

Autonomy as a Mechanism to Address Exclusion and to Enhance Participation of Minorities

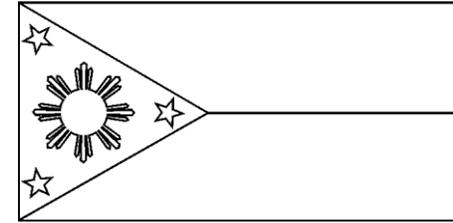
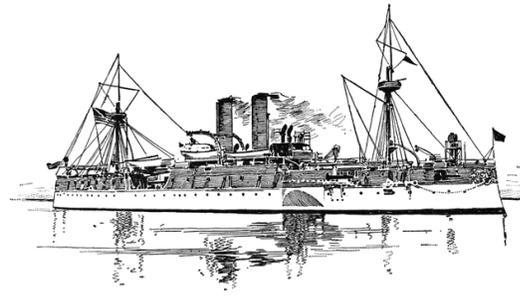
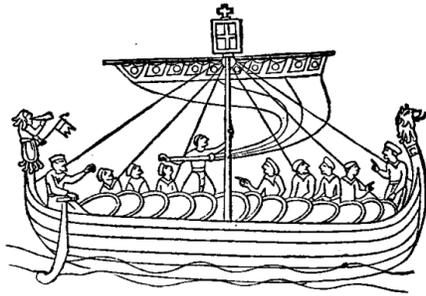
Atty. Erwin M. Caliba
"Governance, Democracy, and Media: Building Better Communities"
23rd National Press Forum
July 5, 2019 Hotel Jen, Manila

Filipino minorities, used to live in their homelands.

- **Self-governed**
- **Self-subsistent**
- **Possessing unique identity, language and culture.**



Minorities Excluded from Power and Deprived of Meaningful Political Participation



SPANISH

AMERICAN

**POST-
COLONIZATION**

Regional Autonomy to Address Exclusion

Autonomy “device to allow ethnic or other groups that claim a distinct identity to exercise direct control over affairs of special concern to them while allowing the larger entity to exercise those powers that cover common interests”

HOW?

- Recognition of minorities' identities.
- Recognition of minorities' territory where they constitute the majority of the population
- Making minorities governors themselves.

