THE INTERFACE BETWEEN NATIONAL LAND LAW AND KALINGA LAND LAW

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INTRODUCTION

The history of tribal Filipinos is a history built on a rich tradition of struggle. When the first wave of Spanish *conquistadores* arrived in 1521 and claimed ownership of an archipelago of 7,100 islands, they also planted the initial seeds of resistance. Tribal Filipinos stood up and offered strong resistance even against succeeding waves of colonial conquest and domination. This tradition of resistance has been the unifying thread of their history. At the heart of this history is the struggle to defend their land.

Today, land has remained at the center of the tribal Filipinos' struggle. Providing impetus to this struggle is the government's failure to understand and recognize indigenous systems of land ownership. Inherently colonial in origin, our national land laws and policies continue to frown upon indigenous claims to ancestral lands. Communal ownership is looked upon as inferior, if not inexistent. As a result, the issue of usurpation versus preservation of ancestral lands has become the focal point of the interaction between national land laws and policies and the indigenous forms of land ownership. And perhaps nowhere are the dimensions of this issue more sharply crystallized than in indigenous Kalinga society.

The Kalinga struggle to defend their land has gained national prominence in recent years. While it has served as an example of the unlimited capacity of a people to defend their land, it has also dramatized the inherent antagonism between the national and indigenous systems and concepts of land ownership.

This study, therefore, grew out of a desire to contribute to a better understanding of the problem. Realizing the importance of a comprehensive understanding of the issues, this paper has chosen to approach the problem in its legal, sociological and historical dimensions.

To facilitate a deeper discussion of the interface between national land laws and policies vis-a-vis indigenous Kalinga land laws, the first section will attempt to analyze the basic concepts underlying the national system of land ownership and government policies on ancestral land.

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The next section will deal with the indigenous Kalinga system of land ownership, the modes of land use and classification, forms of land acquisition and the means of settling disputes on land.

The third section, which comprises the main portion of this paper, will attempt to analyze the conflict between national land laws and policies and indigenous Kalinga laws on land as manifested in three dimensions: (1) Ancestral land vs. Public domain; (2) National vs. Indigenous Kalinga systems of ownership; and (3) National development projects vs. Tribal land preservation.

While the paper does not pretend to offer a clean and neat solution to the brewing problems of the interface, it will, nonetheless, attempt to offer some suggestions on how to deal with them.

I. OVERVIEW OF NATIONAL LAND LAWS

A. The Regalian Doctrine

The reign of Ferdinand and Isabella saw the end of the Moorish wars and the beginning of the great voyages of discovery. It was an era of expansionist ventures, with England, Holland, Portugal and Spain engaged in the drive for accumulation of colonies. The popularity of overseas ventures is traceable to the need to develop a world market for capitalism, which required the subjugation and exploitation of the peoples of Africa, Asia and Latin America.[1] It was during one such venture that Magellan "discovered" the Philippines in 1521.

It is in this spirit of exploitation that colonial subjugation of the Islands has to be seen, for the colonists' forcible taking of land was prompted by an intense desire to discover and appropriate wealth for themselves and their respective governments. They justified this act of arrogation by a legal fiction: that henceforth, by virtue of conquest, all land in the archipelago belonged to the sovereign.[2] This legal fiction is called the Regalian Doctrine.

Originally espoused by the Spanish colonizers, the Regalian doctrine was to be abused once again by American colonizers in the further exploitation of the islands.[3] Colonial and feudal as it is, the Regalian doctrine is well-entrenched in Philippine jurisprudence.

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1 Constantino, The Philippines: A Past Revisited 15-19 (1975).

2 Lecture by Owen Lynch, Freedom from Injustice: Towards Recognition of the Human Right to Ancestral Land Ownership, Baguio City, December 30, 1983.

3 Lynch, *Native Title: Its Potential For Social Forestry*, 4 Likas-Yaman 10 (1982).

Valenton v. Murciano

In 1902, *Valenton v. Murciano*[4] was brought before the Philippine Supreme Court, raising the issue as to which basis for ownership was superior, long-time occupation or paper title. Plaintiffs had entered into peaceful occupation of the land in question in 1860. Defendant's predecessor-in-interest, on the other hand, purchased the land from the provincial treasurer of Tarlac in 1892. The lower court ruled against the plaintiffs on the ground that they had lost all rights to the land by not objecting to the administrative sale. Plaintiffs appealed the judgment, asserting that their thirty-year adverse possession, as an extraordinary period of prescription in the *Partidas* and in the Civil Code, had given them title to the land as against everyone, including the State; and that the State, not owning the land, could not validly transmit it.

The Court, speaking through Justice Willard, decided the case on the basis of "those special laws which from the earliest times have regulated the disposition of the public lands in the colonies."[5] The question posed by the Court was, "Did these special laws recognize any right of prescription as against the State as to these lands; and if so, to what extent was it recognized?"[6]

Prior to 1880, the Court said, there were no laws specifically providing for the disposition of land in the Philippines. However, it was understood that in the absence of any special law to govern a specific colony, the Laws of the Indies would be followed. Indeed, in the Royal Order of July 5, 1862, it was ordered that until regulations on the subject could be prepared, the authorities of the Philippine Islands should follow strictly the Laws of the Indies, the *Ordenanza of the Intendentes* of 1786, and the royal cedula of 1754.[7]

Law 14, title 12, book 4 of the *Recopilacion de Leyes de las Indias* provided:

> We having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, *still pertaining to the royal crown and patrimony,* it is our will that all lands which are held without proper and true deeds of grant be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled,... and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if neces-

[4] 3 Phil. 537 (1906).
[5] *Id.* at 540.
[6] *Ibid.*
[7] *Id.* at 548.

> sary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.[8] (emphasis supplied)

There was a further provision that all possessors of agricultural land should exhibit their *title deed*, otherwise the land would be restored to the Crown. The *Recopilacion* also provided for a system of assignment of public lands to Crown subjects.[9]

These comments by the Court are clear expressions of the concept that Crown holdings embraced both *imperium* and *dominium*. The Court expressed the view that:

> In the preamble of this law there is, as is seen, a distinct statement that all those lands belong to the Crown which have not been granted by Philip, or in his name, or by the kings who preceded him. This statement excludes the idea that there might be lands not so granted, that did not belong to the king. It excludes the idea that the king was not still the owner of all ungranted lands, because some private person had been in the adverse occupation of them. By the mandatory part of the law all the occupants of the public lands are required to produce before the authorities named, and within a time to be fixed by them, their title papers. And those who had good title or showed prescription were to be protected in their holdings. It is apparent that it was not the intention of the law that mere possession for a length of time should make the possessors the owners of the land possessed by them without any action on the part of the authorities.[10]

In the same compilation, the Court noted, there was a provision for adjustment wherein possessors may be granted title deeds. Land not covered by deeds, upon the expiration of the periods provided, "shall, without exception, be sold at public auction to the highest bidder" (law 15, title 12, book 4).[11]

The Royal Cedula of October 15, 1754, reinforced the *Recopilacion* when it ordered the Crown's principal subdelegate to issue a general order directing the publication of the instructions of the Crown:

> to the end that any and all persons who, since the year 1700, and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not ... cultivated or tenanted, may ... appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied.... Said subdelegates will at the same time warn the parties interested that in case of their failure to present their title deeds within the term designated, without a just and valid reason therefor, they will be deprived of and evicted from their lands, and they will be granted to others.[12]

The Court, however, noted that an exception to this highly mandatory provision was recognized by the Crown, to wit: "Where such possessors

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[8] Quoted in *id.*, at 542-43.
[9] *Valenton*, 3 Phil. 537 at 543-44.
[10] *Ibid.*
[11] *Id.* at 544.
[12] Quoted in *id.*, at 545-46.

shall not be able to produce title deeds it shall be sufficient if they show ... ancient possession, as a valid title by prescription; . . . ."[13]

The Court held that this law was much more strongly worded than law 14. Nevertheless, such law recognized "ancient possession" as a valid title by prescription.

In 1880, the Crown adopted regulations for the adjustment of lands "wrongfully occupied" by private individuals in the Philippine Islands. *Valenton* construed these regulations together with contemporaneous legislative and executive interpretation of the law, and concluded that plaintiff's case fared no better under the 1880 decree and other laws which followed it, than it did under the earlier ones.

Analyzing the decree itself, the Court was of the impression that title deed is indispensable for valid ownership. The preface to the decree, in recommending the regulations for the King's approval, revealed that considerable weight was given to "the immense and immediate profit which must result to all classes of interest, public as well as private, from the substitution of full ownership, with all the privileges which by law accompany this real right, for the mere possession of lands."[14]

As to the coverage of the decree, the preface held that:

> These regulations refer not only to *tenants of royal lands in good faith* and by virtue of a valid title, but also to those who, lacking these, may, either by themselves reducing such lands to cultivation or by the application of intelligence and initiative, causing their cultivation by others who lack these qualities, be augmenting the wealth of the Archipelago.[15] (emphasis supplied).

The preface applied to all kinds of possessors. Its purpose was to provide a mechanism for the adjustment of royal lands wrongfully occupied by private individuals in the Philippine Islands. Art. 1 defined royal lands as "All lands whose lawful ownership is not vested in some private person, or what is the same thing, which have never passed to private ownership by virtue of cession by competent authorities, made either gratuitously or for a consideration."[16]

The natives and Spanish and Chinese authorized the following to initiate adjustment proceedings: (1) good faith possessors for ten years, by virtue of a good title; (2) good faith possessors for twenty years, of cultivated lands, or for thirty years, if uncultivated, without title deeds; (3) possessors of land without title deeds, who are willing to purchase such land; and (4) purchasers of "wild" land.[17]

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[13] *Id.* at 546.
[14] *Id.* at 551.
[15] *Ibid.*
[16] *Id.* at 548-49.
[17] *Id.* at 549.

