Land Act.[51]

The implementation of government programs with respect to lands classified as forest lands is currently being undertaken by the Department of Environment and Natural Resources. [52] Specifically, these programs are the Integrated Social Forestry Program and the Contract Reforestation Program, as modified by the Forest Land Management Agreement. In both programs, the tenurial rights of the indigenous peoples are categorically recognized as vital to the development, management and utilization of public lands.

At the outset, the pertinent laws and jurisprudence on the matter seem to give the impression that the tenurial rights of the indigenous peoples are amply secured and protected. Noted legal scholars who have closely examined the same would, however, controvert such a conclusion. They argue that these laws, on the contrary, operate to divest the indigenous peoples of their rights to their ancestral lands inasmuch as the very premise of these laws is that the lands occupied by these peoples form part of the public domain and are therefore owned by the State. They regard as a legal myth the argument that the State, as owner thereof, has the authority to impose conditions for its use and alienation by private parties. The objection set forth is based on the premise that the

[50] Presidential Decree No. 705 (1975).

[51] Ibid.

[52] Order No. 192 (1987), sec. 4.

lands occupied by the indigenous peoples have never been public but had always been private in character. Thus, the State possesses no power whatsoever in respect to these lands and consequently, what it ought to undertake is the recognition of titles already held by the indigenous peoples.

Tenurial Rights Under the Philippine Legal System

Under the present legal system, there are four identifiable legal bases for the recognition of the tenurial rights of the indigenous peoples in respect of the lands they have been occupying for generations: (1) the Cariño Doctrine; (2) grant of free patent and confirmation of title under Commonwealth Act No. 141; (3) the Agrarian Reform Law (Republic Act No. 6657); and (4) the Revised Forestry Code (Presidential Decree No. 705, as amended) which include the various upland development programs of the Departmment of Environment and Natural Resources (DENR).

The above enumeration is a modified version of the six distinct tenurial rights, as well as a variety of correlative rights, identified by Lynch. [53] Most of these rights are predicated on occupancy for a specified period of time. Each right "... emanates from national laws recognized by the Philippine legal community as valid and in force as of February 1987." [54] None are contingent on documentation. Instead, they are presumed to exist where there is evidence of occupation and possession for the requisite number of years. These rights, identified by Prof. Lynch, are: (1) native title (Cariño Doctrine); (2) Sec. 48 (b) of Commonwealth Act No. 141 as amended; (3) the amendment introduced by Sec.1 of Republic Act No. 3872 to Section 48 of Commonwealth Act No. 141; (4) the Migrants' Amnesty of 1975 (Sec. 53 of Presidential Decree No.

[53] Lynch, A paper prepared for the Department of Environment and Natural Resources Policy Advisory Group, Task Force on Lad Resources Allocation and Management, 1987.

[54] Ibid.

705); [55] (5) the eligibility to participate in the various Integrated Social Forestry (ISF) programs of the Government; and (6) the constitutional guarantee of due process of law afforded to all property holders.

The Cariño Doctrine

During the early years of American occupation, the United States Supreme Court introduced into Philippine jurisprudence the common law concept of aboriginal title in the case of *Cariño v. Insular Government*. The decision gave rise to the time-honored Cariño doctrine which states that "when as far back as testimony or memory goes, the land has been held under a claim of private ownership it will be presumed to **have been held in the same way before the Spanish conquest, and never to have been public land."**[56]

Plaintiff Mateo Cariño, a member of the Igorot tribe, was applying for registration of a parcel of land in Benguet. He and his ancestors had held the land as owners for more than a hundred years. His grandfather had lived upon it and had maintained fences sufficient for the holding of cattle, according to the custom of his people. Some of the fences appeared to have been of much earlier date. His father had cultivated parts and had used other parts for pasturing cattle. Mateo himself had used the land in question for pasturing. As he had inherited the land from his father, in accordance with Igorot custom, he claimed title to the land. No document of title, however, had issued from the Spanish Crown, and although in 1893 -1894, and again in 1896 -1897 he

[55] For the purposes of this paper, the fourth right identified by Prof. Lynch may be disregarded inasmuch as it is not applicable to the situation of the indigenous peoples for the obvious reason that they are not considered migrants to the lands of which they are recognized as the original settlers. The constitutional guarantee of due process of law ought not to be identified as a distinct source of a tenurial right for it may be deemed to have been taken into consideration in any of those already mentioned. The amendment introduced by Rep. Act 3872 may be incorporated in the item identified as "confirmation of title" under Com. Act 141. A new item has been added, namely, the Agrarian Reform Law of 1988 (Rep. Act 6657).

[56] Phil. 935 (1905).

applied for one under the Royal Decrees then in force, nothing came out of it. In 1901, plaintiff filed a petition, alleging ownership under the mortgage law, and the lands were registered in his name. That process, however, established only a possessory, not a proprietary, title.

Opposing Cariño's application for registration, the Government argued that Spain assumed, asserted and had title to all the land in the Philippines except in so far as it saw fit to permit private titles to be acquired; that there was no prescription against the Crown and that, if there was, a decree of 25 June 1880 required registration within a limited time to make the title good; that Cariño's land was not registered, and therefore became, if it was not always, public land; that the United States succeeded to the title of Spain so that the plaintiff had no rights that the Philippine Government was bound to respect. It submitted the question of *whether plaintiff could have acquired title by prescription of land which belonged to the public domain.*

Counsel for the plaintiff took exception to the definition of the legal issue for the reason that it erroneously assumed that the land formed part of the public domain and that the claimant and his ancestors were originally "squatters" thereon. He further stated that:

> The real situation is essentially different. The land has never at any time belonged to the Crown, but had since, and of necessity before, the Spanish conquest been in the possession of natives who had settled customs and laws of their own, not the least of which was the ownership of lands in severalty. Cariño and his predecessors held the land not as "squatter" on Crown lands but according to the laws and customs of their people. [57]

[57] Quoted from the "Brief on Behalf of Plaintiff in Error" filed by the attorneys for Mateo Cariño, excerpts of which are reproduced in *Human Rights and Ancestral Lands: A Source Book* sponsored by the Ugnayang Pang-agham Tao, University of the Philippines (1983) for the National Congress on Human Rights and Ancestral Lands, held last December 8-9, 1983 in Diliman, Quezon City.

Furthermore, he argued that, contrary to the position taken by the government, aboriginal titles were afforded recognition by both the Spanish and American legal systems.

In disposing of the issue, the United States Supreme Court, through Justice Oliver Wendell Holmes, held that:

> Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, 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.*

Commenting on this decision, Prof. Lynch opines that the same has remained a landmark decision. By virtue of the said ruling, he concludes that "...Igorots, and by logical extension, other tribal Filipinos with complete customs and long associations, have constitutionally protected native titles to their ancestral lands." [58]

The Cariño ruling gives rise to a real right over land, a real right of the highest order—that of ownership, nothing less. It gave a member of the indigenous cultural community all classes of land tenurial rights pertaining to an absolute owner.

The rule that a legal presumption arises in favor of private ownership where the land has been in the possession of a tribal community since time immemorial admits of no exceptions. Upon a showing that possession of the land had been since time immemorial, the legal presumption begins to operate and cannot be defeated by any subsequent claim of the State nor by any subsequent classification of the land into public land. The doctrine, in effect, creates a significant exception to the Regalian Doctrine for, notwithstanding the absence of a certificate of title to evidence

[58] Ibid.

ownership, the land is presumed private upon a showing that the requisite period of possession has been satisfied.

