OPINION NO. 12 S. 2014

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

LML-L-22H14-1139

22 August 2014

Atty. ANTONIO M. BERNARDO
Commissioner and Chief Executive Officer
Housing and Land Use Regulatory Board
NLURB Bldg., Kalayaan Avenue corner
Mayaman Street, Diliman
Quezon City

HOUSING AND LAND USE REGULATORY BOARD
OFFICE OF THE CHIEF EXECUTIVE OFFICER
RECEIVED BY: ARLYN AYAG - YANA
Head Executive Assistant
DATE: 16 Sept. 2014
TIME: 11:36 AM

Dear **Atty. Bernardo**:

This refers to your 13 August 2014 letter-request for opinion on the interpretation of certain provisions of Republic Act (R.A.) No. 8371, or The Indigenous Peoples' Rights Act of 1997, relating to the sale or transfer of ancestral lands. Specifically, you raise the following issues:

1. Whether the sale or transfer of ancestral lands to non-indigenous peoples (non-IPs) or third parties is absolutely prohibited pursuant to Section 5 of the Indigenous Peoples' Rights Act of 1997 (IPRA) or is subject to exception as implied under Section 8 of the said law; and

2. Whether the ancestral lands in Baguio City can be sold or transferred to any interested buyer for value because of the seemingly conflicting provisions of Sections 5 and 8 of the IPRA.

You state that on February 8, 2012, the Housing and Land Use Regulatory Board (HLURB) promulgated Board Resolution No. 885 declaring a moratorium on the issuance of Development Permits and License to Sell for subdivision and other development projects affecting ancestral lands and/or ancestral domain, particularly in Barangay Irisan, Baguio City, until such time that the sale or transfer of said properties to non-IPs/third parties have been clarified and settled by the proper authority; and that the board resolution was implemented through Administrative Order No. 01 dated February 16, 2012.

You likewise state that an affected subdivision project owner-developer in the area sought for relief for the lifting/recalling of the said

moratorium; and that attached to its plea is the legal opinion obtained from the Legal Affairs Office of the National Commission for Indigenous People (NCIP) relative to the conveyance or transfer of affected lands within the context of IPRA, which concludes as follows:

> Consequently, where will the ancestral lands in City of Baguio fall? It is a historical fact that Baguio City is the former territory of the Ibaloi indigenous cultural communities. However, since the American occupation, the domain has been transformed into a multi-cultural city where migrants coming from different parts of the country have settled due to growing and vibrant economy. xxx Considering its current status today, it is impossible to delineate Baguio City as the ancestral domain of the Ibalois. To force the situation would only inspire bloodshed and disunity among the multi-ethnic inhabitants. We therefore conclude that ancestral lands in Baguio are within the coverage of Section 53 (b) or lands that are not within ancestral domains.
>
> Though the city can no longer be treated as an ancestral domain within the context of the law, it is undisputed that there are IPs with remaining ancestral landholdings. Can these ancestral landholdings be the subject of sale, disposition or transfer to IPs or non-IPs, entities or corporations? Will the prohibition in Section 5 apply?
>
> Such prohibition no longer applies for the simple reason that ancestral lands in Baguio are classified under Section 53 (b) of IPRA. Therefore, we truly believe that Baguio City is no longer within the coverage of such prohibition and ancestral lands therein can now be the subject of transfer or disposition to IPs or non-IPs alike or to other entities.

Confronted with the foregoing issues and in line with your mandate on the protection of buyers of subdivision/condominium projects nationwide which might be in conflict with the IPs' right of redemption under the IPRA, you now seek our position on the matter.

Please note that as a matter of settled policy and practice, this Department declines to render opinion on issues involving a determination of the legality of any action by an agency over which the Secretary of Justice exercises no revisory authority[1]. However, in view of the importance of the issues at hand, we state the following **for your information and guidance only**:

On the first issue, the subject provisions of the IPRA, insofar as pertinent, respectively state, *viz*:

> SECTION 5. Indigenous Concept of Ownership. — Indigenous concept of ownership sustains the view that **ancestral domains** and

[1] DOJ Op. No. 31, s. 2011.

all resources found therein shall serve as the material bases of their cultural integrity. **The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed.** xxx (Emphasis supplied)

xxx xxx xxx

SECTION 8. Rights to Ancestral Lands. — The right of ownership and possession of the ICCs/IPs to their **ancestral lands** shall be recognized and protected.

a) Right to transfer land/property. — **Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.**

b) Right to Redemption. — **In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.**

xxx xxx xxx (Emphasis supplied)

To us, the seeming conflict between Sections 5 and 8 of the IPRA is more imagined than real. As explicitly stated, the absolute prohibition from transfer or disposition under Section 5 was made to apply specifically to *ancestral domains*[2]. This was so because ancestral domains, under the indigenous concept of ownership, were meant to be reserved for indigenous cultural communities/indigenous peoples (ICCs/IPPs) for all generations. It is recognized as their private but communal property. On the other hand, the provisions of Section 8

[2] a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators; (Section 3, Republic Act No. 8371)

would refer to *ancestral lands*[3] held by indigenous peoples under claims of individual or traditional group ownership since time immemorial.

