

11th Session of the United Nations Permanent Forum on Indigenous Issues
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Intervention on Agenda Item 3: *"Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)"*

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Thank you, Madame Chair, for this opportunity to contribute information on the impacts of the Doctrine of Discovery among indigenous peoples in Asia.

The Doctrine of Discovery is practiced in the Philippines through the concept of jura regalia or the Regalian Doctrine. This concept refers to royal rights claimed by the King of Spain during the 16th century by virtue of the discovery and conquest of the Philippines by Spain. Consequently, all lands in the colony were declared the exclusive patrimony and dominion of the Spanish Crown. The Regalian Doctrine became the basis for subsequent laws, which, through the years, have deprived the indigenous peoples of the lands that we and our forebears had held since long before the coming of the Spanish colonizers.

Under the Regalian doctrine, private title to land must be traced to some grant, or title, given by the Spanish Crown or its successors, the American Colonial Government, and thereafter, the Philippine Republic. This is in direct conflict with indigenous peoples' concepts of land rights and ownership, which are based on occupation since time immemorial. The Regalian doctrine is still in effect until today and the Philippine constitution contains provisions that clearly state that all lands of the public domain and all natural resources belong to the State. To quote Section 2 of the Philippine Constitution: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.... The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations...." Hence, the Regalian doctrine is a colonial imposition that historically marginalized and dispossessed us from our ancestral lands, resources and territory. It is the root cause of the systematic violation of our collective rights to our ancestral lands and self-determination.

Today, the Regalian Doctrine is at the core of the ongoing conflicts between indigenous peoples and the Philippine government on ancestral land ownership and self-determined development. On one hand, indigenous peoples are asserting their right to land and self-determination when confronted with destructive development projects such as mining, logging, plantations, dams and other forms of extractive industries and development aggression. On the other hand, the government insists that they have the right and power to take over indigenous peoples' land and resources for exploitation by private corporations, because these are part of the public domain. This clash of concepts has caused numerous conflicts and resulted in the serious violation of the inherent rights of indigenous peoples as enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international laws.

At this point, we wish to highlight yet another existing legal doctrine, as opposed to the Doctrine of Discovery. This is the Doctrine of Native Title, which arose from a US Supreme Court decision in 1909 written by Justice Oliver Wendell Holmes on a case filed by my great grandfather, indigenous Ibaloi leader Mateo Cariño, vs. the US colonial government in the Philippines. In 1903, the US colonial Government expropriated the ancestral lands of the Cariño family for the establishment of a US military base known as Camp John Hay. Mateo Cariño filed suit against the Insular Government for this illegal taking of his family's pasturelands. The legal case, Cariño vs. Insular Government, went through the court system and reached all the way to the US Supreme Court, which finally decided in Mateo

Cariño's favor after six long years. In 1909 the US Supreme Court declared that that "... when, as far back as testimony or memory goes, that land has been held by individuals under a claim or 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.... Law and justice require that the applicant should be granted what he seeks, and should not be deprived of what by practice and belief of those among whom he lived, was his property." (Cariño vs. Insular Government)

Thus, the US Supreme Court recognized that we, indigenous peoples in the Philippines, privately owned our lands, because these had never been part of the public domain since before the coming of the Spanish colonizers.

The Doctrine of Native Title marks a significant victory in the struggle of indigenous peoples for the recognition of the land rights. The Cariño doctrine was the basis for the definition of Native Title under the Philippine Indigenous Peoples Rights Act (IPRA) of 1997. Indigenous peoples in the Philippines have effectively used the Doctrine of Native Title to assert our rights over their ancestral domains through self-delineation and self-declaration of Native Title in accordance with customary law. We have been able to do this, in spite of the non-issuance by the government of Certificates of Ancestral Lands or Domain (CALT/CADT), which have proven ineffective and divisive, not to mention the long tedious process that indigenous peoples have to go through to prove their ownership of the land and acquire a CALT/CADT.

With this background, we now forward the following recommendations to the UN Permanent Forum on Indigenous Issues:

1. Abrogate the Doctrine of Discovery in all its forms, including the Regalian Doctrine in the Philippines, which has been instrumental in the violation of indigenous people's rights to land and self-determination since colonial times until the present. Initiate measures of redress to correct the centuries of injustice committed against indigenous peoples using the Doctrine of Discovery.
2. Uphold the Cariño Doctrine of Native Title. Recognize indigenous peoples' rights to their ancestral lands in accordance with customary laws and concepts of land ownership and native title.
3. All laws and policies anchored on the Regalian doctrine must be reviewed and reversed in order to be consistent with the UNDRIP.

Thank you all for your attention and consideration.