THIS BOOK is based on some of the presentations made at the 2005 National Conference on Indigenous Peoples' Land Rights held in Quezon City, the Philippines. At its core are four case studies of different indigenous groups from various parts of the country: the Kankana-ey and Bago of the northern Cordilleras, the Buhid Mangyans of Mindoro, and the Subanon and Matigsalug of Mindanao. Each one describes an indigenous group's experiences, as it seeks to protect its lands and resources from external threats using, among others, the ancestral domain titling procedures of the Indigenous Peoples Rights Act (IPRA) of 1997. This law was promulgated as the Philippine state's response to decades of advocacy, activism and armed struggle by indigenous communities and their support groups. Together, the case studies allow the reader to explore the strengths and weaknesses of the IPRA, as communities located in differing historical, cultural and political contexts strive to negotiate the terms of their co-existence with other actors. The book thus contributes to the timely and much-needed assessment of the IPRA ten years after its promulgation, and serves as a starting point for discussions on indigenous peoples' rights vis-a-vis the state in the Philippines, and in Southeast Asia.

Legal Rights and Natural Resources Center, Inc.
Kasama sa Kalikasan/Foe-Phils
LRC-KsK / Friends of the Earth-Philippines

NEGOTIATING AUTONOMY

Case Studies on Philippine Indigenous Peoples' Land Rights

Editor AUGUSTO B. GATMAYTAN

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IWGIA
International Work Group on Indigenous Affairs

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Negotiating Autonomy

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Edited by Augusto B. Gatmaytan

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This book is dedicated to the Indigenous Peoples of the Philippines; especially those who, like Markus Bangit and so many others, died in the defense of land, life and self-determination; and those who remain, despite the dangers, on the forefront of the struggle for justice for Indigenous Peoples.

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Finally, we thank all the indigenous peoples' communities in the case studies that continue to struggle everyday for a more dignified existence.

FOREWORD

SECURING LAND and territorial rights has always been on top of the agenda of IWGIA's almost 40 years of advocacy work for indigenous peoples' rights. This is our priority because it is the indigenous peoples' priority. On a poster printed in the 1980s IWGIA has summarized its priorities and approach in three simple words: Land – Life – Culture. For indigenous peoples the three are indeed inseparably connected, as indigenous leaders and community members have been telling the world over and over again during the past decades. To indigenous peoples, land *is* life, land *is* culture.

I recently found a particularly beautiful and strong statement conveying how indigenous peoples see their relationship to their land, in an article by Colin Nicholas on Orang Asli identity. He quotes Batin Hun-ho, a Semai headman in Perak state. Batin Hun-ho in addressing an officer of the government's agency in charge of Orang Asli affairs said:

> "Each time you come here, you tell us that we have to move, that this is Tanah Melayu [Malay Land]. But we are from here. Like the durian tree. It grows tall. It flowers. It bears fruit. The fruits fall, and new seedlings emerge. Then new trees grow. We are like the durian trees here. We are the sengoi asal [original people] here." (Nicholas 2002: 128)

In the 1980s, IWGIA expanded the scope of its work and began to provide direct support to titling of indigenous territories in the Peruvian Amazon, later on in Bolivia and elsewhere in Latin America. Territorial defense is still a priority of IWGIA's work in that region. Experiences all over the region have however shown that territorial defense, even after a title has been granted, is not all that easy since the communities often have to deal with extremely powerful and well-connected actors that are interested in their land and resources and seek new ways of getting access to them.

When the Philippines passed the Indigenous Peoples Rights Act (IPRA) in 1997, IWGIA shared the joy of indigenous communities, organizations and their supporters who have fought so hard to make this happen. Having equally shared their skepticism about the previous tenurial instrument, the Department of Environment and Natural Resources' Administrative Order number 2 of 1993 (DAO 2), which provided only for the recognition of the claim, and not the right to an Ancestral Domain, IWGIA considered IPRA a huge step forward towards the genuine recognition and protection of indigenous peoples' rights in the Philippines. From the beginning, there were also critical voices, but these were few and enthusiasm was the prevailing sentiment. Indigenous peoples indeed put great hopes in the law, and soon the first applications for titling of their Ancestral Domains were submitted to the National Commission on Indigenous Peoples (NCIP). Since the NCIP has only limited resources and capacities, indigenous organizations, support NGOs and the Church stepped in and launched their own programs to support indigenous communities in obtaining a Certificate of Ancestral Domain Title (CADT). One of these programs, the Ancestral Domain Support Program (ADSP) jointly initiated by the indigenous NGO Inter-Peoples Exchange (IPEx) and the advocacy NGO Anthropology Watch, has been supported by IWGIA since the past seven years. IWGIA saw it as an opportunity to respond to one of the most urgent needs of indigenous communities in the Philippines.