A reading of the entire text of the IPRA would reveal that Congress intended to distinguish between the concepts of ancestral domains and ancestral lands. To illustrate, these terms were separately defined under Section 3 of the law. Also, in the consolidated cases of *Cruz vs. Secretary of Environment and Natural Resources*[4], disposed by the Court *per curiam*, Justice Reynato Puno, in his Separate Opinion, stated:

> xx Ancestral lands are not the same as ancestral domains. These are defined in Section 3 [a] and [b] of the Indigenous Peoples Right Act, *viz*:
>
> xxx xxx xxx
>
> **Ancestral domains** are all areas belonging to ICCs/IPs held under a claim of ownership, occupied or possessed by ICCs/IPs by themselves or through their ancestors, communally or individually since time immemorial, continuously until present, except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings with government and/or private individuals or corporations. **Ancestral domains comprise lands, inland waters, coastal areas, and natural resources therein and includes ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable or not, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources.** They shall also include lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.
>
> **Ancestral lands** are lands held by the ICCs/IPs under the same conditions as ancestral domains except that these are limited to lands and that these lands are not merely occupied and possessed but are also utilized by the ICCs/IPs under claims of individual or traditional group of ownership. These lands include but are not limited to residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.

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[3] b) Ancestral Lands — Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots; (Section 3, Republic Act No. 8371)

[4] 347 SCRA 128.

xxx xxx xxx

> The procedure for the delineation and recognition of **ancestral domains** is set forth in Sections 51 and 52 of the IPRA. The identification, delineation and certification of **ancestral lands** is in Section 53 of said law.
>
> Upon due application and compliance with the procedure provided under the law and upon finding by the NCIP that the application is meritorious, the NCIP shall issue a Certificate of Ancestral Domain Title (CADT) in the name of the community concerned. The allocation of **lands within the ancestral domain** to any individual or indigenous corporate (family or clan) claimants is left to the ICCs/IPs concerned to decide in accordance with customs and traditions. With respect to ancestral **lands outside the ancestral domain**, the NCIP issues a Certificate of Ancestral Land Title (CALT).[5] (Emphasis supplied)

The conflict arose in the application of sub-paragraphs (a) and (b) of Section 8. With respect to ancestral lands, in sub-paragraph (a) thereof, the law gives the right to transfer the same to or among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned. However, in sub-paragraph (b), the law likewise provides for the right to redemption when it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price. From the wordings of the provisions contained in this Section, it seems that there is indeed a *right to transfer land/property rights* but only to or among members of the same ICCs/IPs which is in contradiction with the provision on the *right to redemption* which seems to allow transfer even to non-IPs, provided that consent is not vitiated or the transfer was not made for an unconscionable consideration or price.

To resolve, it would be necessary to resort to a rule in statutory construction that all parts of a statute ought to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intention in the same statute are never to be supposed or so regarded, unless forced upon the court by an unambiguous language[6].

First, it may be worthy to note that Sections 5 and 8 fall under the same Chapter relating to the Rights to Ancestral Domains. In the same Chapter, it is likewise provided:

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[5] At pp. 195-197.

[6] Sec. of Justice Op. No. 41 and 21, s. 2010, both citing cases.

SECTION 12. Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496. — Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this section shall be exercised within twenty (20) years from the approval of this Act. (Emphasis supplied)

From the above-quoted provisions, it is made clear that ancestral lands may be titled under the then Commonwealth Act No. 141, as amended, or the Land Registration Act.[7] Such lands are now classified as alienable and disposable agricultural lands. This option to secure certificate of title, however, may only be exercised for a period of twenty (20) years from the approval of the law. Being covered by the Torrens System, these lands may now properly be the subject of conveyance. Thus, in the aforesaid Supreme Court case, Justice Puno further elucidates: "A torrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the **civil law**. xxx Ownership, under Roman Law, may be exercised over things or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing includes the right to receive from the thing what it produces, the right to consume the thing by its use, the right to alienate, encumber, transform or even destroy the thing owned, and the right to exclude from the possession of the thing owned by any other person to whom the owner has not transmitted such thing."[8]

Thus, to reconcile and give effect to both provisions of Section 8, we opine that the right to transfer land/property rights under subsection (a) is granted with respect to ancestral lands acquired by virtue of a

[7] Amended by Presidential Decree No. 1529 or the Property Registration Act.
[8] Op cit., at p. 221.

native title[9] under the IPRA. Thus, these lands may only be transferred to or among members of the same ICCs/IPs. On the other hand, ancestral lands registered under the Torrens System in keeping with the option given under Section 12 of the IPRA, may likewise be transferred to or among members of the same ICCs/IPs or even to non-IPs, the latter being subject to the right to redemption as provided under subsection (b).

On the second issue, we regret to decline to render opinion on the matter. As a matter of policy, the Secretary of Justice renders opinion only on issues involving specific legal questions[10], not on questions of fact or mixed questions of fact and law. To render an opinion on the issue would require a prior determination of specific facts which are not readily available in your letter-request.

Please be guided accordingly.

Very truly yours,

LEILA M. DE LIMA
Secretary

Department of Justice
CN : 0201409139

[9] Section 11, R.A. No. 8371.
[10] Op cit., Op. No. 21, s. 2012.