However, the concept of aboriginal title in the Philippines has undergone modifications in subsequent legislations and judicial decisions. These subsequent modifications had one thing in common and that is, the presumption that lands occupied and cultivated by the tribal Filipinos by themselves or through their ancestors, where no certificate of title has been issued as to evidence ownership thereof, **form part of the public domain and are converted into private lands only upon the award by the Government of such lands to them.**

Presidential Decree No. 410, known as the Ancestral Land Decree of 1974, in particular, paragraph 2 of Section 1 thereof, defines ancestral lands as:

> Section 1. Ancestral lands. x x x
>
> For purposes of this Decree, ancestral lands are lands of the public domain that have been in open, continuous, exclusive and notorious occupation and cultivation by members of the national cultural communities by themselves or through their ancestors, under a *bona fide* claim of acquisition of ownership according to their customs and traditions for a period of at least thirty (30) years before the date of approval of this Decree. The interruption of the period of their occupation and cultivation on account of civil disturbance or *force majeur* shall not militate against their right granted under this Decree. [59]

The Decree was promulgated to give landless Muslims and members of other cultural minority groups the same opportunity to own the lands occupied and cultivated by them, which lands were likewise occupied and cultivated by their ancestors. It gave ethnic minority ancestral land owners in twenty-seven

[59] Presidential Decree No. 410 (1974).

provinces [60] ten years to perfect their titles.[61]

The same provision that speaks of the above right of members of cultural minority groups contained a proviso which states that:

> Section 1. Ancestral Lands. x x x
>
> Provided, however, that lands of the public domain heretofore reserved for settlement purposes under the administration of the Department of Agrarian Reform and other areas reserved for other public or quasi-public purposes shall not be subject to disposition in accordance with the provisions of.this Decree. x x x x x

What is peculiar about this Decree is that, notwithstanding its avowed policy of assisting members of national cultural communities in acquiring full ownership of the lands occupied or cultivated by them, **it merely authorizes the issuance of a Land Occupancy Certificate to the beneficiaries.** Moreover, it requires that the recipient must first be a member of a "farmers cooperative" before a Certificate of Land Occupancy may be issued to him. [62]

Departing from this interpretation of the concept of aboriginal title is a proposed bill in the House of Representatives (House Bill No. 33881) which seeks "to recognize and promote the rights of indigenous cultural communities within the framework of national unity and development, to protect the rights of indigenous cultural communities to their ancestral domains to ensure their economic, social and cultural well being; and to provide for the applicability of customary laws governing the ownership and extent of their ancestral domain." [63] It defines "ancestral domain" in the following

[60] Ibid. Section 1 contains the enumeration of the provinces covered by the Decree: Mt. Province, Cagayan, Kalinga Apayao, Ifugao, Mindoro, Pampanga, Rizal, Palawan, Lanao del Sur, Lanao del Norte, Sultan Kudarat, Maguindanao, North Cotabato, South Cotabato, Sulu, Tawi-tawi, Zamboanga del Sur, Zamboanga del Norte, Davao del Sur, Davao del Norte, Davao Oriental, Davao City, Agusan, Surigao del Sur, Surigao del Norte, Bukidnon, and Basilan.

[61] Ibid.

[62] Ibid. sec. 6 (1).

[63] House Bill No. 33881, sec. 2 (1990).

manner:

> [It] refers to all lands and natural resources owned, occupied or possessed by indigenous cultural communities, by themselves or through their ancestors, communally or individually, in accordance with their customs and traditions since time immemorial, continuously to the present except where interrupted by war, *force majeur*, or displacement by force, deceit or stealth. *It shall include ancestral lands, titled properties, forest, pasture, residential, agricultural and other lands individually owned whether alienable/disposable or otherwise, hunting grounds, worship areas, burial grounds, bodies of water, air space, mineral and other natural resources.*[64]

It defines "ancestral lands" as referring "to those real properties within the ancestral domain which are communally owned, either by the whole community or by a clan or group." [65]

Clearly, the object of the bill is not to grant any tenurial right to indigenous cultural communities in respect of the lands they and their ancestors have been occupying. Instead, its declared purpose is to give recognition to such tenurial rights already existing. It therefore admits the existence of such rights in favor of the indigenous peoples, regardless of whether the Government has declared the said lands as "alienable/disposable" or otherwise. It appears that its intention is to remove such lands from the class of public lands. In more concrete terms "formal certificates of recognition which officially and documentarily acknowledge the existence of ancestral domain rights over the area covered" shall be issued to the beneficiaries."[66]

The Senate likewise had its own version of the bill. [67] In essence, this bill includes the recognition of the "historic rights" of the

[64] Ibid. Sec. 3 (b).

[65] Ibid. Sec. 3 (c).

[66] Ibid. Sec. 10.

[67] Senate Bill No. 909 (1989); See also Senate Bill No. 152 (1988).

indigenous cultural communities to their ancestral domain. The bill likewise sought to create a Commission on Ancestral Domain which shall be primarily tasked to determine the location, extent and boundaries of the ancestral domain of each cultural community. Another significant portion of the bill was its provision on the principle of communal ownership of land.

The Public Land Act (Commonwealth Act No. 141) provides for special modes of conveyance of public land to private citizens known as the grant of free patent and confirmation of imperfect title. These particular modes of conveyance are made expressly applicable to indigenous peoples.

The grant of free patent is carried out through administrative legalization while confirmation of imperfect title is coursed through judicial legalization.

Free Patent or Administrative Legalization

Section 44 of the Act identifies who are qualified to avail of the benefits of a free patent. Its original text was amended in 1964 by Republic Act No. 3872 which added a second paragraph mentioning members of the national cultural communities. As amended, the provision reads:

> Sec. 44. Any natural born citizen of the Philippines who is not the owner of more than **twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this amendatory Act,** has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed **twelve (12) hectares.**
>
> A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, *whether disposable or not* since July 4, 1955, shall be entitled to the right granted in the preceding paragraph of this section: Provided, **that** at the time he files his free patent application he is **not the** owner of any real property secured or disposable under this provision of the Public Land Law. [68]

The second paragraph of the same provision has not been expressly amended by subsequent legislation. However, in view of the provisions of Sections 2 and 3 of Article XII of the 1987 Constitution which took effect on 2 February 1987, it has apparently become the official stand of the Department of Environment and Natural Resources that the free patent to which any member of a national cultural community is entitled under Section 44 may be granted only if the land in question is classified or declared as alienable by the Government.

A free patent or administrative legalization may be obtained in accordance with the following procedure:

1. Filing of the application (with the required supporting papers) with the Community Environment and Natural Resources Office (CENRO) where the land applied for is located, after the land is surveyed and the application is duly accomplished. Supporting papers accompanying the application are the plans and technical descriptions of the land, affidavits of two (2) disinterested residents of the municipality where the land is located, and documentary evidence of possession or ownership.

2. Indexing and verification by the CENRO whether the land applied for is already covered by any previous application.

3. Final investigation to be conducted by land investigators or inspectors or duly deputized public land inspectors to determine whether the land applied for is

[68] Words in bold are amendments introduced by Rep. Act No. 6940 which was approved on 28 March 1990 and took effect on 16 April 1990.

disposable through free patent and the applicant is entitled to the same.

4. Posting of notice for two (2) consecutive weeks in the provincial capital, municipality and in the barrio where the land is located if the application is filed under Republic Act No. 782, Republic Act No. 3872, Presidential Decree No. 1073 or Republic Act No. 6940.

If no claim is presented and the area of the land applied for is up to five (5) hectares or five (5) up to ten (10) hectares, patent is prepared for the signature of the Provincial Environment and Natural Resources Officer (PENRO) and Regional Executive Director (RED) respectively, pursuant to the provisions of Administrative Order No. 38 dated April 19, 1990.

If the land applied for is more than ten (10) hectares, the proposed patent, together with the records of the application, is submitted to the Secretary for approval and signature.

5. Once the patent is signed by the [PENRO/RED]/Secretary of Environment and Natural Resources, as the case may be, the same is transmitted to the Register of Deeds concerned for registration and issuance of the corresponding certificate of title, in accordance with Sec. 103 of the Property Registration Decree (P.D. 1529).