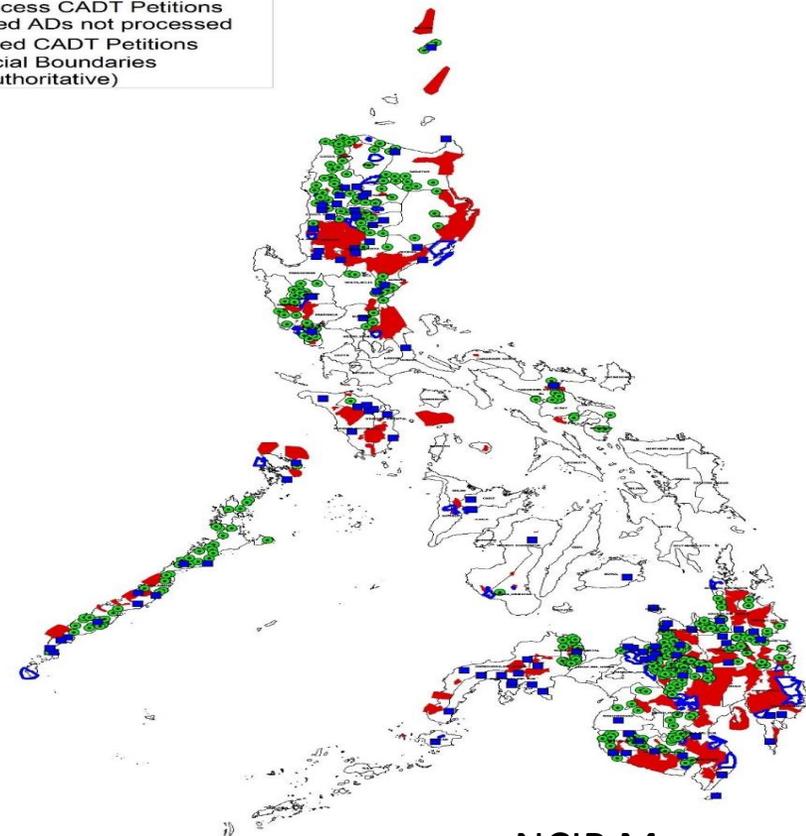
Regional Autonomy

- **Ensures Citizen Participation**
- **Brings More Responsive Governance**
 - **Upholds the Rule of Law**