As of the time of writing these few lines, 57 CADT's have been granted by the NCIP, but many more applications are pending and even more communities have not yet applied or are not considering doing so. As we and our partners had to learn, experiences with the delineation and application process by communities and their supporters have been rather mixed so far. Not only has the process frequently been found utterly complicated and costly, all too often it has been made even more difficult if not impossible by uncooperative attitudes on the part of government officials, or obstructions by vested interest. In other cases, cooperation with the government was smooth, and the 57 CADT's prove that there are people in the government who are genuinely committed. But what indigenous communities in Latin America experienced also seems to hold true for their brothers and sisters in the Philippines: all too often the real problems begin after the title has been issued. Thus, quite soon after IPRA was passed, it became evident that it not only has potentials, but severe constraints and limitations, if not, as some see it, dangers as well. Such concerns were shared with us by our friends and partners in the Philippines and they suggested conducting a national-level assessment of the situation of indigenous peoples' land rights. Thus, a national coordination committee was formed and a national conference on indigenous peoples' land rights held in November 2005. Legal Rights and Natural Resource Center – Kasama sa Kalikasan (LRC-KsK) took over the responsibility for organizing it. Having already been alerted by emerging issues related to land rights and territorial defense in Latin America, IWGIA welcomed the initiative and fully supported it, as well as the publishing of this book.

Experiences gained in the Philippines with various past and present tenurial instruments, we believe, are extremely valuable lessons that should be shared with indigenous peoples and supporters elsewhere in the world. Encouraged by the growing strength of the global indigenous peoples' movement, indigenous communities and their organizations all over the world are – sometimes successfully – demanding the recognition of their right to their land and resources. The Declaration on the Rights of Indigenous Peoples, adopted by the United Nations' General Assembly on September 13 this year, comes as a much needed moral support. But many indigenous communities need more support if they are to succeed. And the most valuable support comes from among themselves. There is a lot for indigenous peoples to learn from each other in terms of concrete solutions to the multitude of political, legal, institutional and technical challenges faced in the struggle for the recognition and protection of their rights to land and resources. The conference of November 2005 provided indigenous communities, organizations and their supporters a venue for such sharing. The LRC-KsK took up the task to compile the most enlightening case studies presented during the conference. It also managed to convince some of the most competent researchers and activists in the field to do the editing and to contribute additional ar-

ticles. The result of these endeavors is this book. May it contribute to the critical reflection on existing laws and policies that is so much needed in the Philippines as well as the rest of the world to ensure genuine self-determination for indigenous peoples, and therewith their full control over their land, their life and their culture.

CHRISTIAN ERNI
IWGIA Asia Program Coordinator

Reference

Nicholas, Colin 2002. "Organizing Orang Asli Identity," in *Tribal Communities in the Malay World. Historical, Cultural and Social Perspectives,* ed. Geoffrey Benjamin and Cynthia Chou. Singapore: Institute of Southeast Asian Studies.

ACRONYMS AND TERMS USED

A and D	Alienable and Disposable; public or government lands classified as agricultural, portions of which can be titled in the name of qualified individuals through judicial or administrative procedures
ADMP	Ancestral Domain Management Plan; a resource management plan required for holders of CADCs under DAO 2
ADSDF	Ancestral Domain Sustainable Development Framework
ADSDPP	Ancestral Domain Sustainable Development and Protection Plan; a resource management plan required for holders of CADTs under the IPRA
Ancestral Domain	ancestral lands and the natural resources located within it
Ancestral Land/s	land/s traditionally used by indigenous families or individuals for residential, agricultural and similar purposes
Barangay	the lowest local government unit in the Philippine political system, at the level below the municipality or city
Barrio	a term equivalent to the *barangay*, used prior to the Martial Law period (1972-1986)
BITO	Bakun Indigenous Tribes Organization; an indigenous peoples' organization in Bakun municipality, Benguet province
CADC	Certificate of Ancestral Domain Claim; a DENR certification that a certain area is

claimed by a certain indigenous group, organization or community as their Ancestral Domain (issued through DAO 2)