The privilege to apply for legalization must be availed of not later than December 31, 2000. [69]

Judicial Confirmation of Imperfect Title

The provisions of Section 48 have undergone three (3) amendments to date. In its original text, it read as follows:

Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or

[69] See Rep. Act No. 6490, setting a new time limit for applications for free patent.

claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have, with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors-in-interest [sic] have been in the open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **except as against the Government since July twenty sixth, eighteen hundred and ninety four,** except when prevented by war or *force majeure.* These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

In 1957 the words in bold above were deleted by Rep. Act No. 1942. In addition, the period of occupation was reduced to a period of at least thirty (30) years prior to the filing of the application for confirmation of title. [70]

Republic Act No. 3872 (approved on June 18, 1964) added a new subsection, referring to the members of national cultural

[70] Rep. Act No. 1942, sec. 1.

communities as beneficiaries. As introduced by Republic Act No. 3872, said subsection reads as follows:

> Sec. 48. x x x x x
>
> (c) Members of the national cultural minorities who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of *lands of the public domain suitable to agriculture, whether disposable or not*, under a *bona fide* claim of ownership for at least 30 years shall be entitled to the rights granted in subsection (b) hereof. (Underscoring supplied.)

With the promulgation of Pres. Decree No. 1073 on January 25, 1977, Section 48 was further amended to limit the application of subsections (b) and (c) to alienable and disposable lands of the public domain. It further reduced the requisite period of occupation to a period beginning July 12, 1945. [71]

Interpreting Section 48 (b) above, as amended, the Supreme Court ruled in the case of *Meralco v. Castro-Bartolome* [72] that the land referred to is public land, that the same would remain as such, and "would cease to be public land only upon the issuance of the certificate of title to any Filipino citizen claiming it under Section 48 (b)". It cited the ruling in the case of *Oh Cho v. Director of Lands* [73] that "all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain [sic] " to support its decision in the case.

Under the Cariño Doctrine, however, an exception to the above rule is any land that has been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest. [74]

[71] Pres. Decree No. 1073 (1977), sec. 4.

[72] 114 SCRA 799 (1982).

[73] Philippine Reports (1946).

[74] *Cariño v. Insular Government*, supra and 41 Philippine Reports (1909).

Without actually overturning the Cariño Doctrine, the Court in the present case sought to make a distinction between land possessed under a *bona fide* claim of ownership before 1880 or since a period of time "beyond the reach of memory" (Cariño case) and land held before the Pacific War broke out in 1941 (Meralco case). Thus, it decided that the Cariño Doctrine was inapplicable to the Meralco case. It instead turned to the ruling in the case of *Uy Un v. Perez* [75] for guidance, where it was noted that the right of an occupant of a public agricultural land to obtain a confirmation of his title under section 48 (b) of the Public Land Law was a *derecho dominical incoativo*, and that, before the issuance of the certificate of title, the occupant was not, in the juridical sense, the true owner of the land since it pertained to the State. This ruling in the Meralco case was reaffirmed in *Republic v. Villanueva*. [76]

In the Meralco case, Justice Claudio Teehankee authored a vigorous dissent, which dissent he reiterated in the Villanueva case. The dissent later became the basis of the majority decision in a 1986 case.[77] It was premised on the failure of the majority opinions in the Meralco and Villanueva cases to adhere to the doctrine established in 1909 and thereafter reaffirmed in 1925 [78] as well as in the 1980 case of Herico [79] pursuant to the Public Land Law, as amended. The Supreme Court ruled in these cases that where a possessor has held the open, continuous and unchallenged possession of *alienable public land* for the period provided by law, 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 the land has already ceased to be of the public domain and has become private property.

[75] Philippine Reports (1941).

[76] 114 Supreme Court Reports Annotated (1982).

[77] Director of Lands v. The Intermediate Appellate Court and Acme Plywood and Veneer Company, Inc., et. al., 146, SCRA 509 (1986).

[78] *Susi v. Razon and the Director of Lands*, Phil. (1925).

[79] Herico v. Dar, SCRA 437 (1980).

Thus, the lands in question ceased, *ipso jure*, or by operation of law, to be lands of the public domain upon completion of the statutory period of open, continuous, exclusive, notorious and unchallenged possession by the applicants' predecessors-in-interest who were qualified natural persons and entitled to registration by right of acquisitive prescription under the provisions of the Public Land Law.

In interpreting the same provision of law, the Supreme Court in the 1986 case of the Director of Lands v. Intermediate Appellate Court [80] defines the nature of confirmation proceedings as follows:

> Nothing can more clearly demonstrate the logical inevitability of considering possession of public land which is of the character and duration prescribed by statute as the equivalent of an express grant from the State than the dictum of the statute itself that the possessor(s) "x x x shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title x x x." No proof being admissible to overcome a conclusive presumption, confirmation proceedings would, in truth, be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceeding would not originally convert the land from public to private land, but only confirm such a conversion already effected by operation of law from the moment the required period of possession became complete x x x The effect of the proof, wherever made, was not to confer title, but simply to establish it, as already conferred by the decree, if not by earlier law.

Three years later, the Supreme Court laid down an exception to the rule in the case of the Director of Land Management and the Director of Forest Development v. Court of Appeals and Mino Hilario. [81] What was involved was a parcel of land situated within

[80] Supreme Court Reports Annotated (1986).

[81] Supreme Court Reports Annotated (1989).

three adjoining classified forest reservations, namely, the Central Cordillera Forest Reserve which was established under Proclamation No. 217, dated 16 February 1929, the Ambuklao Binga Watershed covered by Proclamation No. 548, dated 19 April 1969, and the Upper Agno River Basin Multiple Use of Forest Management District created under Forestry Administrative Order No. 518, dated 9 March 1971.

Respondent Mino Hilario sought to register the land in dispute under Act No. 496 but alternatively invoked the benefits of Chapter VIII of Act No. 2874 (which is now section 48 of Com. Act No. 141) as well as provisions of Republic Act No. 1942 and Republic Act No. 3872, he being a member of the National Cultural Minorities. He claimed ownership by purchase from his father on April 17, 1972.

The opposition of the Director of the Bureau of Lands was anchored on the fact that the property in question pertained to the inalienable class of public lands. In support of this argument, the Director of the Bureau of Forest Development points out the fact that the property has not been re-classified as alienable or disposable.

Upon a finding that the applicant and his predecessors-in-interest had successively, continuously, publicly and adversely occupied, possessed and worked on the land in the concept of absolute ownership since before the outbreak of the First World War and that the property had been declared for taxation purposes in the father's name in 1945, the Land Registration Court ruled that the testimonies of oppositor's witnesses did not at all refute the appplicant's evidence as to the length, nature and manner of acquisition of the land by himself and his predecessors-in-interest.

On appeal, the Court of Appeals affirmed the lower court's decision, stating that the land, notwithstanding that it is within the said Forest Reservation, is registrable under Republic Act No. 3872, and that the applicant had acquired a private right to the land in question prior to the issuance of Proclamation Order No. 217, Proc. No. 548 and Forestry Administrative Order No. 518 relied upon by the Director of the Bureau of Lands.

The Supreme Court apparently disagreed with both the Land Registration Court and the Court of Appeals. It sustained the argument of the oppositors and ruled that there can be no imperfect title to be confirmed over lands not yet classified as disposable or alienable. The declassification of forest lands is an express and positive act of the Government so that it cannot be presumed. Neither can it be ignored or waived.

Citing *Republic v. Court of Appeals* [82] it reiterated the rule that forest lands or forest reserves are not susceptible to private appropriation and possession of said lands, however long, cannot convert them into private property unless such lands are reclassified and declared disposable and alienable by the Director of Forestry; but even then, possession of the land before its reclassification cannot be credited as part of the thirty year requirement under Section 48 (b) of Commonwealth Act No. 141.

Neither could the provisions introduced by Republic Act No. 3872, according to the Court, be applied to the situation at bar for the same are merely amendatory to Commonwealth Act No. 141 which applies to agricultural lands and to no other type of land as borne out by the explicit terms of the said law. [83] Section 2 clearly states that the "provisions of this Act apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws." Similarly, Section 10 provides that "the methods authorized by the Act for the acquisition, lease, use, or benefit of lands referred to lands of the public domain other than timber or mineral lands."