Presumably unknown to most mountain natives, the decree also provided that failure to request for an adjustment of possessed lands within one year would result in authorities taking action to:

> reassert the ownership of the State over the lands, and . . . after fixing the value thereof, . . . to sell at public auction that part of the same which either because it may have been reduced to cultivation or is not located within the forest zone is not deemed advisable to preserve as the State forest reservation.[18]

In *Valenton,* the Court held that good faith possessors are not pronounced by law as owners, which would have been the language naturally used if an absolute grant had been intended.

> The law says, instead, that those shall be considered owners who *may prove* that they have been in possession for ten years. Was this proof to be made at any time in the future when the questions might arise, or was it to be made in the same proceedings which these very regulations provided for the purpose? We think the latter is the proper construction.[19] (emphasis supplied).

According to the Court, such provision, and the clear, repetitive statements in the decree that it is to cover lands "wrongfully" withheld by private persons notwithstanding their good faith or lands merely "possessed," and that the law seeks to convert this "possession to full ownership" via the adjustment mechanism, is repugnant to the idea that possession for a given period of time may give rise to a title valid against the whole world.

The Court cited two Spanish decrees to reinforce its decision. First was the Royal Decree of December 26, 1884, which referred to the 1880 Decree's adjustment procedure and proceeded to divide into three groups "all those public lands *wrongfully withheld* by private persons." Second was the Royal Decree of August 31, 1883 which repealed the first. It required settlers on public lands to obtain deeds from the State. The Court then made an important observation:

> The policy pursued by the Spanish Government from the earliest times, requiring settlers on the public lands to obtain deeds therefor from the State, has been continued by the American Government in Act No. 926, which takes effect when approved by Congress. Section 56, sixth paragraph of the act, declares that the persons named ... 'shall be conclusively presumed to have performed all conditions essential to a Government grant and to have received the same.' Yet such persons are required by section 56 to present a petition to the Court of Land Registration for a confirmation of these titles.[20]

Upon publication of the 1880 Decree, inquiries were directed to the officers in Manila charged with its execution. The question concerned whether possessors of land under color of title and in good faith should

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[18] *Id.* at 549-50.
[19] *Ibid.*
[20] *Id.* at 553.

seek adjustment. The reply was yes, for "it is to them that article 4 of the regulation refers, as also the following article covers other cases of possession under different circumstances."[21]

As a general doctrine, the Court stated:

> While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.[22]

In conclusion, the Court stated: "We hold that from 1860 to 1892 there was no law in force in these Islands by which the plaintiffs could obtain the ownership of these lands by prescription, without any action by the State."[23]

The Court in *Valenton v. Murciano* clearly upheld the Regalian Doctrine as provided by the decrees as the legal basis for the State's holding of property in the concept of *imperium* and *dominium.*

The only question which the Court failed to address was whether the recognition given to "ancient possession" in the royal cedula of 1754 detracts in any way from the application of the Regalian doctrine. This was to be raised anew in *Cariño v. Insular Government.*[24]

The Cariño Doctrine

In 1906, three cases were brought before the Supreme Court, and decided on the basis of *Valenton v. Murciano.* First was *Cansino v. Valdez,*[25] then *Tiglao v. Insular Government,*[26] and finally *Cariño v. Insular Government.* All these three cases reiterated the doctrine in *Valenton:* the statute of limitations does not run against the Crown on behalf of long-term occupants of public agricultural lands.

Cariño, however, was appealed to the United States Supreme Court. The U.S. government posited that Spain assumed, asserted, and had title to all lands in the Philippines unless it permitted private titles to be acquired.[27] Writing for the majority, Justice Oliver Wendell Holmes admitted that if the government was correct, plaintiff would lose his land. Holmes wrote, "Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those in the same zone of civilization with themselves."[28]

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21 *Id.* at 552.
22 *Id.* at 543.
23 *Id.* at 557.
24 41 Phil. 935 (1909).
25 6 Phil. 320 (1906).
26 7 Phil. 80 (1906).
27 *Cariño,* 41 Phil. at 938.
28 *Id.* at 939.

The Court noted, however, that it need not accept Spanish doctrines. The limitations or the extent to which the United States would assert its sovereignty over the Islands would ultimately lie with the United Stattes itself. The choice was with the new colonizer:

> It is true, also, that in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.[29]

Ultimately the matter had to be decided under United States Law. It was based on the strong Consitutional mandate extended to the Islands via the Philippine Bill of 1902: "No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

Since the Spanish adjustment proceedings never held sway over unconquered territories, and since the wording of the law was not framed in a manner to convey to the natives that failure to register what to them has always been their own would mean loss of such land, the United States Supreme Court refused to declare unhispanicized Filipinos squatters on their own land. The Court continued, "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."[30]

The *Cariño* decision was founded largely on the North American constitutionalist's concept of "due process" as well as the pronounced policy to "do justice to the natives."[31]

Justice Holmes, however, went further. Analyzing the same royal decrees upon which the *Valenton* decision was founded, Holmes concluded that on such bases, the applicant had vested rights to the land. According to Holmes, the pre-1880 decrees and laws, "seem to indicate pretty clearly that the natives were recognized as owning some lands, irrespective of any royal grant . . . Spain did not assume to convert all the native inhabitants of the Philippines into trespassers or even into tenants at will."[32]

As for the 1880 decree, although it started with a theoretical assertion that, to be deemed owners, there must be a royal grant, it never declared that native holders are not owners, or that their continued possession of

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[29] *Ibid.*
[30] *Id.* at 941.
[31] *Id.* at 940.
[32] *Id.* at 941-42.

the land is unlawful. Rather, it recognized that legally, those who have been in possession for a certain period of time, are deemed owners.

The requisite proof before registration proceedings was "not calculated to convey to the mind of an Igorot chief the notion that ancient family possessions were in danger, [even] if he had read every word of it."[33] "Certainly, in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt."[34]

By recognizing native title, the Court clearly repudiated the doctrine of *Valenton*. It was frank enough, however, to admit the possibility that the applicant might have been deprived of his land under Spanish law because of the inherent ambiguity of the decrees and concommitantly, the various interpretations which may be given them. But precisely because of this ambiguity and because of the strong "due process mandate" of the Constitution, the Court validated native title. Native title was sufficient, even without government administrative action, and entitled the holder to a Torrens certificate of title. Justice Holmes, explained:

> It will be perceived that the rights of the applicant under the Spanish law present a problem not without difficulties for courts of a different legal tradition. We have deemed it proper on that account to notice the possible effect of the change of sovereignty and the act of Congress establishing the fundamental principles now to be observed. Upon a consideration of the whole case we are of opinion that law and justice require that the applicant should be granted what he seeks, and should not be deprived of what by the practice and belief of those among whom he lived, was his property, through a refined interpretation of an almost forgotten law of Spain.[35]

The *Cariño* decision, written in 1909, was to be largely followed in a long line of decisions,[36] except for some deviations now and then.[37]

The legal scenario, even after the authoritative ruling of *Cariño*, was always in a state of ambivalence, never sure whether it should fully respect native title as against government claim of ownership.

Lee Hong Hok v. David

In 1972, a decision was rendered by the Supreme Court, which resurrected the *Valenton* doctrine, and made use of *Cariño* in a manner Justice Holmes would no doubt have objected to. Penned by then Justice, now Chief Justice, Fernando, *Lee Hong Hok v. David*,[38] declared the Re-

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[33] *Id.* at 944.
[34] *Id.* at 941.
[35] *Id.* at 944.
[36] Susi v. Razon, 48 Phil. 424 (1925); Mesina v. Senza, 108 Phil. 151 (1960); Herico v. Dar, G.R. No. 23265, January 28, 1980, 95 SCRA 437 (1980).
[37] Manila Electric Co. v. Republic, G.R. No. 49623, June 29, 1982, 114 SCRA 799 (1982).
[38] Lee Hong Hok v. David, G.R. No. 30389, December 27, 1972, 48 SCRA 372 (1972).

galian Doctrine to be in force, the Philippine state substituting for the Crown of Spain.

Lee Hong Hok, the petitioner, claimed the disputed parcel of land by way of accretion. Defendant, on the other hand, had a sales patent in his name, issued by the Secretary of Agriculture and Natural Resources, on the basis of which a Torrens title was issued. The petitioners claimed that the government never was the owner of the land; hence it did not have the power to sell the same. The government claimed otherwise, asserting that the land was the product of its reclamation efforts.

The case could have been decided on these conflicting assertions alone, the petitioner not having been able to prove ownership by accretion. But the Court went further and said that when the plaintiff failed to prove accretion, it tried to recoup its position by proposing an "unorthodox legal theory." The Court was challenged by the proposition. It noted "overtones indicative of skepticism, if not of outright rejection, of the well-known distinction in public law between the government authority possessed by the state which is appropriately embraced in the concept of the sovereignty, and its capacity to own or acquire propertty."[39] The Court, therefore, attempted to settle the confusion on the issue of state ownership of land.

> As far as the Philippines was concerned, there was a recognition by Justice Holmes in *Cariño v. Insular Government*... that 'Spain in its earlier decrees embodied the universal feudal theory that all lands were held from the Crown . . .' That was a manifestation of *jura regalia*, which was adopted by the present Constitution, ownership however being vested in the state as such rather than the head thereof. What was stated by Holmes served to confirm a much more extensive discussion in the leading case of *Valenton v. Murciano*, decided in 1904.[40]

The Court then proceeded to pronounce verbatim Law 1, Title 12, Book 4 of the Law of the Indies, in which the Crown asserted that it had "acquired full sovereignty over the Indies and all lands, territories, and possessions" not granted by them still pertains to the Crown as its patrimony. The *Valenton* decision had earlier deemed this assertion a "statement" which "excludes the idea that there might be lands not so granted, that did not belong to the King. It excluded the idea that the King was not still the owner of all ungranted lands, because some private persons had been in the adverse occupation of them."[41]

Cariño, on the other hand, saw the statement as a futile assertion of ownership, actually nothing more than paper sovereignty:

> It is true that it begins by the characteristic assertion of feudal overlordship and the origin of all titles in the King or in his predeces-

[39] *Id.* at 377.
[40] *Ibid.*
[41] *Valenton*, 3 Phil. 537.