CADT	Certificate of Ancestral Domain Title; a deed of ownership over an Ancestral Domain (issued under the IPRA)
CAFGU	Citizens Auxiliary Forces Geographical Unit; paramilitary units recruited, trained, armed, supplied and led by government military personnel
CALC	Certificate of Ancestral Land Claim; a DENR certification that a certain area is claimed by a certain indigenous group, family or individual as their Ancestral Land (issued through DAO 2)
CALT	Certificate of Ancestral Domain Title; a deed of ownership over Ancestral Land (issued under the IPRA)
CARL	Comprehensive Agrarian Reform Law; a statute providing for distribution of land to landless tillers, part of the CARP
CARP	Comprehensive Agrarian Reform Program
CBFM	Community-Based Forest Management; a DENR program which allocates use-rights to forest resources to mainly upland communities or organizations
CCFS	Certificate of Community Forestry Stewardship; a document issued by the DENR as part of its social forestry program (see ISFP)
CFSLA	Community Forest Stewardship Lease Agreement; a document issued by the DENR

as part of its social forestry program (see ISFP)

CHDF	Civilian Home Defense Forces; paramilitary units organized by the government during the Martial Law period (1972-1986), the forerunner of the CAFGU
CLOA	Certificate of Land Ownership Award; a deed of ownership issued by DAR to beneficiaries of the CARL
CNI	Commission on National Integration; the government agency in charge of indigenous peoples' affairs in the period before, and during the early part of, the Martial Law period (1972-1986), at which time it was replaced by the PANAMIN
COE	Council of Elders; a political institution introduced by the NCIP
CSSMMPC	Canatuan Small Scale Miners Multi-Purpose Cooperative; an association of small-scale miners in *sitio* Canatuan, Siocon municipality, Zamboanga del Norte province
DAO 2	DENR Administrative Order no. 2 (1993); an administrative regulation that provides for delineation and certification of ancestral land and domain claims
DA	Department of Agriculture; a government line agency
DAR	Department of Agrarian Reform; a government line agency, renamed the DLR
DENR	Department of Environment and Natural Resources; a government line agency

DLR	Department of Land Reform; a government line agency
FEMMATRICs	Federation of Matigsalug-Manobo Tribal Councils; an indigenous peoples' organization in the Davao City-Bukidnon province border area, in southern Mindanao Island
FPIC	Free and prior informed consent; consent by affected indigenous communities which must be secured before the start of a commercial or other project within their territory, as required under the IPRA
FTAA	Financial or Technical Assistance Agreement; a type of mining agreement, between the Philippine government and a mining company, which features incentives for multinational firms
ICCs/IPs	Indigenous Cultural Communities/Indigenous Peoples
IFAD	International Fund for Agriculture Development; an international funding agency
IFMA	Industrial Forest Management Agreement; a contract for corporate tree-plantation operations issued under the DENR Industrial Forestry Program
IKSP	Indigenous knowledge systems and practices
ILO	International Labor Organization; a United Nations agency
IP	Indigenous peoples
IPRA	Indigenous Peoples Rights Act of 1997; a law providing a procedure for titling ancestral lands and domains, among other things

ISFP	Integrated Social Forestry Program; a DENR program that allows organizations, groups or communities to secure use-rights to classified forest lands
Kagawad	A councilor or legislator at the *barangay*, municipal/city or provincial level
KKK	Kilusang Kabuhayan at Kaunlaran; a livelihood program of the defunct Ministry of Human Settlements
KPLN	Kapulungan Para sa Lupaing Ninuno, Inc.; an indigenous Mangyan organization on Mindoro Island
LGU	Local government unit
LIUCP	Low-Income Upland Community Project
LRA	Land Registration Authority; a government agency
MPSA	Mineral Production Sharing Agreement; a type of mining agreement between the Philippine government and a foreign or local mining company
NCIP	National Commission on Indigenous Peoples; the government agency tasked with the implementation of the IPRA
NGO	Non-government organization
NPA	New Peoples' Army; the military arm of the outlawed Communist Party of the Philippines
PAFID	Philippine Association for Inter-cultural Development; an NGO
PANAMIN	Presidential Assistant for National Minorities; the government agency in charge of

indigenous affairs, particularly during the Martial Law period (1972-1986)

PARO — Provincial Agrarian Reform Officer; the department official in charge of DAR operations at the provincial level