The Court construed the new subsection introduced by Republic Act No. 3872 together with the provisions of the preceding subsection which refers to agricultural lands of the public domain. It concluded that it does not appear that two different classes of lands were intended to be the subject matter of one section of the same Public Act.

As to the construction given by the Court of Appeals, that is, to include even forest reserves as susceptible to private

[82] SCRA (1987).

[83] See Com. Act No. 141, secs. 2 and 10.

appropriation, the same was held to be tantamount to unconstitutionally applying the provision. The 1973 Constitution does not consider timber or forest lands as alienable.

Finally, the Court declared that the land was neither non-forest nor agricultural land before the 1929 proclamation. It did not earn a classification from non-forest into forest land because of the proclamation. The proclamation merely declared a special forest reserve out of already existing forest land. Therefore, a person cannot enter into forest land and, by the simple act of cultivating a portion of that land, earn credit towards an eventual confirmation of imperfect title. The Government must first declare the forest lands to be alienable and disposable agricultural land before the year of entry, cultivation, and exclusive and adverse possession can be counted for purposes of an imperfect title.

The same issue was resolved in a different light by the Court in the recent case of *Republic v. Court of Appeals and Paran.* [84] The Court reaffirmed the ruling that a positive act of the Executive Department is required to declassify public land which was previously classified as forestal and to convert it into alienable or disposable lands for agriculture or other purposes. Hence, once a parcel of land is shown to have been included within a forest reservation duly established by Executive Proclamation, a presumption arises that the parcel of land continues to be part of such Reservation until clear and convincing evidence of subsequent withdrawal or de-classification is shown. The rule cannot, however, be applied to the situation of members of cultural minorities.

According to the Court, in a situation where the applicant for confirmation of title is a member of a cultural community, the applicable provision is the third paragraph of section 48 of Commonwealth Act No. 141. The addition of subsection (c) was intended to create a distinction between applications for judicial confirmation of imperfect titles by members of National Cultural Communities and those by other qualified persons in general. Members of National Cultural Communities are entitled to the rights granted therein regardless of the alienability of the land of

[84] Supreme Court Reports Annotated 1 (1991).

the public domain. It may be deduced from the use of the phrase "whether disposable or not" that they may apply to public lands even though such lands are legally forest lands or mineral lands of the public domain, as long as such lands are in fact suitable for agriculture. Other qualified persons' rights under section 48 are limited only to agricultural lands of the public domain, that is, disposable lands of the public domain which would of course exclude lands embraced within forest reservations or mineral land reservations.

It further ruled that the distinction so established in 1964 by Republic Act No. 3872 being expressly eliminated or abandoned thirteen (13) years later by Presidential Decree No. 1073 (effective on January 25, 1977) only highlights the fact that during those thirteen years, members of cultural communities had rights in respect of lands of the public domain, whether disposable or not.

The Court noted that the application for confirmation of title was filed in 1970 and the land registration court rendered its decision confirming the long continued possession of the land in question, that is, during the time when subsection (c) of section 48 in its original text was in legal force. Therefore, imperfect title was perfected or vested by the completion of the required period of possession prior to the issuance of Presidential Decree No. 1073 and those who acquired said right could not be divested thereof by the courts.

The effect of the 1977 amendment [85] on sections 48 (b) and (c) of Commonwealth Act No. 141 was, therefore, to vest rights on those whose possession and occupation had met the thirty-year requirement (provided that the possession was of the requisite character) at the time of the effectivity of Republic Act No. 3872 regardless of the alienability of the public land in question. In other words, when Presidential Decree No. 1073 amended subsections (b) and (c) of section 48 of Commonwealth Act No. 141 by limiting their application to alienable and disposable lands of the public domain, the said amendment could not operate to deprive the beneficiaries of Republic Act No. 3872 of vested rights.

[85] Presidential Decree No. 1073 (1970), sec. 4.

Their titles to the lands they had been occupying for the requisite period and character were conferred upon them not upon the issuance of the titles, which was yet to take place, but upon the completion of the requisite period of occupation while Republic Act No. 3872 was still in force. So that, even if the application for confirmation of title was made only after the effectivity of Presidential Decree 1073, title had already vested rights in those who had fulfilled the requirements during the effectivity of Republic Act No. 3872. [86]

Commenting on the fact that a succession of statutes had simply extended the original period, rather than establish a series of discrete periods of time with specific beginnining and ending dates, the Court in the Paran case concluded that it only shows a clear legislative intent to avoid *interregna* which would have generated doubtful and difficult questions of law.

Agrarian Reform in the Uplands

The enactment of Republic Act No. 6657 by Congress was made in compliance with the constitutional mandate clearly expressed in the provisions to be discussed below. Article II of the Constitution adopts as a state policy the promotion of "comprehensive rural development and agrarian reform". [87] Expounding on this avowed policy of the State, Article XIII specifically provides that:

> The State shall, by law undertake an agrarian reform program founded on the rights of farmers and regular farmworkers, who are landless, to own directly or

[86] The period for filing applications for judicial confirmation of title has been repeatedly extended by law. When Com. Act No. 141 was enacted, the period for filing was to end on 31 December 1938. Under Com. Act No. 292 dated 9 June 1938, the deadline was moved to 31 December 1941. Again in 1947, the period was extended to 31 December 1957 by Rep. Act No. 107. A year after the expiration of said period, Rep. Act No. 2061 set a new period which was to end on 31 December 1968. Three years after the expiration of said period Rep. Act No. 6236 set another period which was to end on 31 December 1976. By Pres. Decree No. 1073 (1977) the period was further extended to 31 December 1987. The most recent amendment to the law is Rep. Act No. 6940 which took effect on 16 April 1990. The new period for application is to expire on 31 December 2000.

[87] Constitution, art. II, sec. 21.

collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of *all agricultural lands*, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. x x x x [88] (Underscoring supplied.)

Section 6 of the same Article states that:

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

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

From the foregoing constitutional provisions, it is worthy to note that the implementation of an agrarian reform program necessarily considers the following objectives: (1) the distribution of agricultural lands, whether privately owned or belonging to the public domain; (2) the application of the principles of agrarian reform and stewardship in lands of the public domain; (3) the recognition of prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

Hence, in determining the specific tenurial rights afforded by this legislation to the indigenous peoples, it is essential at this point to acquire an understanding of how the various types of land are classified. The availability of a parcel of land for distribution under the program depends a great deal on the alienability of the same.

[88] Ibid., art XIII, sec. 4.

The lands presently occupied by most indigenous peoples are untitled and located in upland areas. Such areas may be categorized into: (1) lands formally classified as agricultural lands; (2) lands formally classified as forest or timber lands; and (3) unclassified lands of the public domain.

At the outset, the Constitution conveys the impression that agrarian reform, in respect of lands of the public domain, is applicable only to those which, under the law, have been classified as public agricultural lands. Thus, while the Constitution mandates that an agrarian reform program be undertaken to enable landless farmers to own, directly or collectively, the lands they till, it limits the power of the State to alienate public lands to agricultural lands of the public domain.[89]

We must not lose sight, however, of the fact that the term "public agricultural land", as used in the Constitution, has nothing to do with the purpose to which the land is devoted. As pointed out earlier, it is merely indicative of what lands of the public domain may be alienated. Thus:

> **Sec. 3. Lands of the public domain are classified into** agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. x x x [90]

Examining the above provision, it may be readily seen that the enumeration of the classes of lands of the public domain is exclusive.

In addressing the problem of how lands which have not been formally classified are to be treated in the light of existing laws, including the Constitution, for purposes of carrying out the provisions of the Comprehensive Agrarian Reform Law, we may allow ourselves to be guided by the definition of terms contained therein.

[89] Ibid, art. XII, secs. 2 and 3.
[90] Ibid, art. XII, sec. 3.