> sors. That was theory and discourse. The fact was that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books."[42]

The Court in *Lee Hong Hok,* did not bother to explain why it was abandoning the *Cariño* doctrine. What makes the position more difficult for skeptics of the Regalian doctrine is the Court's pronouncement of the doctrine's integration into the fiber of Philippine constitutional law.

To finish its discussion on the Regalian Doctrine, the Court quoted a 1971 decision penned by Justice J. B. L. Reyes, in which the Court ruled that:

> the applicant having failed to establish his right or title over the northern portion of Lot No. 463 involved in the present controversy, and there being no showing that the same has been acquired by any private person from the Government, either by purchase or by grant, the property is and remains part of the public domain.[43]

In a primer on the 1973 Constitution, Fr. Joaquin Bernas, a noted lawyer in constitutional law, opined, "*Dominium,* which was the foundation for the early Spanish decrees embracing the feudal theory of *jura regalia* that all lands were held from the Crown, is also the foundation for section 8."[44]

Bernas was referring to the provision on national patrimony. He based his opinion on the *Lee Hong Hok* decision. As to the consequence of the Regalian doctrine as embodied in Section 8, Article XIV, he referred once more to *Lee Hong Hok,* and said: "Any person claiming ownership of a portion of the public domain must be able to show title from the State according to any of the recognized modes of acquisition."[45]

Present Controversies

Owen Lynch argues that the Regalian Doctrine was never clearly adopted in the Philippines. He believes it was resurrected in the 20th century as part of the North American colonial scheme to justify land-grabbing.[46] This argument is used by Lynch to bolster the claim of native title.

Director Ramon Cassanova of the Bureau of Lands claims that the doctrine is well-established. He traces its roots to 1521, when Ferdinand Magellan proclaimed that all lands in the archipelago belonged to the Crown of Spain.

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[42] *Cariño,* 41 Phil. at 942.

[43] Director of Lands v. Court of Appeals, G.R. No. 29575, April 30, 1971, 38 SCRA 634 (1971).

[44] BERNAS, THE 1973 CONSTITUTION 184 (1981).

[45] *Ibid.*

[46] Lynch, *supra* note 3, at 10.

This doctrine is used by the Executive Branch to refute the claim of native title. As Director Cassanova expalined:

> When we speak of public grant we assume that the regime in that particular country is the so-called Regalian Doctrine, meaning that all lands are presumed to belong to the public domain and if there is any individual who would like to acquire title to any portion of the territory, then he must apply with the government. This is the system that was implanted in this country.[47]

Based on our foregoing discussion, it would seem that not even Prof. Perfecto V. Fernandez's proposed solution to consider the doctrine in the concept of *imperium* will do,[48] for the *Lee Hong Hok* decision declared that the Regalian Doctrine regime has been adopted by the present Constitution in the concept of *dominium*. The snub given the *Cariño* decision is a blow to proponents of native title, although the possibility cannot be discounted that *Cariño* might be embraced once again by the Court. A 1982 decision[49] made mention of *Cariño*, but refused to apply it because the facts in the two cases were not analogous. The only way to reconcile *Lee Hong Hok* and *Cariño*, is to view *Cariño* as having carved out an exception to the Regalian Doctrine.

B. The Torrens System of Land Registration

The law governing registration of titles to land is the Land Registration Act of 1902 (Act No. 496) as amended by Presidential Decree No. 1529 promulgated in 1978, otherwise known as the Property Registration Decree. Act No. 496 is said to be almost a verbatim copy of the Massachussets Land Registration Act of 1898.[50] The latter in turn is one of several state legislations in the late 1800's which adopted the Torrens system after such system's initial success in South Australia and several other British dependencies.[51]

Origins

It was in South Australia that the Torrens System was formulated into law. Although prior to Torrens' time, the reports of an English Commission formed in 1830 to look into the state of the law of real property recommended the adoption of certain features to be found later in the Torrens Act, it was Sir Robert Torrens who submitted, lobbied for and carried into operation the first integrated scheme for land registration.[52] He got his idea from the English Merchants Shipping Acts which governed the conveyancing and fitting of interests in ships. While Commissioner of Customs, he was:

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[47] *Id.* at 19.
[48] *Id.* at 48-49.
[49] Manila Electric Co. v. Republic, 114 SCRA at 803.
[50] Peña, Registration of Land Titles and Deeds 26 (1982); Niblack, An Analysis of the Torrens System of Conveying Land 16 (1912).
[51] Niblack, *supra* note 50, at 14-16.
[52] *Id.* at 7-8.

> struck by the comparative facility with which dealings in regard to transfer of undivided shares of ships were carried out under the system of registration provided in the Merchants Shipping Acts. Subsequenttly becoming a registrar of deeds he became acquainted with the confusion and uncertainty inseparable from most questions of title to land. He devised a scheme of registration of title modelled on the Merchant Shipping Acts, with such modifications as the different nature of the subject matter demanded.[53]

The Merchant Shipping Acts on the other hand with its emphasis on facility of transfer of titles, was a necessary offshoot of the need to streamline procedures related to the shipping industry which had launched British dominance in the world market.

Before Torrens, all transactions and claims were registered without distinction as to superiority of rights or as to birth or extinguishment of liens. This was the ministerial system of recording or registering evidence of title. Anybody who wanted to deal with land had to face the very difficult task of poring over all the documents covering that particular parcel, and determining the legal status of claims to it. Moreover, a buyer in good faith had to contend with the possibility that an unknown adverse claim might threaten his interest later. Purchasers must draw their own conclusion from the entire evidence as recorded, "and do so at their peril."[54]

With the Torrens system, the ultimate proof as to the ownership and description of the land is immediately revealed on the certificate, precluding any other unknown or undeclared claim, with a few exceptions. As stated by Niblack:

> When a title is registered in the first instance, or under a transfer from the last registered owner, the statute declares the certificate to be evidence of an indefeasible title to the estate or interest registered, and the effect of this is that the issue of the certificate, ipso facto, divests any interest or estate which may exist in any other person and vests it in the person registered as owner. There is, therefore, on the part of an intending purchaser, no necessity for a retrospective examination of title.[55]

The system, with the state guaranteeing indefeasibility of the title to land as stated in the Torrens certificate, highly facilitates land negotiations. The effect of this is the transformation of real estate into an industry. Cameron, one of the best-known exponents of the system, had early on caught the significance of Torrens' work when he saw "no legal or economic principle . . . of greater moment than this system." He predicted that "it would interest every owner of property, without exception, every lawyer and every financier who would soon see real estate

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53 *Ibid.*
54 PEÑA, *supra* note 50, at 7.
55 NIBLACK, *supra* note 50, at 6.

becoming an asset as liquid as other factors of wealth upon which banks may be expected to loan funds."[56]

Guiding Philosophy

Land as Commodity:

Cameron was correct when he predicted that with the Torrens system, land would be as liquid as any asset, on the security of which many financial transactions would transpire. It would become an object of brisk commercial dealings. Implicit in Cameron's words was the further prediction that man's relationship to land would also change. Land would be viewed as an asset transferable as any chattel. Land, by virtue of the Torrens system, can pass hands by the mere exchange of money, execution of the requisite documents, and the registration of such documents. There need not be any attempt to understand the topography of the land, a determination of the best land use, or an investigation of the presence of occupants. Anybody who wishes to deal with the land need look only at the cerificate of title. Transactions in good faith, entered into on that basis, will be safeguarded by the State. Parties to such transactions may have no 'relation' at all to the land except what may be stated in the certificate.

The quality of the Westerner's concept of land as reinforced by the Torrens system, is that it is a commodity; the extent of his rights over it is not guided by his acual use or occupation but by what the paper title indicates. As noted by Bohanan:

> Westerner's rights are not directly to land, but rather to a piece of the map. Should the map be legally declared 'wrong' as a result of erroneous survey or should the definitional points of the grid be changed, we 'own' the piece of land which corresponds to the map under the new survey, not the piece of land that we earlier demarcated by terrestial signs.[57]

Land as Individually Owned

One of the main causes of landgrabbing is the differences in the concept of land ownership that exist in our country. While the national legal system recognizes individual ownership, there are still a significant number of groups which regard land as communally held. The former concept has its foundation in the Roman law on property with its absolutist guarantee of the right to alienate. The Torrens system has been continuously used as a devise to guarantee untrammelled exercise of the rights of individual owners. It has also been used as a system to convert communal ancestral lands into individually titled 'parcels' of land.

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[56] PEÑA, *supra* note 50, at 22.

[57] Bohanan, *"Land," "Tenure," and Land-Tenure,* in AFRICAN AGRARIAN SYSTEMS 103 (1963).

The certificate of title is in the name of an owner, or co-owners, describing the land to which it applies, and no rights in derogation of the title of the registered owner shall be recognized by the State. The registered owner is thus given, under our property laws, the right to use and dispose of his land. If the title has been issued to co-owners, a co-owner may, at any time, move for a dissolution of the co-ownership and the land will be parcelled and such parcels be individually titled. An agreement to stay in co-ownership can last for only ten years, while a donation or will can prohibit partition for only than twenty years.[58] Once individually titled, there is no prohibition to the frequency with which the land may pass hands. The Torrens system promotes this individualism by guaranteeing easy transferability.

The system has also been responsible for the disintegration of a number of communal villages. A person, familiar with the Torrens system, registers ancestral, communal lands as his own. He fears no opposition since he presumes that the villagers are 'ignorant' of such registration laws. Once registered, he then claims the land as his individual, separate property to the surprise and anger of the community. In this controversy, he can rely on the state apparatus to support him, since it is committed to uphold the Torrens title. Conflicts, often violent, then ensue. This scheme has often been used by 'outsiders' usually with the connivance of government officials. Sometimes, the help of a member of the tribe is employed. It has happened, also, that a member of the tribe himself resorts to 'ethnic landgrabbing.' The case of *Cariño,* wherein 104 hectares of ancestral communal Ifugao lands became individually titled, is a classic example of the inequity of the system.