PENRO — Provincial Environment and Natural Resources Officer; the department official in charge of DENR operations at the provincial level

SB — *Sangguniang Bayan* or *Sangguniang Barangay*, the legislative council at the municipal/city or *barangay* level, respectively

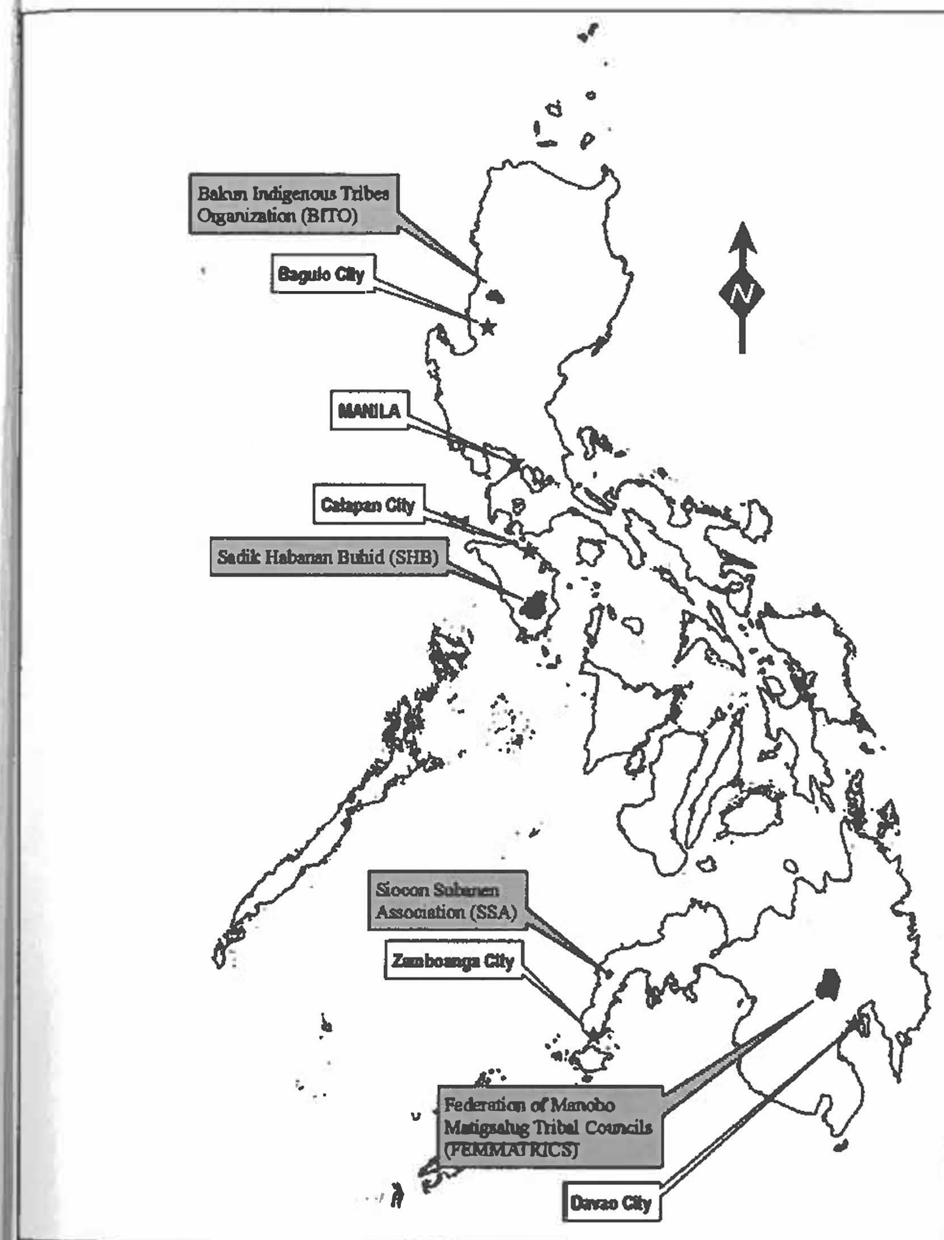
SEC — Securities and Exchange Commission

SHB — Sadik Habanan Buhid; an indigenous peoples' organization in southern Mindoro Island

Sitio — In upland rural areas, a village, hamlet, settlement or community, consisting of a cluster of houses and the surrounding or adjoining territory, where the residents farm, hunt, etc. *Barangays* in upland rural areas typically consist of a number of such *sitios.*

SSAI — Siocon Subanon Association, Inc.; an indigenous peoples' organization in Siocon municipality, Zamboanga del Norte province

TVI — Toronto Ventures, Inc.; a Canadian multinational mining company



Philippine Map

AUGUSTO B. GATMAYTAN

PHILIPPINE INDIGENOUS PEOPLES AND THE QUEST FOR AUTONOMY: Negotiated or Compromised?