The term "agricultural land" is defined by the law in the following manner:

> Sec. 3. Definitions. For the purpose of this Act, unless the context indicates otherwise:
>
> x x x x
>
> (c) Agricultural Land refers to land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or indusrial land.
>
> x x x x

There are then only two (2) requisites to be satisfied in order that a land may be considered as agricultural within the purview of the law, to wit: (1) that the land is devoted to agricultural activity; and (2) that it is not classified as mineral, forest, residential, commercial or industrial. There is nothing in the law which imposes the requirement of prior classification of the land by the Government.

The second requisite is undoubtedly present with respect to unclassified lands. In determining the existence of the first requisite, a perusal of the definition of "agricultural activity" would be in order. Thus:

> Sec. 3. Definitions. x x x x
>
> (b) Agriculture, Agricultural Enterprise or Agricultural Activity means the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products and other farm activities, and practices performed by a farmer in conjunction wih such farming operations done by persons whether natural or juridical. (Underscoring indicates that portion of the definition which has been declared by the Supreme Court in Luz Farms versus Secretary of the Department of Agrarian

Reform [91] as not comprising agricultural activity).

The above approach in construing the term "agricultural land" is supported by other provisions of the Law.

In identifying the scope of the law, section 4 provides that:

> Sec. 4. Scope. The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.
>
> More specifically, the following lands are covered by the Comprehensive Agrarian Reform Program:
>
> (a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain;
>
> (b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;
>
> (c) All other lands owned by the Government devoted to or suitable for agriculture; and
>
> (d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

Paragraph (c) above refers, in particular, to other lands of the public domain devoted to or suitable for agriculture. Clearly,

[91] SCRA (1990).

Congress did not intend to restrict the applicability of the distribution plan under the Agrarian Reform Program to lands which have been formally classified as agricultural. It extends to lands which are devoted to or suitable for agriculture but which have not been formally classified as agricultural lands.

Significant is the promulgation of Executive Order No. 407 dated June 14, 1990 by President Corazon C. Aquino entitled, "Accelerating the Acquisition and Distribution of Agricultural Lands, Pasture Lands, Fishponds, Agro-Forestry Lands and Other Lands of the Public Domain Suitable for Agriculture". Executive Order No. 407 seeks to implement the mandate of section 7 of Republic Act No. 6657 which provides that:

> Sec. 7. Priorities. The DAR [Department of Agrarian Reform], in coordination with the PARC [Presidential Agrarian Reform Council] shall plan and program the acquisition and distribution of all agricultural lands through a period of ten (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:
>
> Phase One: Rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform; *all lands foreclosed by government financial institutions; all lands acquired by the Presidential Commission on Good Governmment (PCGG); and all other lands owned by the government devoted to or suitable for agriculture,* which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years; x x x (Underscoring supplied.)

The third and sixth paragraphs of the "Whereas Clauses" of Executive Order No. 407 explicitly provide that:

> Whereas, Section 7 of RA 6657 mandates, among others, that all lands foreclosed by government financial institutions, all lands acquired by the PCGG, and all other lands owned by the government devoted to or suitable for agriculture, shall be acquired and distributed immediately upon the effectivity of the said Act and with implementation to be completed within a period of not more than four (4) years therefrom.
>
> x x x x
>
> Whereas, Executive Order No. 360, series of 1989, enjoins all government financial institutions and government owned or controlled corporations to grant the Department of Agrarian Reform the right of first refusal in the sale or disposition of all lands owned by them which are suitable for agriculture;
>
> x x x x

Section 1 of Executive Order No. 407 orders all Government instrumentalities to immediately execute Deeds of Transfer in favor of the Republic of the Philippines as represented by the Department of Agrarian Reform and to surrender to the latter Department all landholdings.

Thus, the redistribution program of the Agrarian Reform Law, with respect to the upland areas, applies to lands which are classified as public agricultural and to those unclassified lands of the public domain which are suitable for agriculture. Those who may avail of the redistribution program of the Agrarian Reform Law are identified as the "qualified beneficiaries" as the term is defined in the Law:

> Sec. 22. Qualified Beneficiaries. The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farmworkers;
(c) seasonal farmworkers;
(d) other farmworkers;
(e) actual tillers or occupants of public lands;
(f) collectives or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

x x x x

Being actual tillers of the lands they occupy, the indigenous peoples could very well qualify as "beneficiaries" under paragraph (e) of the aforequoted provision. A further requisite is his "willingness, aptitude and ability to cultivate and make the land as productive as possible." [92]

As such, the indigenous peoples can exercise the tenurial rights of control, direct use, right to economic gain, residual rights, right to transfer and the symbolic rights over the land upon the award of the land to them as evidenced by the certificates of land ownership award (CLOA), subject to the conditions that they may not sell, transfer or convey the land within a period of ten (10) years, except through hereditary succession, or to the government, or to the Land Bank of the Philippines, or to other qualified beneficiaries, [93] and that annual amortizations will have to be paid.[94]

For the purposes of the indigenous cultural communities, were they to avail of the benefits of the Agrarian Reform Program, the three (3) hectare limit may seem inappropriate for their system of communal ownership. An examination of a later provision will reveal that a particular indigenous cultural community may, however, opt for collective ownership. Thus, section 25 provides that:

> Sec. 25. Award Ceilings for Beneficiaries. Beneficiaries shall be awarded an area not exceeding three (3) hectares,

[92] Republic Act No. 6657 (1988), sec. 22, 4th paragraph.

[93] Ibid. and secs. 24 and 27.

[94] Ibid. and sec. 26.

> which may cover a contiguous tract of land or several parcels of land cumulated up to the prescribed award limits.
>
> x x x x
>
> The beneficiaries may opt for collective ownership, such as co-ownership or farmers cooperative or some other form of collective organization: Provided, That the total area that may be awarded shall not exceed the total number of co-owners or members of the cooperative or collective organization multiplied by the award limit above prescribed, except in meritorious cases as determined by the PARC. Title to the property shall be issued in the name of co-owners or the cooperative or collective organization as the case may be.

Commenting on this provision, Prof. La Viña observed that the enumeration of the possible modes of collective ownership does not preclude communal ownership as the concept is understood by indigenous peoples. Thus, "by distinguishing co-ownership and cooperative from `some other form of collective ownership' it can be inferred that such other form of collective ownership can include communal ownership . . ." [95]

Given this, the next issue to be dealt with is whether indigenous peoples occupying lands, which have been classified as timber or forest land and are therefore inalienable and not susceptible to distribution, are entitled to any tenurial rights; and if so, what these rights may be.

With respect to inalienable lands of the public domain, the Constitution empowers the State to directly undertake the exploration, development and utilization of these lands as the State, may enter into co-production, joint venture or production sharing agreements with Filipino citizens. Such agreements may be for a period of twenty five (25) years, and under such terms and

[95] La Viña, "Arguments for Communal Title," *Philippine National Journal* (December 1989).

conditions as may be provided by law. [96]

The Agrarian Reform Law takes into account the constitutional provision in its definition of the term "agrarian reform". Thus:

> Sec. 3 Definitions. For the purpose of this Act, unless the context indicates otherwise:
>
> (a) Agrarian reform means the *redistribution of lands*, regardless of crops or fruits produced, to farmers and regular farmworkers who are landless, irrespective of tenurial aarrangement, to include the totality of factor and support services designed to lift the economic status of the beneficiaries and *all other arrangements alternative to the physical redistribution of lands*, such as production or profit sharing, labor administration, and the distribution of shares of stock, which will allow beneficiaries to receive a just share of the fruits of the lands they work.(Underscoring supplied.)

Clearly, agrarian reform is not limited to the redistribution of lands. Tenurial rights less than ownership rights may be granted to qualified beneficiaries. Other alternative arrangements are available or are to be made available to qualified beneficiaries.

Under these alternative types of arrangement, the beneficiary would be granted various classes of rights, the most common of which would be the right to the direct use of the land. The right of control, together with the right to transfer, and the residual rights cannot, however, be alienated in his favor.