Once the land has been registered under the Torrens system, it becomes forever bound thereto. Thus, the system has a self-perpetuating mechanism which hastens the conversion of land concepts from communal to individual.

Main Features

Indefeasibility of Title

The system owes its stability to the state guarantee of indefeasibility of title. It is 'incontrovertible,' 'not subject to collateral attack,' 'imprescriptible,' 'indefeasible.' Mere possessors of registered lands are in the eyes of the law, squatters, and the registered owner has the right to ask for their ejectment. Because of the rigidity of application required by the system a number of unjust situations have arisen, in which rightful owners were deprived of their lands. The court has continually refused to recognize their ownership as against the registered, 'good faith' owners, because of the overriding interest of the State to preserve the integrity

[58]CIVIL CODE, art. 494.

of the system. By way of compensation, the aggrieved party can sue the perpetrators of the fraud or seek indemnity from the State Assurance Fund. Compensation for damages presumes that the value of land can be fixed in monetary terms. However, this proves inadequate, when a people relate to land, not in the Western concept of land as 'commodity,' but as something integral to heir social existence. Then, money can never approximate the loss.

The unquestioning acceptance of the advantage the Torrens System has in terms of stability in the land system of a society should be reassessed in the light of these sad experiences of tribal Filipinos and other indigenous occupants of the so-called 'public domain.'

Process of Registration

The process of titling land involves a cumbersone procedure. The land has to be surveyed. The claimant must file his application together with the tracing-clothplan, the technical descriptions, his muniments of title, certificate of tax assessment, etc. A notice of the application and the date of initial hearing must be published in a newspaper. At the hearing, the applicant must prove his title to the land, usually in the face of government opposition. If the court finds his claim valid, it will adjudicate ownership of the land to him. When the judgment becomes final, the court orders the Land Registration Commission to enter a decree of registration. The Register of Deeds, upon receipt of the decree, issues a certificate of title covering the land in the name of the applicant.[59]

The premises upon which the whole registration proceedings rest are: (1) a high degree of literacy, i.e., that the 'Western' model is prevalent among Filipinos such that most of us are able to grasp the import of legal practices like publication of notice, documentation requirements and judicial proceedings; (2) the abundance of mass-circulated newspapers, such that no substantial prejudice may be caused a segment of society by reason of inability to purchase a subscription; and (3) the financial capacity of most Filipinos to avail themselves of national legal processes.

One writer noted that many Philippine citizens have never even heard of the necessity of acquiring land titles.[60] Thus, it is not unusual to hear of lowland settlers who easily dupe 'ignorant' upland farmers out of their land.

All questions relating to land registration are to be decided by the land registration court. The procedures as outlined in the Rules of Court are to be applied in a suppletory manner. The statute of frauds disallows

[59] Pres. Decree No. 1529 (1978), secs. 15, 17, 23, 24, 25, 30.

[60] Maceda, *Survey of Landed Property Concepts and Practices Among the Marginal Agriculturists of the Philippines*, 9 PHIL. QUARTERLY OF CULTURE AND SOCIETY 6 (1979).

oral proof as to the contents of contracts of sale of real property.[61] Again, this rule presumes that the general populace appreciates the necessity of reducing all their agreements into written contracts. It discounts the possibility that a significant segment of the population is used to keeping their laws and contracts in the oral tradition.

Although land registration courts are to apply the Rules only suppletorily, their proceedings take on the inherent adversary character of court litigations. Court litigations are effective in quelling discontent in the sense that the State mechanism for enforcing the rights of the victor are designed to deter the loser from 'taking the law into his own hands,' but it is undeniable that the parties emerge from such battles with bitter feelings toward each other. The danger of open and sometimes violent conflict becomes greater when the question involves land.

II. KALINGA INDIGENOUS LAWS ON LAND

A. THE SETTING

The Kalingas live in the vast fastness of the Cordillera mountain range in the north-central portion of Northern Luzon.[62] The area—considered as the most isolated in Northern Luzon—originally served as a refuge ground for upland and lowland inhabitants who resisted Spanish and American colonial rule.[63]

The Kalingas were originally small bands of close kins who lived by gathering food, hunting and fishing.[64] As they began to develop techniques of *kaingin* or slash and burn farming, they also started to settle down in scattered areas along mountain swiddens. With the development of irrigated farming or wet-rice agriculture, the clusters of close kin groups began to stabilize into settlements of self-sufficient and subsistent villages called *ili* in Kalinga.[65]

In the 19th century, the scattered *ili-ili* (plural form of *ili*) were placed under the political-military jurisdiction of *Commendancia de Itaves* which was established by the Spanish *conquistadores* to suppress the resistance of mountain tribes.[66] During this period, the term Kalinga—which means 'enemy' in Ibanag—was used to describe those bands of unchristianized people in the mountains and foothills on both sides of the Cagayan River.[67]

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[61] CIVIL CODE, art. 1403, par. 2 (e).
[62] BARTON, THE KALINGAS 6 (1949).
[63] DOZIER, MOUNTAIN ARBITERS 28 (1966).
[64] Garming, The Use of Indigenous Institutions as an Approach to Rural Development: A Case of an Upland Community 11 (December 1982) (available in the University of the Philippines College of Law Library).
[65] *Ibid.*
[66] DOZIER, *supra* note 63, at 37.
[67] Scott, *Semper's "Kalingas" 120 Years Later*, in CRACKS IN THE PARCHMENT CURTAIN AND OTHER ESSAYS 164-165 (1982).

In 1908 during the time of North American colonial occupation, the areas representing Kalinga-occupied territory were integrated into the Mountain Province which also included Benguet, Bontoc, Lepanto-Imbangan and Apayao.[68]

In 1966, however, by virtue of Republic Act 4965, the sub-province of Kalinga was merged with the sub-province of Apayao to become the Kalinga-Apayao Province. With a total land area of 7,046.6 sq. km., the Kalinga-Apayao Province is ranked as the twelfth largest province in the country.[69] According to a 1970 census, it had a total population of 136,249, of which 99.7 percent were native born.[70]

Kalinga sub-province is characterized by a uniformly rugged terrain of high sierras and steep mountain slopes with a maximum elevation of 3,000 ft. above sea level.[71] Several streams run along the mountain slopes and foothills, making the area fertile and conducive to agriculture.

Economic life among the villages is largely based on agriculture consisting of *kaingin* and wet-rice farming. Wet-rice agriculture is relatively more developed in the southern than in the northern Kalinga area.[72] This is due largely to southern Kalinga's strategic topography characterized by fertile soil and adequate water supply provided by the Chico River.[73]

Kalinga social life is based primarily on strong kinship relations. A kinship group consists of the relatives within the eight pairs of the individual's great-great-grandparents up to the third degree of relations. The next social unit is the *ili* which is governed by a consensus system administered by the *pangat* (leader). The biggest social organization among the Kalinga is composed of several communities drawn together under a system of *inter-ili pudon* (peace pact).[74]

B. Basic Concept of Land

Unlike the Western concept, the indigenous Kalinga concept of land is built on a complex but coherent body of customs, traditions, beliefs and practices. To understand the indigenous laws on land use and ownership requires an appreciation of an entire way of life. Kalinga customary land laws are directly tied down to a peculiar mode of economic existence and socio-cultural tradition and lifestyle termed *Biyag Kinalingga.*

Land as sacred

Kalinga villagers consider it a man's birthright to till and cultivate the land, to gather and hunt in the forest, and to bathe and drink in the

[68] Dozier, *supra* note 64, at 10.
[69] Garming, *supra* note 64, at 10.
[70] *Id.* at 9.
[71] Keesing, The Ethnohistory of Northern Luzon 309 (1962).
[72] Dozier, *supra* note 63, at 135.
[73] *Id.* at 125.
[74] Barton, *supra* note 62, at 32.

rivers and creeks. While every man has the right to enjoy the land and its resources, nobody can claim absolute ownership. Only *Apo Kabuniyan*—the Supreme deity—owns the land, including water and mineral resources. The Kalinga, therefore, see themselves not as owners but as caretakers of divine lands. As Macliing Dulag, a Kalinga leader, put it:

> To claim a place is the birthright of every man. The lowly animals claim their place, how much more man. Man is born and lives. Apo Kabuniyan, Lord of us all, gave us life and placed us in the world to live human lives. And where shall we obtain life. From the land. To work the land is an obligation, not merely a right. In tilling the land you possess it. And so land is a grace that must be nurtured. To enrich it and make if fructify is the eternal exhortation of Apo Kabuniyan to all his children. Land is sacred. Land is beloved. From its womb springs our Kalinga life.[75]

Land as a source of life

To the Kalingas, land is not only sacred, it is also the basis of their existence. Around the land revolves their economic and social activity. Land is their source of life; the basis of their material production and economic sustenance.

Describing the importance of land in shaping Kalinga society, Maximo Garming, a native Kalinga scholar, wrote:

> Most of the essential features of their economic organization depend mainly on the availability of land and its physical characteristics. This is why, aside from its sacredness, land is the most valued property among the Kalingas because it is almost the basic dependence on land that gives continuity and meaning not only to economic production, but also to the socio-cultural system.[76]

Not only land is viewed as communal; even production is communal. To be able to cultivate and produce enough rice in the hilly slopes requires constant, efficient work on a scale impossible for an individual to achieve. Without communal organization, it is difficult, if not impossible, to sustain a self-sufficient and subsistent Kalinga community.