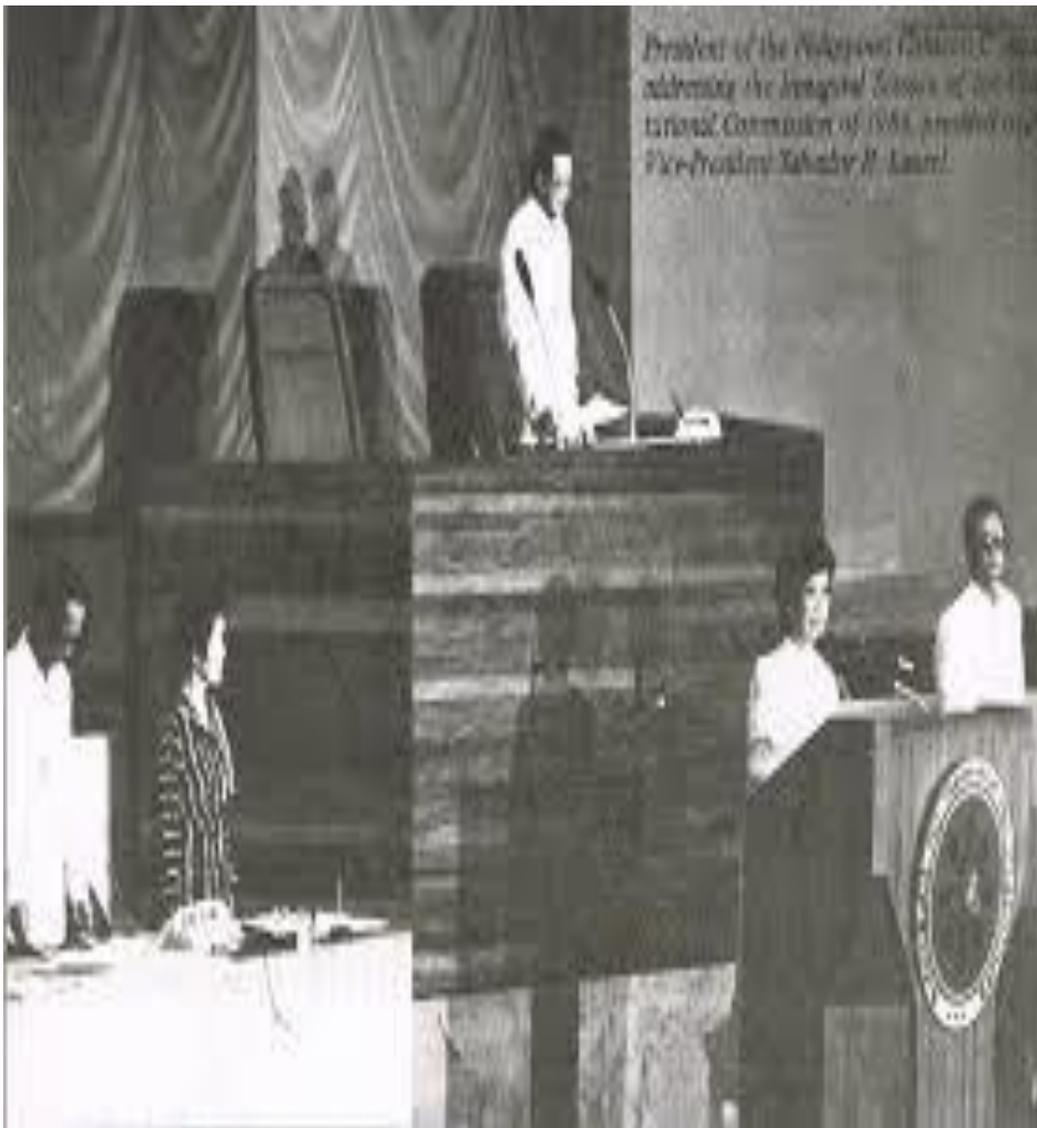
INDIGENOUS PEOPLES, ANCESTRAL DOMAINS AND RIGHT TO SELF-DETERMINATION

How about peoples with distinct identities and culture outside the Cordilleras and in the Bangsamoro?

LEGEND:
■ On-Process CADT Petitions
● Identified ADs not processed
■ Approved CADT Petitions
□ Provincial Boundaries (Not Authoritative)