The implementation of these alternative arrangements has become the joint project of the Department of Agrarian Reform and the Department of Environmment and Natural Resources. The mechanics of these projects, insofar as they are applicable to the situation of the indigenous peoples, will be discussed under the topic of the various Integrated Social Forestry Programs (ISFP).

[96] Constitution, Art. XII, sec. 2.

The Revised Forestry Code [97]

The Revised Forestry Code, which took effect on May 19, 1975 was promulgated for the purpose of classifying, managing, and utilizing lands of the public domain in order to meet the demands of increasing population. Concomitantly, the law seeks to protect, rehabilitate, and develop forest lands. [98] As used in the Code, "forest lands" are lands of the public domain which have been: (1) subjected to the existing system of classification; or (2) determined necessary for forest purposes; or (3) reserved by the President for any specified use.

They are classified into: (1) public forests; (2) permanent forests or forest reserves; and (3) forest reservations.[99] The classification merely hinges on whether the said mass of lands has or has not been subjected to the existing system of classification and determined to be necessary for forest purposes, and whether such has been reserved by the President for any specific use.

Since forest lands are situated in areas topographically described as having slopes of eighteen percent (18%) or over, forest lands of whatever nature are generally declared excluded from lands which are alienable or disposable. Furthermore, lands which have been previously classified as alienable and disposable are, as a general rule, deemed reverted to the present classification as forest lands.[100]

Under the Code, alienable and disposable lands of the public domain refer to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forestry purposes. [101] Since the concept of "alienable and disposable land" implies the capability of such land to be owned, and transferred by sale, assignment, donation, or succession, it can be concluded that forest lands are not susceptible

[97] Presidential Decree No. 705.

[98] See the WHEREAS clause of Presidential Decree No. 705.

[99] Ibid and secs. 3 (a), (b), (d) and (g).

[100] Ibid., sec. 15.

[101] Ibid., sec. 3 (c).

to private or individual ownership and appropriation.

Hence, as regards the tenurial rights of the indigenous peoples on lands classified as forest lands, the rights of control and transfer inherent in the right of ownership are generally non-existent and their exercise is expressly prohibited.

Nevertheless, it is possible for ownership rights to be afforded recognition under the Code such as: (1) those already covered by existing titles or approved public land applications; and (2) those actually occupied openly, continuously, adversely and publicly for a period of at least thirty (30) years as of the effectivity of the Code, "where the occupant is qualified for a free patent under the Public Land Act".

Accordingly, an individual must prove that he has such right under either of the two exceptional circumstances mentioned, namely, that the lands are covered by existing titles or approved public land application, or that these lands have been actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of May 19, 1975. [102]

Except for these two isolated instances, the tenurial rights afforded by this Code to the indigenous peoples are reduced into the categories of possessory and use rights. This is illustrated in several provisions of the Code.

First, in its definition of "private right" , the Revised Forestry Code provides that:

> Private rights are *titled rights* of ownership under existing laws, and in case of primitive tribes, *rights of possession* existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds and old clearings, but exclude production forest inclusive of logged over areas, commercial forests and

[102] Ibid., sec. 15.

> established plantations of forest trees and trees of commercial value. [103] (Underscoring supplied.)

This definition reveals the bias of the Code in favor of titled rights over untitled rights held by most indigenous peoples by literally vesting ownership rights to the people in general and mere possessory rights to the indigenous peoples in particular. This bias is further enunciated in the delineation of the areas where such rights may or may not be exercised through the exclusion of certain types of forest land and plantation from the covered areas.

Secondly, the Code explicitly allows the exercise of particular rights corollary to the right of possession by granting to qualified persons the privilege *to utilize, exploit, occupy, possess and conduct any activity within specified portions of the forest land.* [104] To obtain such a privilege, one must first secure prior authorization from the proper government agency, as evidenced by the holding of a license, license agreement, lease, or permit, as the case may be. Without such requisite undertaking, the privilege can neither be exercised, nor may such persons be allowed to enter into such lands and cultivate the same. [105] Any violation of such provisions may subject the unlicensed occupant to criminal prosecution. [106]

Rights of occupation and possession may be acquired under a lease agreement. Such lease is taken to mean as "(1) a privilege granted by the State to a person to occupy and possess (2) in consideration of a specified rental (3) any forest land of the public domain (4) in order to undertake any activity therein". [107]

A lease for the establishment of an industrial tree plantation or a tree farm may be granted by the State as provided in Section 34 of the Code. This is allowed for a duration of twenty five years and renewable for another period not exceeding twenty five (25) years. [108]

[103] Ibid., sec. 3 (mm)
[104] Ibid., sec. 21.
[105] Ibid., sec. 52.
[106] Ibid., sec. 53.
[107] Ibid., sec. 3 (bb).
[108] Ibid., sec. 34

The privilege to utilize forest resources, to establish and operate a wood-processing plant, or conduct any activity involving the utilization of any forest resources is further allowed by the State after a license is issued for that purpose. Once extended, it can be exercised to the exclusion of other persons. Such privilege, however, excludes the right of occupation and possession over the same. [109]

Contrary to the provision on the grant of a license and the so-called "license agreement", once issued by the State, a license agreement gives rise to the privilege of *utilizing forest resources with the right of possession and occupation* to the exclusion of other people. While the *jus utendi* and *jus ponendi* are both granted under this scheme, such rights impose the corresponding obligation to develop, protect and rehabilitate the forest land pursuant to the terms and conditions of the agreement. [110] Such license agreement may be valid for a maximum period of twenty five (25) years, renewable for not more than twenty five (25) years, and conditioned upon the grantee's capacity to reforest the covered areas. [111]

Finally, the Code provides for the issuance of a permit. This is a modified version of the license in the sense that, as in licenses, the privilege to utilize forest resources is also granted. The only difference lies in the period within which such authority or privilege may be exercised and as to the type of forest resource that may be utilized. In the case of a permit, the period is on a short term basis and contemplates limited forest resources. [112]

In addition to the above requirements, the indigenous peoples must prove that they have the "financial resources and technical capability not only to minimize utilization, but also to practice forest protection and conservation and to develop measures that would insure the perpetuation of said forest in productive condition". [113]

[109] Ibid., sec. 34.
[110] Ibid., sec. 3 (cc).
[111] Ibid., sec. 27.
[112] Ibid., sec.3 (ee).
[113] Ibid., sec. 60.

As "the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, specific forest lands ... and lands of the public domain" and particularly as the entity which exercises "exclusive jurisdiction over the management and disposition of all lands of the public domain", [114] the Department of Environment and Natural Resources (DENR) has spearheaded several programs intended to develop the upland regions by encouraging the participation of the people, particularly those who dwell on these lands. These are the Integrated Social Forestry Program (ISFP) and the Contract Reforestation Program as modified by the Forest Land Management Agreement (FLMA).

The Integrated Social Forestry Plan (ISFP)

The Integrated Social Forestry Program is the first and oldest of the DENR programs. It aims "to protect the environment, alleviate poverty and promote social justice by enlisting the people directly using forest lands in the task of *stewarding* the uplands". [115] The exercise of stewardship rights requires the presence of the individual, family, group or community, as the case may be, in the area to be stewarded. Such presence can be demonstrated by the concurrence of two acts: first, by personally tilling whatever land is cultivated in the area to be stewarded, and second, by residing within the area or adjacent barangay. [116]

Moreover, the Administrative Order provides for the following qualifications: [117] (a) Filipino citizens; (b) of legal age; (c) actual tillers or cultivators of the land to be allocated; and (d) living within the projected or adjacent barangay or sitio.

[114] Ibid, sec. 4; Ibid., sec. 5 (d) and (m).

[115] Letter of Instruction No. 1260 (1982); DENR Administrative Order No. 4 (1991), sec. 1, par. (3).

[116] DENR Administrative Order No. 4 (1991), sec. 1, par. (4).

[117] Ibid, sec. 1, par. (4).