"Why has self-determination become merely the IPRA? Why has the IPRA become merely the CADT? And why has the CADT become merely a checklist?"

Zenaida Hamada Pawid,
Indigenous Rights Activist
21 August 2007

Land Rights and the IPRA

IT IS NOW TWENTY YEARS since the Constitution required the Philippine state to "protect the rights of indigenous cultural communities to their ancestral lands".[1] It is ten years since the promulgation of the Indigenous Peoples Rights Act (IPRA), a law that recognizes indigenous peoples' or groups' rights to their ancestral territories. And it is now seven years since the Supreme Court declared that the IPRA is constitutional.[2]

Whatever else has been said of it, the IPRA remains a historically significant act of legislation. At the time of its enactment, the Department of Environment and Natural Resources (DENR) was already

[1] Art. 12, sec. 5.
[2] *Cruz and Europa v. Secretary of Environment and Natural Resources, et al.*, G.R. no. 135385, dated 6 December 2000.

implementing its pioneering DENR Administrative Order no. 2 (1993) (DAO 2 *hereafter*), through which the "ancestral land" and "ancestral domain" claims of applicant groups or communities could be documented, as evidenced by Certificates of Ancestral Land Claim (CALC) or Certificates of Ancestral Domain Claim (CADC).[3] However, CALCs and CADCs only certify the existence and extent of an applicant's claim, and do not affirm ownership of the delineated area (Gatmaytan 1992).

The IPRA surpassed DAO 2 by providing a procedure by which applicants could secure actual deeds of ownership—called Certificates of Ancestral Land Titles (CALT) and Certificates of Ancestral Domain Titles (CADT)—over their ancestral territories.[4] It also allowed those who had secured CALCs or CADCs to convert these instruments into CALTs and CADTs.[5] By doing this, the IPRA broke away from a legal tradition that historically favored the Philippine state's control of lands and resources, over the rights and interests of indigenous peoples and groups (Lynch 1987, 1984). This gives Philippine policies on indigenous peoples a positively progressive image, especially when compared with the other countries in Southeast Asia (Eder and McKenna 2004).

The enactment of the IPRA was met with widespread excitement and interest by indigenous groups and organizations, and by an unprecedented degree of non-government organization (NGO) collaboration with the (NCIP), the agency tasked with the implementation of the statute (Gatmaytan 2004). For a time, in fact, it seemed to be politically incorrect to be critical of the IPRA; I had indigenous

[3] DENR certification was embodied in Certificates of Ancestral Land Claims (CALC) or Certificates of Ancestral Domain Claim (CADC). Note that DAO 2 only certifies the existence and extent of the applicant's claim, and does not address the issue of ownership of the delineated area (Gatmaytan 1992).

[4] For the reader's reference, this volume includes a copy of the IPRA as an annex.

[5] Sec. 52 (a), IPRA.

leaders telling me of their puzzlement and dismay over my alleged hostility towards "their" law.

Today, the IPRA has come to dominate the discourse on indigenous land and resource rights. Most Philippine indigenous communities and support-NGOs accept it, as borne out by the flood of pending applications for CALTs or CADTs. The study of groups' or communities' use of the IPRA and its impact on their lives would therefore represent a major contribution to the larger task of examining the strategies chosen by indigenous groups for asserting control of their lands and resources.

True, there are communities which have not invoked the IPRA in their defense of their territories, and the study of their experience clearly has much to teach us. Unfortunately, there are no studies of such groups readily available for inclusion in this volume, and while this essay does make a small contribution towards closing this gap (*see below*), further studies of communities that chose other tenure strategies—including the rejection of the IPRA or the legal system itself—are strongly recommended.

Towards an Assessment of the IPRA

There seems to be an emerging consensus on the need to assess the IPRA and its implementation, particularly among the NGOs working with indigenous organizations or alliances. As of this writing, at least three different groups are planning separate activities all geared towards this end. Methodologically speaking, this is a good time to look backward at the law's implementation, and forward to the future of an indigenous peoples' movement in the Philippines (*following* Gaspar 1990).