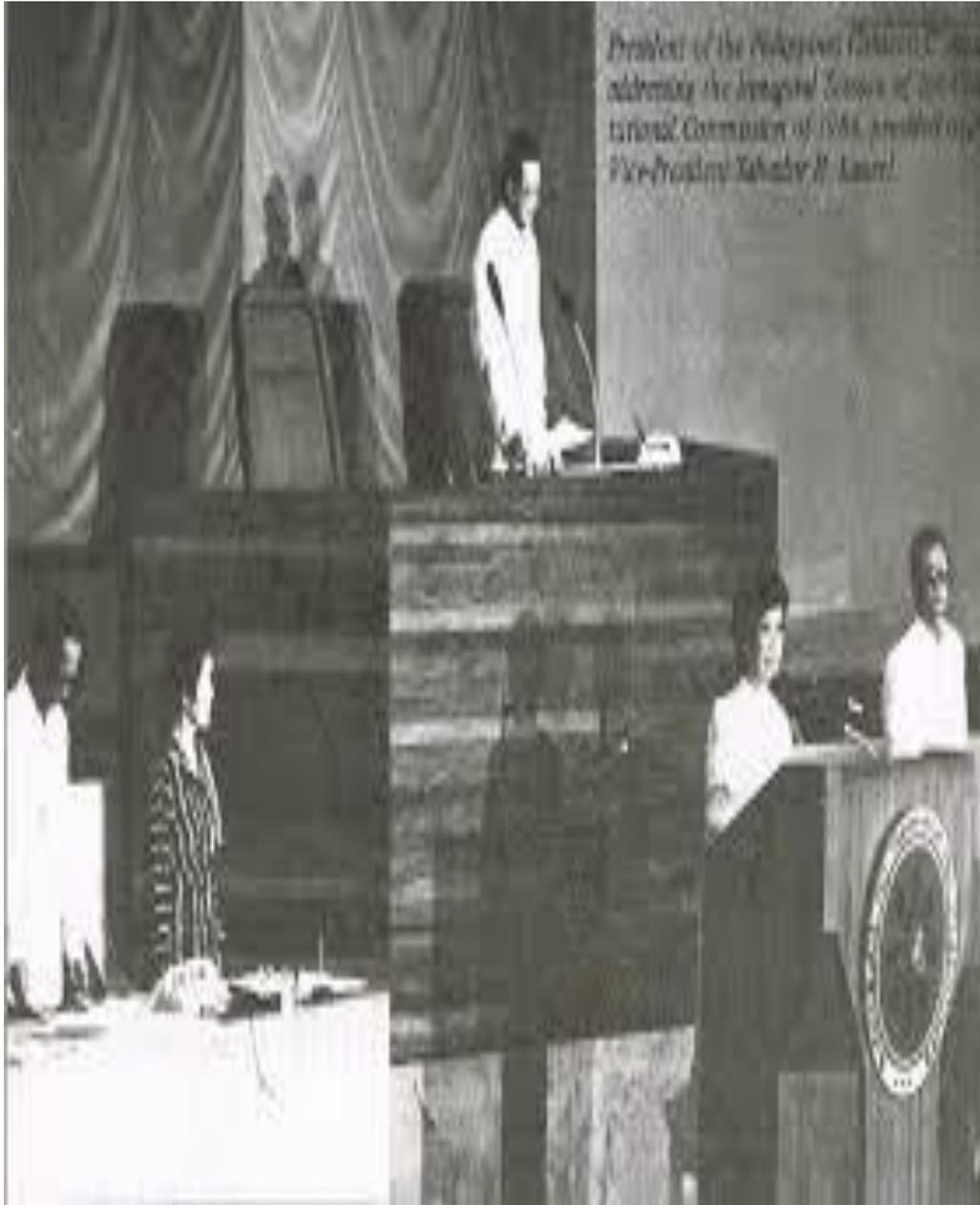
NCIP Map



1987 Constitution

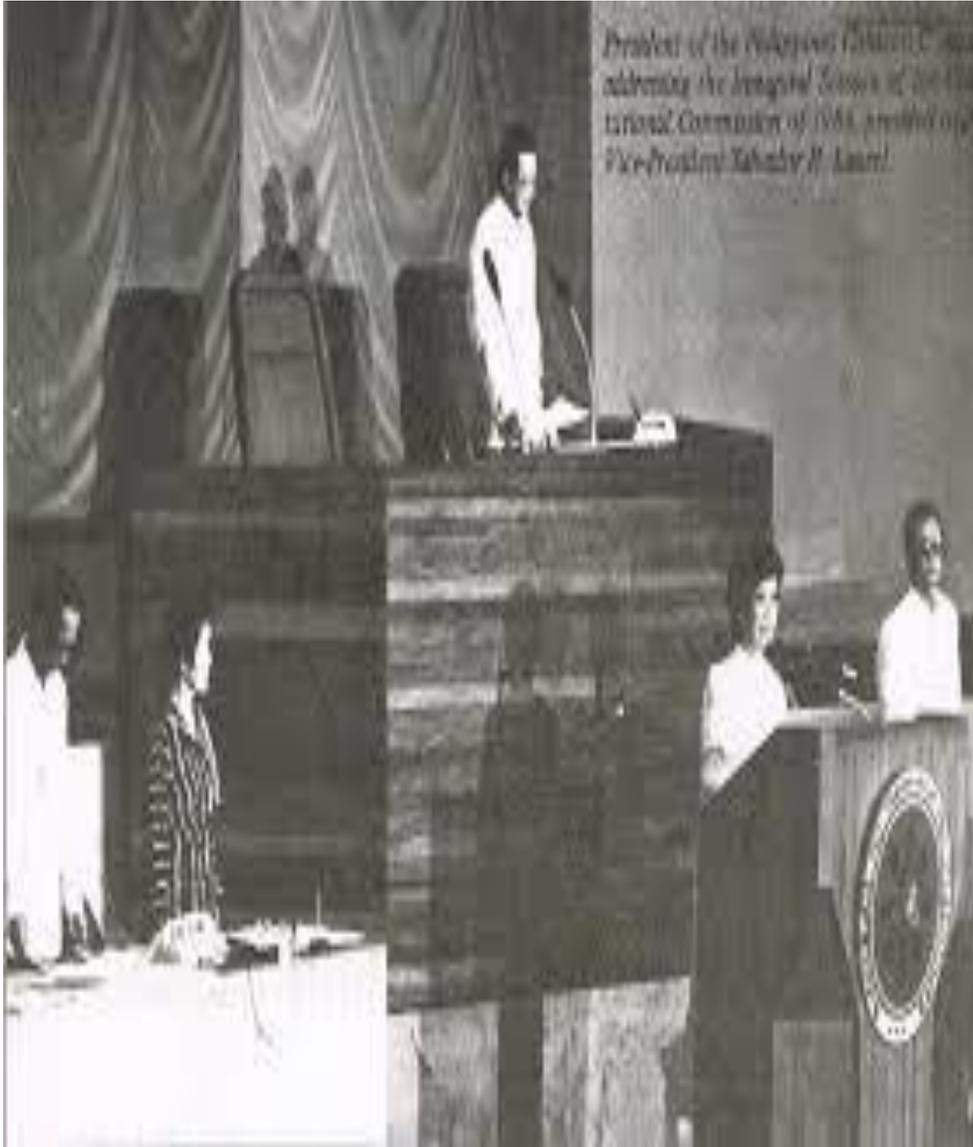
“The State recognizes and promotes the **rights of indigenous cultural communities** within the framework of national unity and development”