From these two provisions, it may be deduced that the indigenous peoples in the upland regions could very well qualify and avail of the benefits of this program. As earlier mentioned, peoples have been in open and continuous possession of lands presently classified as forest lands. The mass tenurial rights afforded by the Integrated Social Forestry Program are broadly designated as "use rights" which may be exercised by the program participant for a period of 25 years, renewable for an additional 25 years. [118] This tenurial right is embodied in the contract or stewardship agreement itself, signed by the individual forest occupant or forest community association or cooperative and the Government, which gives the *right to peaceful occupation, possession and sustainable management of the designated areas.*[119]

The area over which such tenurial right may be exercised depends on the type of stewardship agreement entered into with the government. In case of individual or family stewardship agreement, the area shall depend on topography, soil and general conditions of the land but shall not exceed five (5) hectares. In case of communal stewardship agreement, there is no provision as to the maximum area which could be allowed. Nevertheless, several factors should be considered, such as the nature of the site, the history of the group in the area, and the potential of the group to promote productive and protective activities. [120]

Aside from the rights of possession, occupation and use of the subject area, the program provides for other tenurial rights:

> *First. Right to transfer* stewardship rights and responsibilities in case of (a) death or incapacity of original stewards; (b) movement outside of area by the steward and; (c) change of vocation of the stewardship agreement holders from upland farmers or when stewards cease to be the actual tillers of the area. [121]

[118] Ibid, sec. 1, par. 4.

[119] Ibid, sec. 2, 9.

[120] Ibid, sec. 1.3.

[121] Ibid, sec. 11.

The exercise of this right is, however, subject to the approval of the DENR Secretary or his authorized representative. [122] Furthermore, this right is evidently available only during the prescribed period of the stewardship agreement, i.e., 25 or 50 years, and while the contract subsists.

Second. Right of pre-emption to any subsequent stewardship agreement covering their allocated land. This may be availed of by the program participants or their direct next of kin upon the expiration of the stewardship agreement. [123] The term "next of kin" refers to the spouse and children or, in their absence, to the parents, brothers or sisters of the program participant. [124]

Third. *Right to receive just compensation* for permanent improvements introduced, including the trees. Like the right of pre-emption, this right is available upon the expiration of the stewardship agreement. However, such may only be availed of should the preceding right become impossible on account of the government's decision not to allocate the land for stewardship purposes. [125]

Corollary to these rights are the corresponding responsibilities imposed upon the program participants. [126] Failure to comply with these terms and conditions constitutes a ground, among others, for the cancellation of the agreement. [127]

[122] Ibid.

[123] Ibid, sec. 9.6.

[124] Ibid, sec. 2.4.

[125] Ibid, sec. 9.6.

[126] Ibid., Sec. 10,

[127] Ibid., Sec. 12 for the complete enumeration of the grounds for cancellation.

Contract Reforestration Program and the Forest Land Management Agreement (FLMA)

The Contract Reforestation Program of the government has its roots in a number of executive and administrative issuances. [128] Its underlying philosophy is the undertaking of reforestation activities by the government in collaboration with the private sector through family, community and corporate contractors. [129]

Specifically, the program seeks to create incentives that will encourage the participation of "non-governmental organizations (NGOs), local government units and the private sector, including forest occupants and rural communities", in the development, management, and protection of our forest resources. [130]

In its initial stage, contracts were entered into between the Government, through the DENR, and the individual or entity concerned, whereby the latter agrees to implement an activity required to reforest a denuded portion of the public domain and the former agrees to pay for the activity accomplished, pursuant to its terms and conditions. These contracts come in varied forms depending on the type of contractor, the size of the contract area, and the duration of the program.

Briefly, the first mode of contract reforestation is the so-called "family approach" whereby an individual or head of the family may reforest one to five hectares of denuded forest land for three (3) years subject to extension when certain conditions are met. [131]

The second mode is the "community approach" where the tribal communities are lumped together with associations, cooperatives, civic or religious organizations, local government

[128] Exec. Order No. 192, (1987); DENR Memo. Circ. No. 11, (Oct. 11, 1988); DENR Adm. O. No. 71 (1990); DENR Administrative Order No. 31 (1991); DENR Master Plan for Forestry Development, 1990.

[129] DENR Administrative Order No. 31 (1991), sec. 1.

[130] DENR Memorandum Circular No. 11 (1988), sec. 1.

[131] Ibid, secs. 10, 11, 17.

units, and non-governmental organizations (NGOs) as prospective contractors of this specific program. [132] The duration of this contract is the same as in the family approach, but the area covered is from five (5) to one hundred (100) hectares. [133]

The third mode is the "corporate approach" whereby a duly registered corporation, selected through a competitive bidding, may undertake to reforest more or less than 500 hectares of forest land. [134]

Under the first two modes, the three (3) year duration of the contract may be extended "when warranted because of climatic conditions, security problems or similar unforeseen circumstances which interrupt the anticipated schedule of activities". [135] After the expiration of this period, any and all the rights to improvements made by the contractor shall automatically revert back to the government. [136]

On June 24, 1991, the DENR issued an order [137] substantially modifying certain provisions of the previous guidelines, particularly with respect to the duration of the contract, as well as on the rights and obligations of the contractors.

Accordingly, the administrative order, coined as the "Forest Land Management Agreement", is described as:

> x x x a perpetuation of the present reforestation contracts under the National Forestation Program of the DENR. It emphasizes long term reforestation activities that will provide upland farmers the opportunity to become legitimate, licensed suppliers of timber and other

[132] Ibid, sec. 32.

[133] Ibid, sec. 31.

[134] Ibid, sec. 53.

[135] Ibid, sec. 17.

[136] Ibid.

[137] DENR Administrative Order No. 71 (1990).

products. x x x With the FLMA, tenure insecurities of contractors can be lessened. [138]

This modified version, coined as the "Forest Land Management Agreement" (FLMA), is intended to take effect in the last stages of the 3 to 4 years of the original contract reforestation program whereby the contractors, now called "forest land managers", shall sign new agreements with the DENR. [139] The FLMA shall entitle the forest land managers *"to harvest, process, sell or otherwise utilize the products grown on the land"* [140] covered by the agreement for "25 years, renewable for another 25 years". [141]

These rights are further affirmed in the Revised Guidelines for Contract Reforestation:

Forest Land Management Agreement is a contract issued by the DENR to duly organized and *bona fide* residents of communities where FLMA area is located granting them *sole and exclusive privilege to develop said area, harvest and utilize its products for 25 years, renewable for another 25 years* x x x. [142]

In a related provision, the FLMA specifically grants the privilege *"to interplant cash crops, fruit trees and otherwise agricultural or minor forest products between existing trees"* [143] to augment the income of the forest land manager.

It likewise provides for the *transferability of rights* in case of inability on the part of the forest land manager to continue the implementation of the program due to old age, sickness, death or

[138] "The Forest Land Management Agreement", *Philippine Uplands Resources Center (PURC) News and Views*, (July to September 1990,) vol. 4, No. 3, p. 3.

[139] Ibid, sec. 2.

[140] Ibid, Art. I, sec. 3.

[141] Ibid, Art. III, sec. 8.

[142] DENR Administrative Order No. 31 (1991), sec. 2.10.

[143] DENR Administrative Order No. 71, sec. 11.

other valid reason. [144] This right may be transferred to his family, or to an immediate member of his family or next of kin, as the case may be. [145] Finally, the agreement shall entitle the forest land managers to *security of tenure during the duration of the FLMA*, a right which the DENR undertakes to ensure. [146]

In return for the enjoyment of these rights, the forest land managers must comply with certain requirements that will help the government to presumably generate funds to help others receive the same assistance. In a broad sense, the FLMA obliges the forest land manager "to provide the DENR with a share of the proceeds from the sale of forest products grown on land covered by the FLMA". [147] It requires the forest land manager "to pay the government a production share of income from sales in amount adequate to reforest one (1) hectare of denuded land for every hectare of 3 to 4 year old trees turned over to FLMA" [148] which, in more accurate figures, consists of thirty percent (30%) of the gross sales made, inclusive of forest charges and sales tax paid. [149]

With the foregoing discussion of the general features of the present contract reforestation program of the government focusing on the tenurial rights and obligations of the indigenous peoples, as forest land managers, it may be observed that, to a certain extent, the program has lessened the tenurial insecurities of upland dwellers.