C. CLASSIFICATION OF LANDS AND THEIR MODES OF USAGE

Land within the Kalinga *ili* is classified according to its use. In the interior Bugnay village, for example, land is classified into six general categories: the residential areas, rice terraces, swidden farms, forest areas, pasture or grazing ground and tree farms.

The residential area lies at the heart of the *ili,* comprising well-defined plots where the villagers set up their dwellings. Although irregular in shape, these parcels are generally equal in size.

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[75] Quoted in *Land and Survival,* 2 TRIBAL FORUM 13 (1981).
[76] Garming, *supra* note 64, at 12.

Terraced rice fields are small and irregular parcels of land constructed on flat alluvial ledges along river banks and mountain hillsides. A family normally cultivates several closely scattered rice paddies, each generally small enough to require no more than the labor capacity of an ordinary family unit. While no paddy can be deprived of its water source, the older fields enjoy preferred rights in times of scarcity. New irrigated fields cannot be constructed higher than an old one if the water source will become insufficient for the original field.

Swidden farms refer to areas alloted for dry rice or *kaingin* agriculture. These areas are generally chosen on the basis of their distance from the settlement, type of soil, nature of vegetation and slope.

The forest areas often consist of virgin forests covering deep mountain ranges. In the forest, Kalinga engage in hunting pigs, chickens and other wild animals. The forest is also a virtual cornucopia of building materials and edible plants.

The pasture areas serve as communal grazing grounds for domesticated animals, especially the carabao.

Like the pasture areas, the tree farms also consist of vast tracts of lands where pine trees are normally grown which are used as materials for house construction.

In her groundbreaking study on aspects of land use in Pasil village, Mariflor Parpan-Pagusara came out with almost similar categories, except that instead of tree farms, *kakkaju* or orchards cultivated for mandarin oranges and coffee comprise the sixth category.[77]

Parpan-Pagusara represented the different aspects of land use by means of a circular diagram, divided into six equal parts, not so much as to suggest that they are six equal areas and continguous to each other as parcels of land in their actual geography, but that they are in "intense complementation and intimate mutuality, and therefore, have equal weight in the life of the individual, especially of the tribe as a collective."[78]

Parpan classifies the land, according to use, into the *piphyphyoy*, or the residential lands; the *sangasang*, the sacred shrine; the *lupluphunan*, the burial ground; the *uma*, the swidden farms; the *paypayao*, the rice terraces; the *ginuphayat*, the forest areas; the *piyag*, the pasture or grazing grounds; and the *kakkaju*, the cultivated orchard where oranges, coffee and fruit trees are grown.

The six aspects of land use are inherently intertwined, each complementing the other. As illustrated by Parpan:

[77] Parpan-Pagusara, *Reflections on Native Title in Relation to the Kalinga: An Anthropologist Responds*, SANDUGO 12 (1983).
[78] *Ibid.*

> The rice grown in the pappajew (rice terraces) is supplemented by beans and root crops and special varieties of festive rice produced in the uma (swidden plots). Protein supply from livestock raised in the piyeg (grazing land) is augmented by venison, pork, obtained from hunting in the ginuhyat (virgin forest). The latter also provide shelter and construction materials. Harvest from kakkaju (orchard) like oranges or coffee are handy semi-cash crop.[79]

D. SYSTEM OF OWNERSHIP

While lands in the Kalinga *ili* are classified according to their natural use, they also fall under two types or systems of ownership: communal and limited individual. Land falling under the first system is referred to as communal. It includes the swidden farms, the orchard or tree farms, the forest and hunting grounds. The residential plots and the rice paddies are private land governed by the system of limited individual ownership.

Ownership is transmitted orally. Boundaries are not defined by written documents but according to well-established unwritten customary rules which are transmitted orally from one individual to another and from generation to generation.

The right to enjoy the benefits under the two systems of ownership is determined by an individual's relationship to the community. Unless he is a member of the particular tribe, he cannot claim any right to any portion of the *ili*. The only exception is when he marries a village member. In that case, he attains the status of a tribe member and becomes subject to all the rights and obligations imposed by the community, including the right to share in communal land or acquire a residential lot or rice paddy.

A non-Kalinga may also be granted the right to own a portion of the *ili* under exceptional cases based on highly equitable grounds. In Bugnay, for instance, a Bontok school teacher by the name of Marchete, was granted the right to own a residential lot after living in the village for over 30 years.

Communal ownership

The Kalinga system of land ownership is basically communal. Inherent in this system is the idea that everybody shares a common right to the land, a concept which draws its meaning from the subsistence and highly collectivized mode of economic production.

Communal ownership governs the forest areas, swidden farms, tree farms or orchards, and pasture and burial grounds. Rights and obligations

[79] *Id.* at 13.

to such land are shared in common. Nobody can be denied the right to use communal land.

In the case of swidden farms, the rule is slightly modified. The right to use and cultivate the land is subject to the prior right of an individual who previously exerted labor in clearing the area. One who has invested labor has the right to exclude others from using the swidden farm. While this right is established through prior use, it is maintained through constant usage.[80] Swidden plots left fallow may be reopened by the first person to clean it but descendants of prior users can claim preferred rights.[81] This means that they can exclude others from using the swidden plot.

Fruits arising from the cultivation of swidden farms or orchards belong exclusively to the cultivator. The same rule applies with regard to fruits and other products gathered in the forest.

It is significant to note that there is a strong tendency among Kalinga residents to reserve for command needs the surplus gained from the use of commercial land. It is not converted into a 'marketable surplus' for individual use but is often to keep to sustain sociocultural obligations of the tribe, such as the festivities accompanying peace pact renewal and tribal war victories.[82]

Limited individual ownership

As discussed earlier, not all lands in the *ili* fall under communal ownership. The residential lots and the terraced rice farms are governed by a limited system of individual ownership. It is limited because while the individual owner has the right to use and dispose of the property, he does not possess all the rights of an exclusive and full-owner as defined under our Civil Code.[83]

Kalinga customary law imposes strict restrictions on the exercise of rights over individual land. It is the custom law that such property is held only in trust by the parents of the children living and yet to be born. Property generally passes to the child upon his marriage and not upon his parent's death as provided for usder the Civil Code.[84] In some areas, the tendency is for the mother to transfer ownership of the property to her daughter or for the father to his son by reason of marriage.[85] The biggest parcel of irrigated land and the best dwelling site normally go to the first son or daughter who get married.[86] The younger child gets the smaller paddy and a large share of heirloom. The youngest child or the

[80] Scott, *supra* note 67, at 166-170.
[81] *Ibid.*
[82] Parpan, *supra* note 77, at 12.
[83] CIVIL CODE, art. 428.
[84] CIVIL CODE, art. 777.
[85] LAWLESS, THE SOCIAL ECOLOGY OF THE KALINGAS OF NORTHERN LUZON 176 (1937).
[86] DOZIER, *supra* note 63, at 155.

child last to marry stays in the parents' house and inherits whatever is left of the parental property.[87]

Alienation of individual land, except by marriage or succession, is viewed with strong social disfavor. Any person who sells, exchanges or otherwise disposes of such property invites the ill-feeling of the community. Similar social pressure is brought upon anyone who purchases or otherwise acquires the individual property by allowing himself to become a willing recipient of an act which will deprive family members of their inheritance.

There are, however, valid grounds of alienation recognized under Kalinga custom law. The most common—and the most acceptable—reason is illness. When a Kalinga member is sick, the *payao* or residential lots of his family are often exchanged for a carabao which is used as a sacrifice to appease the spirits believed to be causing the illness.

While the owner of individual land has the right to dispose of his property under reasonable grounds, this right is subject to two conditions. First, he must initially offer the property to a member of his clan. If no one in the clan is interested, the property may be alienated to any member of the village. Second, in no case may the owner of private lands alienate the property to someone who is not a member of the community. Thus, the term individual property is essentially a misnomer because while the owner has the right to own and dispose of the property, he is bound to preserve it within the clan or the community. In essence, he shares his individual ownership with the other members of the tribe. Hence the phrase: limited individual ownership. According to Kalinga indigenous law, the parcels of residential lots and rice paddies are indivisible. They cannot be subject to partition. They may be alienated or acquired in whole and never in part.

E. MODES OF SETTLING LAND DISPUTES

The adversary system of justice—the bedrock of Western legal procedure—is completely alien to the Kalinga settlement process. When a dispute concerning land occurs within the community, it is decided by the *pangat* and the village elders along unwritten customary rules. Unlike Western trial procedures, the adverse parties are not allowed to confront each other but are bound by the decision of the *papangat*. The settlement process is governed by *vochong* which is administered by the *papangat*. It operates on mutual aid and protection and binds all tribe members both past and present.[88]

The whole settlement procedure is perfectly compatible with the requirements of *biyag Kinalingga*. Since a typical Kalinga village is small,

[87] *Ibid.*
[88] Parpan, *supra* note 77 at 13.

the nature of ownership and the boundaries of each individual parcel of land are publicly known despite the absence of physical markings and written documents. Conflicts concerning land, therefore, do not require complicated and elaborate settlement procedures. The *papangat* as the elder members of the community and the most knowledgeable on unwritten Kalinga custom laws, are presumed to be in the best position to ascertain the truth and resolve conflicting claims. To allow for confrontations in dispute settlement will most likely result in greater damage. It may prolong the settlement process and heighten tensions which could lead to the outbreak of blood feud between clans of the adverse parties. A speedy and quick settlement of disputes is therefore essential to the overall stability of a Kalinga society.

Territorial land disputes between Kalinga villages, on the other hand, are generally governed by bilateral peacepacts or *pagta ti pudon.* These are administered by the highly respected elders of each village. When a dispute occurs, the village elders act as negotiators in behalf of their respective tribes. In the settlement proceeding, the elders resort to the provisions (*pagta*) of existing pact (*pudon*) which define the boundaries of each tribe. These boundaries, however, are not permanent. They may yield to new ones as a result of tribal wars. Under Kalinga customary law, the tribe which sustained more casualties may expand its boundaries as a form of indemnification.