(Declaration of State Policies and Principles, Article II, Sec. 22)



- “The State, subject to the provisions of this Constitution and national development policies and programs, shall **protect the rights of indigenous cultural communities to their ancestral lands** to ensure their economic, social, and cultural well being.
- The Congress may provide for the **applicability of customary laws** governing property rights or relations in determining the ownership and extent of ancestral domain.

(National Economy and Patrimony, Article XII, Section 5)



“ The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their **cultures, traditions, and institutions**. It shall consider these rights in the formulation of national plans and policies.”

*(Education, Science and Technology, Arts, Culture and Sports,
Article XIV, Section 17)*

INDIGENOUS PEOPLES RIGHTS ACT (RA 8371)

Four Bundles of Rights

- Rights to ancestral domains and lands
- **Rights to self-governance** and empowerment
 - Rights to social justice and human rights
 - Rights to cultural integrity

The **Ancestral Domains** are indigenous peoples' "private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed."

RIGHT TO SELF-GOVERNANCE AND SELF-DETERMINATION

- *Right to freely pursue their economic, social and cultural well-being and have the right to determine the priorities of development.*
- *Free and Prior Informed Consent (FPIC)*
- *Right to use justice systems, conflict resolution institutions, peace-building processes and customary laws and practices*
- *Right to Participate fully, if they so choose, at all levels of decision-making*

The UN General Assembly adopted on September 13, 2007 the UN Declaration of the Rights of the Indigenous Peoples (UNDRIP) declaring, among others, the **collective rights of the indigenous peoples to self-determination.**

Confirmed the rights granted by IPRA.

*UN Declaration of
the Rights of the
Indigenous Peoples
(UNDRIP)*



- ***Challenges to the Right to Self-Determination***

- ***Cruz vs. Secretary of DENR (2000)***

- certain provisions allegedly an unlawful deprivation of State's ownership over lands of the public domain as well as minerals and natural resources therein in violation of the medieval doctrine of Jura Regalia.

- ***Unduran v. Aberasturi (2015)***

- Limited the Jurisdiction of the Quasi-Judicial Functions of the NCIP

- ***Many Complaints from Communities***

➤ *Concerns on the Draft Federal Constitution*

- Indigenous peoples' Rights and Welfare now placed under the exclusive powers of the regions

-Formulation of Section 9, Article XV (National Economy and Patrimony)

Section 5 of Article XII (1987 Constitution)

The State, subject to the provisions of this Constitution and national development policies and programs, shall **protect the rights of indigenous cultural communities to their ancestral lands** to ensure their economic, social, and cultural well-being.

The Congress may provide for the **applicability of customary laws** governing property rights or relations in determining the ownership and extent of ancestral domain.”

Section 9, Article XV Draft Federal Constitution

The Federal Republic shall, subject to the provisions of the Constitution and national development policies and programs, **respect the primacy of customary laws of indigenous peoples to their ancestral domains and lands, and all resources** found therein to ensure their economic, social, and cultural well-being.

Ancestral domains which are communal properties cannot be alienated.

CONCLUSION

Autonomy will strengthen the state, pave the way for inclusion and enhance the participation of minorities.

The right of the **Indigenous Peoples to Self-Determination** and communal ownership of their ancestral domains should be well-entrenched in the Constitution

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