First, it stretches the duration of the contract from 3 to 4 years tenure under the initial program to FLMA's 25 years, renewable for another 25 years. Second, it expands the tenurial rights that may be exercised by the indigenous peoples by allowing them to harvest, process, sell and utilize the products grown on the land.

[144] Ibid, Art. III, sec. 8.

[145] Ibid, Art. III, secs. 8.1, 8.2.3

[146] Ibid, sec. 14.3.

[147] Ibid, Art. IV, sec. 12.

[148] Ibid, Art. 1, sec. 3.

[149] DENR Administrative Order No. 3 (1991).

And third, it improved the status of the indigenous peoples from a mere contractual laborer, hired with the task of reforesting denuded portions of forest lands, to a lessee who pays his rent to the government in the form of shares of proceeds from his sale.

Conclusion

This paper has shown that our legal system regards with distinction the culture and history of the Philippine indigenous peoples found in the upland regions. This has been manifested in the various laws enacted since the colonial period as well as in the long line of cases decided by the Supreme Court. Their situation has been continuously afforded special attention by legislation and jurisprudence dealing with land tenurial rights.

A number of legal scholars have labored on the status of native peoples *vis-a-vis* the Philippine legal system. Their works, however, consistently used the argument that the indigenous peoples possess vested ownership rights over lands occupied by them for generations but which lands are now classified as part of the public domain and that the present legal system operates to divest them of such title through laws and doctrines which are either manifestly inadequate or are in utter disregard of such rights.

This paper is not a departure from the line of reasoning advanced by these noted scholars. As has been shown, the concepts of "land" and "land ownership" have been understood in different perspectives by the Philippine legal system and by the indigenous peoples.

The contemporary notion of land is analogous to a commodity which can be owned, transferred and alienated to another person. Corollary to this are the various categories of rights which spring from the idea of land ownership. This concept takes its form in the well-avowed doctrine of *Jura Regalia* and is presently embodied in our constitutional precept of state ownership over all lands of the public domain.

On the other hand, the indigenous peoples regard land as something which brings forth life and appends to their very

existence as a people.

While such variance of perspectives is admittedly recognized, with a leaning towards lobbying for legislative reforms, in the attempt to harmonize the two perspectives, this paper focused on studying the precise nature and character of the tenurial rights in the legal system.

In pursuing this objective, this paper has used Ron Crocombe's approach in the analysis of land tenure systems as a framework for studying tenurial rights of indigenous peoples. As discussed, rights with respect to land can be classified into several categories of rights which can be held by different persons simultaneously and under varying capacities.

Applying this approach to the present study, this paper focused on the interplay of the State's right of ownership over the vast lands of the public domain and the rights afforded by it to the indigenous peoples. This was accomplished by an examination of the relevant laws and jurisprudence on the matter.

Of primary importance are the doctrine laid down in the Cariño case as well as the provisions of CA 141, RA 6657 and PD 705. Under these laws, a member of the indigenous peoples' community can either be an owner, a beneficiary, a steward, a hired laborer, or a lessee of the land in his possesssion.

The rights of ownership, under the legal system, can be derived from three sources: (1) the ruling in Cariño; (2) CA 141 and subsequent amendments; and (3) RA 6657.

In the Cariño case, the right of ownership is considered as a legal presumption. It operates *ipso jure* after proof of "time immemorial" possession in the concept of an owner.

In CA 141, ownership rights are vested in the person who openly, continuously, exclusively, and notoriously occupied and cultivated the land under a *bona fide* claim of title. Nevertheless, title thereto, as a legal evidence, is never presumed to exist and is considered imperfect. The same can be perfected after proof of the requisite thirty (30) year period of possession of the requisite

character either through the free patent system or through the system of judicial confirmation of imperfect title.

Under this law, full ownership can be confirmed upon compliance with the administrative or judicial procedures of which due application must be made by the indigenous peoples within the prescribed period.

Moreover, this right was initially available to indigenous peoples occupying lands of the public domain, excepting only timber and mineral lands. RA 3872 subsequently made the provisions of sec. 48 of CA 141 applicable to lands of the public domain regardless of their alienability where the applicant is a member of a national cultural community, provided the land in question is suitable to agriculture. The provision was further amended by PD 1073 to cover only alienable and disposable lands of the public domain.

Nevertheless, the ruling of the Supreme Court in the Paran case explains that the latter amendment could not operate to deprive the beneficiaries of the rights acquired under RA 3872 inasmuch as said rights became vested during the effectivity of RA 3872 but prior to the effectivity of PD 1073.

The final source of the right of ownership is the present Comprehensive Agrarian Reform Law whereby indigenous peoples are considered as among the "qualified beneficiaries" of the program by virtue of their actual and direct tilling or working upon the land.

The Agrarian Reform Law has been applied to all lands of the public domain. But for purposes of determining which lands can give rise to ownership rights, the law limits them to two kinds, namely: (1) those which have been formally declared as agricultural lands of the public domain; and (2) those lands of the public domain which have not been formally classified as agricultural or forestal, but are suitable to agriculture.

Under this law, the indigenous peoples can be considered as "direct" or "collective" owners of the land they till, as evidenced by a certificate of land ownership award, after compliance with its

rules and subject to limitations as to the right of transferring the same.

With respect to inalienable lands of the public domain, the tenurial rights of the indigenous peoples can be described as merely possessory in character in the concept of a steward, lessee or hired laborer.

This category of right can be seen in the Revised Forestry Code which was enacted to apply to lands classified as forest lands. As such, the only rights which can be obtained therefrom are possessory and use rights. Specifically, these rights include the rights to utilize, exploit, occupy, and conduct other activities thereon, subject to the grant of license and other limitations.

The rights of the indigenous peoples have likewise been considered in the various DENR programs which cater to the Governmment's task of protecting the environmment.

Under the ISFP, a member of the indigenous community can enjoy the exclusive rights of possession, occupation and use of the land by undertaking the role and responsibilities of a steward. Corollary to such rights are the rights of transfer, but not the right of ownership, the rights and duties of a steward; the right of pre-emption and the right to receive just compensation in certain cases. The exercise of these rights is limited as to the area, period of possession, species that may be planted, and other responsibilities.

Under the Contract Reforestation Program, as modified by the FLMA, indigenous peoples' rights are shared with NGOs, local government units, and the private sector, in the task of reforesting denuded portions of the public domain. Initially, the rights given were similar to those of a hired laborer whereby contractors are compensated for the work accomplished. Nevertheless, the subsequent issuance of the FLMA expanded to a certain extent the rights and improved the status of the indigenous peoples to that of a lessee with rights to harvest, process, sell or otherwise utilize the products grown on the land for a maximum period of fifty (50) years.

Having examined the foregoing tenurial rights afforded by the Philippine legal system with respect to lands they have been occupying since time immemorial, let us now review their options. Indeed, the utmost interest of the indigenous peoples is to have their titles, acquired by virtue of their own customs and traditions, recognized by our legal system.

On the strength of the Supreme Court ruling in the Paran case — that notwithstanding the present classification of lands into inalienable lands where the applicant is found to have satisfied the requisites of RA 3872 while the same was still in force and prior to its amendment by PD 1073, the right to a confirmation of title has become vested as of the moment that the requisite character and period of possession was completed by the applicant for registration indigenous peoples can have their rights of ownership registered under our legal system.

Where the applicant is unable to satisfy the ruling in Paran, he can opt to avail of the redistribution plan under the Agrarian Reform Law, provided the land is not among those excluded from the coverage of the program.

Where the land is classified as timber or forest land and the applicant is unable to satisfy the requirements laid down in the Paran case, he can avail of the arrangements under the various ISF and Contract Reforestation Programs. Nevertheless, their participation in these programs might be construed as an abandonment of their claims of ownership over the land.