III. DIMENSIONS OF THE INTERFACE

A. Public Land vs. Ancestral Land

The issue of preservation as opposed to usurpation of ancestral land is the central theme of the interface between national and indigenous Kalinga land laws. Since time immemorial, the various Kalinga tribes have always regarded the forest, hunting, settlement and farm grounds within defined boundaries as owned by and among them. Even before the advent of the Philippine Republic, the Kalingas never doubted their indigenous ownership of ancestral land. They have waged many wars to protect their ownership to ancestral land.

The national land laws, on the other hand, have failed to provide protection to tribal claims to ancestral land. In most cases, they even frown upon indigenous claims of ownership.

At the heart of the issue is the Regalian Doctrine which was first introduced by the Spanish colonizers. By virtue of this doctrine the entire Philippine Archipelago—including the Cordillera mountains—was considered as property of the Spanish crown. Ownership of any portion of the archipelago became contingent on a Spanish grant. Lands occupied and cultivated by natives before the coming of Magellan in 1521 were included

in the Spanish usurpation. Indeed, the Regalian Doctrine extended, at least theoretically, to land which was never subjected to Spanish control.

Colonial and unjust, the Regalian doctrine remains the bedrock upon which national land laws are based. While the *Cariño* decision created an exception to the doctrine when it recognized ancient possession as sufficient basis for private ownership, the issue of communal ownership, however, was not directly raised before the Court. The *Cariño* ruling, therefore, merely recognized individual—not communal—ownership to ancestral lands. But even along this line, there has been a gross failure to implement the spirit of the decision, particularly on the part of the executive branch of the colonial government and the Philippine Republic. By virtue of the Regalian doctrine as traditionally understood in the Philippines, land—including that held by indigenous occupants since time immemorial—is considered as public domain. This legal fiction provides the justification for the massive appropriation of ancestral land. It has also been used to deny native title to ancestral land by the legal fiction that before a Filipino citizen can claim ownership to land, he must prove title from the State as evidenced by documentation.

From the Regalian doctrine also springs the right of the State to classify land of the public domain. Under the 1973 and 1935 Constitutions, land of the public domain is classified as alienable and inalienable. Sec. 8, Art. XIV of the 1973 Constitution provides that only agricultural, industrial, commercial and residential lands of the public domain are alienable or subject to private appropriation. Forest, mineral and grazing lands are considered as inalienable, and hence, not susceptible of private ownership.[89] While land classified as inalienable may be not appropriated, the State may, however, allow its exploitation, exploration and utilization by license, concession or lease.[90]

The authority to classify and de-classify land is traditionally held by the Chief Executive. This power, however, has been delegated to the Director of Forest Development who, in turn, recommends to the President which lands are classifiable as alienable.

The Ancestral Land Decree issued by President Marcos in 1974 classifies unappropriated agricultural land of the public domain occupied and cultivated by cultural minorities for at least 10 years, including the province of Kalinga, Apayao as alienable and disposable.[91] But far from being a step in the right direction, the decree merely exemplifies the duplicitous policy of the government towards tribal land, While the decree, on one hand, recognizes the existence of ancestral land, it also imposes exceptions to indigenous claims of ownership. And the tragedy is that the exceptions are actually the rule.

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89 CONST., art. XIV, sec. 10.
90 CONST., art. XIV, sec. 11.
91 Pres. Decree No. 410 (1974), sec. 1.

For example, the decree provides that "areas reserved for other public or quasi-public purposes shall not be subject to disposition."[92] It likewise provides that the government in the interest of development programs "may establish agro-industrial projects in these areas."[93]

The implications are clear. Ancestral land automatically becomes inalienable, and hence, not susceptible to private appropriation once declared by the President as part of a reservation for forest, watershed, national parks or other public purposes. By the mere act of declaring an area as a forest reserve, communal lands, therefore, may be expropriated, thus paving the way for wholesale usurpation of ancestral lands.

A classic example of this method of ancestral land usurpation is the Cordillera mountain range. The Central Cordillera Forest Reserve alone encompasses virtually the entire Kalinga-Apayao province in what may be considered as one of the biggest 'land-grabbing' cases in recent history.[94] At least 19 other reservations abound in the whole province.[95] In Kalinga sub-province, there are at least five overlapping reservations, excluding the Central Cordillera Forest Reserve, namely: the Chico River Forest Reservation, Atonin-Tanudan-Tabuk Forest Reservations, National Forest Reservation, Balbalasang National Park, and the Mt. Santo Tomas Reservation.[96]

Amicably, but not surprisingly, ancestral land declared as "forest reserve" has fallen into the hands of multinational corporations and big capitalists by virtue of leases and concessions granted by the government. This is exemplified by the Cellophil Resources Corporation (CRC) concession which covers over 197,000 hectares, much of it ancestral, in the provinces of Abra, Kalinga-Apayao, Mountain Province, Ilocos Norte and Ilocos Sur.[97]

In Sagada, located in northwest Mountain Province, at least 1,200 hectares of pine forests are included within the CRC concession. Originally, CRC was only granted a concession to extract forest products in the area.[98] But last year, it filed a tax declaration asserting ownership to large tracts of Sagada ancestral land.[99]

The Revised Forestry Code further expresses the illusory nature of the government's avowed policy of recognizing ancestral land rights.[100] Sec. 15

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92 *Ibid.*
93 *Ibid.*
94 Claver, A Critique of Laws Affecting the Land Rights of the National Minorities 11-14 (1983).
95 *Ibid.*
96 Claver, *The Role of the Igorot Professional and Lawyers in the Cordillera,* SANDUGO 21 (1983).
97 *Ibid.*
98 *Ibid.*
99 *Ibid.*
100 Pres. Decree No. 705 (1975).

of the Code classifies lands with a slope of eighteen per cent or more as inalienable and indisposable for agricultural and settlement purposes. By virtue of this provision, the Kalinga tribes are virtually dispossessed of their indigenous lands, including their stone-walled rice terraces, which are normally located in the high mountain slopes way beyond the eighteen per cent slope requirement set by the Forestry Code. Indeed, based on this criteria, over eighty per cent of Kalinga sub-province will be permanently classified as public forest law.

Ancestral land less than eighteen per cent in slope may also be classified as public forest. Sec. 16 of the Forestry Code provides that the following lands, *even if below eighteen per cent in slope,* are needed for forest purposes, and may not therefore be classified as alienable and disposable land:

> 1. Areas less than 250 hectares which are far from or are not contiguous with, any certified alienable and disposable land;
> 2. Isolater patches of forest of at least five (5) hectares with rocky terrain, or which protect a spring for communal use;
> 3. Areas which have already been reforested;
>
> . . . .
>
> 5. Ridge tops and plateaus regardless of size found within, or surrounded wholly or partly by, forest lands where headwaters emanate;
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> . . . .
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> 10. Arcas previously proclaimed by the President as forest reserves, national parks, game refuge, bird sanctuaries, national shrines, national historic sites.[101]

The irony behind the government's practice of granting reservations at the expense of indigenous land owners is vividly illustrated by Atty. William Claver, a Kalinga native lawyer. Remarked Claver:[102]

> Not even a branch of a tree in the reservation must be cut; not a blade or grass must be touched or trampled. These are land to be protected and cared for by the government so that many Igorots have been jailed or detained by the military for cutting his own tree. This, he does not understand. It is uncomprehensible why those reservations are held so sacrosanct when a native occupant is caught making use of his milieu which happens to be a reservation. But in the next breath, that same government gives that self-same reservations to loggers to denude and destroy.[102]

While the authority to classify and de-classify land is traditionally held by the Chief Executive, this power has been delegated to the Director of the Bureau of Forest Development (BFD). The director recommends to the President which land should be classified as alienable. In policy as well as in practice, the BFD's function has been one of the enlargement of areas classified as forest, thus effectively defeating vested ancestral land rights.

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101 *Ibid.*
102 Claver, *supra* note 96 at 22.

While the Revised Forestry Code claims that classification of forest land shall be without prejudice to private rights, a wide gap separates the avowed declaration from the actual practice and convention. Its definition of private rights in the case of cultural minorities is highly restrictive, covering only "places of abode and worship, burial grounds, and old clearings."[103] This definition completely ignores the Kalinga view of their lands as a cognitive whole comprising not only residential lots, places of worship and clearings, but also forest, pasture and farm grounds.

In addition, nowhere is there a provision for the enforcement of "private right." As such, how can the BFD protect private rights? The traditional attitude of the executive branch of the government is one of disregard of vested ancestral rights. Its interpretattion is that land must first be classified as alienable and disposable before ownership to such may be claimed.

It is Lynch's observation that this interprpetation of the BFD has further made it difficult, if not impossible, for most indigenous occupants of the "public domain" to acquire ownership of their land.[104] They are forced to surmount the obstacle of BFD's arbitrary classification method before they can even hope to obtain recognition of ownership.

B. NATIONAL V. INDIGENOUS SYSTEM OF LAND OWNERSHIP

For a long time, the national system of land ownership existed as mere fiction among the native Kalingas. Ownership to land was established by indigenous law. Disputes were resolved by customary procedures.

While national land laws and indigenous Kalinga land laws exist simultaneously, they tend to operate independently of each other. Inherently antagonistic, their history of interaction is marked by a protracted struggle for dominance. Where one prevailed, the other yielded.

This is not difficult to understand. The system of land ownership under existing national laws and the indigenous Kalinga system of land ownership are drawn apart by entirely different historical origins and economic bases. They operate under contradictory, if not opposing, principles and theories.

The national land laws governing land ownership are Western in origin. The Torrens system—the heart of our national property laws—was implanted into the country by the North American colonizers through the Land Registration Act of 1902. The basic features of this law are retained in the 1978 Property Registration Decree.

With individual ownership as its central feature, the Torrens system of land ownership and registration draws its philosophy from the Western capitalist mode of economic relationships. Land is treated as an individual

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103 Pres. Decree No. 705, sec. 3 par. (mm).

104 Lynch, *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 300 (1982).

commodity, a principle which is perfectly consistent with the *laissez faire* economic spirit. To promote commerce, trade and the circulation and accumulation of capital, land is made easily alienable. This is enhanced by the system of registering land conveyances. In theory as well as in practice, registration serves not only to quiet title to the land but to enhance commercial transactions and economic activities.

On the other hand, Kalinga customary laws of land ownership are basically indigenous. Unlike the Torrens system, their underlying philosophy is communal—not individual—ownership. This fundamental principle is directly rooted in the *Biyag Kinalingga,* a socio-economic life-style which is inherently contradictory to the capitalist economic system. Land is not a mere commodity but a sacred and valuable possession. Ownership is not vested by registration and other muniments of title but by unwritten rules and the individual's membership in the tribe. Preservation—not alienation—of property is the basic policy.

Despite various and vigorous government campaigns to introduce the Western system of land ownership into the mainstream of Kalinga life, it is only in recent decades that the drive has begun to gain significant headway. This development came in the wake of the cash economy's increasing penetration into Kalinga society, accompanied by the growth of trade and commerce in the area. Individual ownership of land is more marked in areas where exposure to the school system, commercial enterprises and the cash economy is greater.

Within a Kalinga village, the individual system of land ownership as defined under national laws has three major proponents: the educated, the merchants, and the local barangay and government officials. All of them have a common interest in promoting individual ownership of land. In most cases, the educated Kalinga is also a merchant and a barangay official.

But the process of initiating the Western concept of individual ownership into the *ili* is never easy. In most cases, it is accompanied by tension and even violence. Those who make the first attempt to introduce individual ownership are met with extreme ostracism by the community. The strongest resistance is usually offered by the *papangat* and the village elders, the most ardent defenders of customary rules and the communal system of ownership.

The practice of securing a certificate of Torrens title to prove ownership never gained any headway in Kalinga society, even among the educated natives, merchants and local barangay officials. This is largely due to the extreme difficulty and impracticability of securing a Torrens certificate of title as defined by the Land Registration Act or the Property Registration Decree. Under both laws, before an applicant can be issued a Torrens title, he has to fuifill several requirements, including the submission of a

survey plan to the Land Registration Court or to the Register of Deeds. These requirements are impracticable in a society where land surveyors are rare and people live at a subsistence level.

In lieu of a Torrens certificate of title, the proponents of individual ownership have promoted the practice of securing a tax declaration certificate to prove title or ownership to land. This practice has gained widespread adherents in recent years and has led to the gradual erosion of the indigenous system of land ownership.

In several Kalinga villages, a tax declaration certificate issued by the provincial or local government after payment of real estate taxes has become a convenient replacement for the Torrens certificate of title. Individual ownership is allegedly proved by presentation of a tax declaration certificate. Lands are sold or mortgaged by surrendering the certificate of tax declaration.

Incredibly, the government has been actively promoting the belief among village residents that payment of real estate taxes establishes private ownership of 'public land.' This practice is duplicitous. Unsupported by proper proof, a tax receipt is not regarded as evidence of title.[105]

This government practice of requiring Kalinga residents to pay real estate taxes received a detailed discussion by Lynch in his article "Native Title, Private Right and Tribal Land Law: An Introductory Survey."[106] Lynch's remarks, although based on discussions with local Bontoc officials, apply with equal force in the Kalinga municipalities.

According to Lynch, government and quasi-government agencies are reinforcing the belief that individual ownership of 'public' land is established by the payment of real etsate taxes.[107] For one thing, the provincial Register of Deeds records conveyances of 'public' land covered by real estate tax receipts.[108] Tax receipts are also used by the local Bureau of Internal Revenue in determining whether a capital gains tax should be levied.

The Philippine National Bank, the Development Bank of the Philippines, and other government-controlled banks, as well as rural banks, accept mortgages of lands by village residents on the basis of real estate tax receipt certificates. This is justified on the ground that rural banks are authorized to grant loans "on the security of land without Torrens title where the owner of private property can show five years or more of peaceful, continuous and uninterrupted possession in the concept of an

[105] Elumbaring v. Elumbaring, 12 Phil. 384, 389 (1909) (citing Evangelista v. Tabayuyong, 7 Phil. 607 (1907)).
[106] Lynch, *supra* note 104, at 289.
[107] *Ibid.*
[108] *Ibid.*

owner."[109] The real estate tax receipt is used as proof of the five-year "ownership" requirement.

Thus, despite the government's claim that ancestral Kalinga land is inalienable and belongs to the "public domain," the pronouncement is contradicted by the practice of recognizing real estate tax receipts as proof of private ownership and, consequently, as a ground for allowing mortgages and foreclosures of allegedly "public" land. This deplorable practice has not led to the recognition of native title or fee-simple ownership among the Kalingas or other indigenous upland citizens. By introducing easy credit, the government has merely facilitated the breaking up of communal land into individual parcels and the alienation of rice paddies and residential lots to non-tribe members.

In reality, the greatest beneficiaries of the government-promoted practice of securing tax declaration certificates to prove ownership are not the ordinary Kalinga villagers, but the enterprising Kalinga merchants, local government officials, big landlords and capitalists. By the mere act of filing a tax declaration they are able to gain private ownership to unoccupied—but communal—land such as forest, pasture and hunting grounds. To complete their land grabbing scheme, they fence in the area covered by their tax declaration, or sell, mortgage and otherwise dispose of the property to private individuals or government agencies.

Since it facilitates transactions to land especially in securing loans, the practice of obtainning a tax declaration has gained a foothold even in interior Kalinga villages. Along with this development new sources of tension within the tribe have also emerged.

The rule prohibiting alienation to people from outside the community is increasingly violated. Traditional methods of determining boundaries of individually-parcelled lots are disrupted because unscrupulous village residents, especially those with formal education and training, often declare for tax purposes a bigger area than what is actually owned. In many instances, disputes involving land ownership are becoming more difficult to resolve as educated Kalingas refuse to recognize the traditional authority of the *papangat* to settle disputes along customary rules.

C. NATIONAL DEVELOPMENT PROJECTS V. TRIBAL LAND PRESERVATION

An important aspect of the interface between national land laws and policies and indigenous Kalinga laws is the brewing issue of government development programs vis-a-vis tribal land preservation. This issue has assumed an explosive dimension in recent years. The national government's plan to build four hydroelectric dams along the Chico River Basin

[109] Rep. Act No. 720 (1952), as amended by Pres. Decree No. 122 (1973), sec. 5.

Development Project serves to showcase the collision between national and indigenous land laws and concepts.

Financed by the World Bank, the proposed dams will submerge at least 2,753 hectares of ancestral Kalinga and Bontok land, including stone-walled rice terraces which took centuries to build.[110] Chico III alone will displace at least 15,000 Kalinga and Bontok families or roughly 100,000 individuals.[111]

According to the government, the dam will generate at least 2,010 megawatts of electric current.[112] It is questionable, however, whether the electricity that will be generated will redound to the benefit of the native Kalingas, who see no immediate need for electric megawatts. What is certain is that the electricity will benefit the existing mining and logging concessions in the area. It will also attract big foreign investors whose expansion may have been hampered by the lack of electricity.

It is important to stress at the onset that the government failed to respect procedural due process in its attempt to exercise the right of eminent domain. When the Chico dams project was being designed, neither the Kalinga nor the Bontok were consulted. But even if the government observed the elements of procedural due process in implementing the project, this would likely not have prevented the outbreak of resistance among the Kalinga and Bontok people. For the issue behind the opposition goes beyond the procedural aspect of due process; it penetrates into the realm of substantive due process. In short, it is an issue of basic justice and human rights.

The Kalinga first learned of the plan in 1974, when National Power Corporation (NPC) survey teams began to roam the area, warning village residents that their land was marked for inundation. As a form of indemnification, the government offered each affected family a two-hectare relocation site and ₱10,000 in cash. The money was meant to cover the cost of displacement, including the construction of a new house and acquisition of farm implements.[113] It merits mention that the Kalinga leaders sent a delegation to Pantabangan, which delegation discovered that many people displaced by that dam were not compensated as promised.

While the government's material cost accounting approach may appear just when applied to traditional relocation practices in urban centers, it is grossly unjust when used against Kalinga village residents. The government cost-benefit approach suffers from a major flaw: it fails to consider the manifold dimensions of the indigenous concepts of land.

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[110] *List of Major Hydroelectric Dam Projects (Existing and Proposed) Affecting Philippine Minorities,* INDIGENOUS PEOPLES IN CRISIS 103 (1983).

[111] AGHAMTAO, Dec. 1979, at 59.

[112] *Ibid.*

[113] *Ibid.*

For one thing, the conventional method used by the government in arriving at the reasonable compensation for the lands subject to condemnation ignores the intense complementary character of the different aspects of the Kalinga *ili*. The *ili* survives on a well-balanced ecosystem. It is able to maintain a self-sufficient economy through the efficient maximization of different types of land. Each aspect of land use is indispensable to the maintenance of economic stability within the village. Once a single aspect is disrupted, economic dislocation is bound to ensue. Thus, even if only the hunting grounds are inundated, the existing economic system is immediately threatened. The result is economic displacement and disintegration of an indegenous life and culture that the Kalinga have srtuggled for generations to preserve.

The material cost of the land, however, is not the most crucial issue. To the Kalingas, what is at stake is not only their lands but their entire way of life. A noted social scientist, Martha Winnacker, provides a penetrating discussion on the incalculable damage posed to the Kalingas by the government's relocation scheme:

> For the Kalinga and Bontok people, the issue goes much further than where and under what conditions they might be relocated because their attachment to their lands is more than an economic and organizational one. Their entire culture is entertwined in their particular land which their ancestors constructed and where they believe sacred spirits dwell. The changes they confront now are much more frightening than those they faced in the 16th century when they transformed themselves from roaming slash and burn farmers to rice terrace cultivators. Then they were able to concentrate their societies in the lands that they had always considered as the center of their life, making themselves self-sufficient and impregnable. Now they are asked to give up the foundations which have made their survival possible.[114]

The Government's attempt to justify the dispossession of land on legal grounds brought wide-scale realization among the various Kalinga communities of the national legal system's existence. Previously, many Kalinga citizens tended to ignore or were never conscious of national land law. They quickly began to recognize the inherent antagonism between their indigenous concepts of land and those of the national system. This sentiment found its provocative expression in the words of a Kalinga leader when he confronted NPC over the issue of land title:

> You ask if we own the land. And mock us: 'Where is your title?' When we query the meaning of your word you answer with taunting arrogance. 'Where are the documents to prove that you own the land?' Title. Documents. Proof [of ownership]. Such arrogance to speak of owning the land. When you shall be owned by it. How can you own that which will outlive you. Only the race owns the land because only the race lives forever.[115]

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[114] Southeast Asian Chronicle, Oct. 1979, p. 67.
[115] TRIBAL FORUM, February-March, 1983, at 13.

By refusing to recognize indigenous concepts of land, the government drew widespread hostility among the Kalinga. Efforts to dampen the anger through indemnification only widened the rift. The government's offer to indemnify did not only offend tribal customs; it rekindled the spirit of struggle inherent in the Kalinga tradition. This is exemplified by the statement of a Kagalwan elder before an NPC official:

> Young sir, you err to speak of a financial negotiation. Money was not yet invented, our forefathers had already carved the pappayaw [rice terraces] upon these mountain heights. Since time beyond recall Apu Kabunian revealed to us this place and delivered us into this land. We belong to this land and to no other. It is sacred. Kalinga is not for sale! We will not be bought off. We will not be relocated. We oppose the dams or any project that will cause our dislocation. We repulsed the foreign invaders— the Spaniards, the Americans, the Japanese — who sought to disposses us, to dictate on us. Your development project is no different. It is an invasion ... We are committed on our honor to resist and struggle to defend our Kalinga life.[116]

As a result of the Chico dam struggle, the government's achievements in terms of introducing the national legal system into the mainstream of Kalinga life suffered a sharp setback, especially when the government resorted to military force to implement the project. By its effort to justify the inundation of ancestral land through national development policies and laws, the government unwittingly promoted among the Kalingas a heightened feeling of hostility against the national legal system and a renewed belief in the inherent justness of their indigenous legal system.

This development was dramatically shown by the refusal of the Kalinga and Bontok tribes to present their case before the court. In their decision to turn down the offer of former Senator Jose W. Diokno to submit their case before the Supreme Court, the Kalinga and Bontok *pappangat* declared:

> If we accept [the offer], it will be as if we ever doubted that we belong to the land; or that we question our ancient law which constituted for us Kalinga [land] and Bontok [land] our *ili* ...
>
> If we accept, it will be recognizing what we have always mistrusted and resisted. If we accept we will then be honor bound to abide by the decision of that tribunal. Long experience has shown that the outsider's law is not able to understand us, our custom and our ways. Always it makes just what is unjust, right what is not right.[117]

The statement crystallizes the complete disenchantment of the Kalinga and the Bontok with the national legal system and its capacity to dispense justice. It high lights the maturation of the inherent contradiction between existing national land laws and policies and the indigenous land laws.

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[116] *Id.* at 14.

[117] Parpan, 2 Kalinga Journal (1974). (Unpublished anthropological field manuscript), quoted in *id.* at 17.

The Chico dam struggle has not only spawned a new degree of unity among the Kalinga and other Cordillera tribes and heightened their faith in indigenous laws. It has, more importantly, opened up a new dimension to the interface. It is a dimension pregnant with social and political implications not only in terms of the Kalinga response to the national legal system but, more significantly, to the struggle of unhispanicized Filipino citizens for self-determination.

Illustrating this phenomenon, a noted scholar of Southeast Asian politics, Joel Rocamora, wrote:

> In the process of defending their lands and their culture, tribal Filipinos have also begun to realize that their predicament is part of a nationwide pattern of exploitation and oppression which affects the low-land Filipinos. This understanding is one of the products of their interaction with Catholic and Protestant social action workers, students, and most importantly the NDF (National Democratic Front) cadres who have supported their cause. This interaction, in turn, has led to the initiation of dialogue on how and under what terms tribal Filipinos will integrate into the broader community.[118]

CONCLUSIONS AND RECOMMENDATIONS

A tradition of conflict characterizes the interface between national and indigenous Kalinga land laws. It is a tradition built upon the inherent antagonism between two systems of land ownership. These antagonisms are nurtured by the policy of the government to ignore indigenous Kalinga laws. They are fortified by the rising practice of ancestral land usurpation. It is therefore not surprising why the Kalinga people have adopted an attitude of open hostility towards the government and the national legal system.

If the Kalinga struggle has escalated in recent years, it is precisely because the usurpation of ancestral land has also intensified. Unless steps are taken, the process of ancestral usurpation promises to accelerate and the prospect of intense conflict looms in the years ahead.

Any solution to the problem will fail unless grounded on a holistic view of the indigenous concepts and system of land ownership and their relationship to the socio-economic and cultural life of the Kalinga and other indigenous upland communities. With this as a basic guide, we submit the following recommendations. They are designed to protect ancestral land rights, preserve the indigenous system of land ownership, and narrow the rift between the national and indigenous legal systems:

1. *Recognition of ancestral land rights.* The starting point in the effort to provide legal protection for ancestral land rights lies in the recognition that land occupied and cultivated by tribal Filipinos and other in-

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[118] Parpan, *supra* note 117, quoted in TRIBAL FORUM, February-March 1983, at 13.

digenous upland citizens since time immemorial does not belong to the public domain. In other words, Filipino citizens enjoy vested rights to their ancestral land. This recognition should not be limited to the settlement, burial and clearing grounds as narrowly defined under the Revised Forestry Code. It must encompass the forest, pasture and farming grounds which are indispensable to the maintenance of a self-sufficient and balanced tribal ecosystem.

All existing reservations which cover any portion of ancestral land shall be immediately suspended. Reservations for national parks, forests or watersheds will no longer be proclaimed. No reservations for national parks, forests or watersheds covering ancestral lands shall be declared without the approval of the affected tribal communities. These prohibitions should also apply to national development projects of the government. Stiff penalties should be swiftly imposed on public officials and private persons who attempt to usurp ancestral lands.

2. *Recognition and protection of indigenous system of land ownership.* The recognition of ancestral land rights must be accomplished in accordance with the local indigenous laws of land ownership, including the modes of land classification and use, and the acquisition and alienation of lands. Indigenous upland communities should be excluded from the provisions of the Property Registration Decree and other national laws governing the ownership and registration of land.

To prevent the further disintegration of indigenous property laws and to curb rising tensions within the respective indigenous upland communities, all land already alienated to people from outside a particular community should either be returned to the original owners or opened for redemption by the community, whichever is justified according to specific conditions.

The government practice of requiring individual tribe members to pay real estate taxes should be immediately discontinued. In lieu thereof, a collectivized form of taxation may be devised to take into account the indigenous system of land ownership, thereby preventing the promotion of the Western concept of individual ownership. In addition, the government practice of granting easy credit to individual tribe members with land as the collateral must be suspended. A new method of granting credit must be formulated to take into account the peculiar characteristics of limited individual and communal ownership, together with the rule prohibiting the alienation of any portion of ancestral lands to non-community members.

3. *Recognition and promotion of the indigenous mode of settling land dispute.* The recognition of a sub-system of indigenous laws should be institutionalized and bolstered by the enforcement power of the national legal system.

The traditional authority of the Kalinga *papangat* and other similar indigenous social organizations to decide land disputes within the community must be recognized. Steps must be taken to promote indigenous processes and methods of settling land disputes. The unwritten customary rules of the community should always prevail over any form of title, or document to prove title, in case of dispute as to ownership of land. This is essential not only to forestall new tensions in indigenous upland communities arising from conflicting rules, but also to avert the out-break of blood feuds brought about by delays in dispute settlement. Conflicts as to inter-community boundaries should be settled by the inter-community village elders according to provisions of the bilateral or inter-*pudon* agreement.

To achieve the desired reforms, we recognize the need for a systematic and persistent pressure on the national government. The problem of ancestral land usurpation must be raised as a human rights issue, on the national as well as international level. The Philippine government must be made accountable to the ILO Convention on the Protection of Indigenous People and the United Nations Working Group on Indigenous Peoples.

To effectively force the government to recognize the rights of Filipino ethnic minorities requires the active participation of other sectors of Philippine society. The struggle for the recognition of ancestral land rights should be shared by all Filipinos working for justice and human rights. The national community must become aware that ancestral land grabbing is a major cause of unrest in the country.

Under present circumstances, we realize, however, that advocating reform within the national legal framework may be insufficient. This is especially true when the desired reforms clash with the dominant classes and foreign interests in Philippine society. The legal system has always been slow to respond ot clamor for fundamental changes. As an institution, law has always been a bastion of conservatism. Its very *raison d'etre* requires that this be so.

Realizing this limitation and considering the urgency of the problem facing our tribal Filipino brothers, we see the traditional avenue of Kalinga struggle as a valid act of self-preservation. For the Kalingas and other citizens occupying ancestral land, the issue goes deeper than land rights. It is the very survival and preservation of their indigenous life and culture. Macliing Dulag, in exhorting his people to KAYAW! (Struggle!), left his legacy in his words:

> And because we [are willing to] fight now, our children may win and keep this Kalinga land. And the land shall become more sacred when nourished by our sweat and blood. Then we who sacrificed that they may live and be secure and happy shall abide with them and nurture the generations, guarding the fields, the papayaw, the ili, blessing their laws till endless time.[119]

[119] *Supra* note 114 at 2.