More importantly, the push for assessment stems from a growing dissatisfaction over the IPRA and its implementation, and uncertainty about its actual value. It seems that despite this key act of legislation, the situation of indigenous peoples and groups in the Philippines has remained stubbornly, frustratingly unchanged. In 2005, a number of Philippine institutions and organizations organized the National Conference on Indigenous Peoples' Land Rights, during

which problems in the implementation of the IPRA were reported and discussed. One NGO sounded a call for NGOs and indigenous organizations to look "beyond the IPRA" (LRNRC 2005) in another Mindanao-wide conference. In a much more recent forum, the question of what the IPRA actually means for communities, in terms of improved lives, livelihoods and environments was explicitly asked (ESSC-PWG 2007). Some observers report indigenous groups who are asking themselves why they should bother applying for a CADT at all. All this is in marked contrast to the sense of opportunity and optimism that had first greeted the IPRA.

This is not to suggest that the statute has been an unqualified failure. In the last forum mentioned, some participants cited the CADT application of Bakun (*see* Boquiren, *this volume*) as a success story. When I asked how representative the Bakun experience is, the informal consensus was that it was very exceptional, hence unrepresentative of most communities' experiences. This begs the question of just how many of the groups that have availed of the IPRA believe it has improved their lives. More, it would be interesting to compare their experience with groups that have not applied for CALTs or CADTs.

But while indigenous groups and their support NGOs in the Philippines are starting to ponder why things seem to have gone wrong—or not to have gone anywhere at all—other indigenous groups in Southeast Asia are looking to the Philippines as a model for policies or legislation on indigenous rights. Groups in Indonesia have long been interested in having something like the IPRA promulgated in their country. More recently, groups in Indo-China have been considering legislative or policy proposals that follow the lines set by the IPRA.

An assessment of the IPRA therefore is timely, not only for those working in the Philippines, but also for other groups in the region. It would, at the very least, help ensure that the mistakes made in the Philippines would not be replicated elsewhere.

This volume hopes to contribute to this need for a critical, timely review of the IPRA. To that end, it presents four case studies which describe different cases discussed in the National Conference on Indigenous Peoples' Land Rights, in November 2005. They were selected for the insight they provide to the problems facing indigenous peoples and organizations today.

I propose to assess the IPRA here by focusing on how well the aims and interests of the indigenous groups or communities who availed of its provisions on tenure were actually served thereby. To that end, I will first present a brief case-study of a group of Banwa-on villages who have collectively rejected the IPRA even as they strive to protect their territory. This provides the reader a glimpse into those groups which have not invoked the IPRA. On another level, the case study illustrates how critical attention to local dynamics—i.e., collective and individual agency exercised in pursuit of (sometimes competing) interests in specific settings—allows a better understanding of the practice and experience of the IPRA. After a brief survey of the literature on the IPRA, I will introduce the four case studies at the heart of this volume. The article will then pick up threads from the case studies and link them to the IPRA and the pursuit of autonomy, the need to problematize the IPRA and its provisions, and the prospects of pursuing autonomy today.

A People Divided by Laws

The Tagdumahan is an alliance of Banwa-on villages along the Ma-asam river, in Agusan del Sur province, northeastern Mindanao. It has been battered over the past few years by threats and violence perpetrated by a paramilitary Citizens Armed Forces Geographical Unit (CAFGU) group (Tagdumahan 2007). Ironically, this CAFGU unit is led by a fellow-Banwa-on, one Mario Napongahan, who is also the duly designated *katangkawan*[6] of the Ma-asam river Banwa-on. As

[6] A *katangkawan* is a traditional Banwa-on political role, often but inaccurately glossed as "*supreme datu*". The *katangkawan's* duty is to maintain peace, by persuading disputing parties to resolve their differences amicably. Where sanctioned by a council of *datu* or headmen, he may also punish wrongdoers or lead a retaliatory attack (*pangayaw*) against other groups.

katangkawan, Tagdumahan leaders complain, he is duty-bound to protect rather than harass the Banwa-on members of Tagdumahan. To justify his actions—including an attempt to dissolve ("*ipa-cancel*") some of these villages by threatening violence if they do not evacuate to a local military outpost—Napongahan has repeatedly accused the Tagdumahan's leaders and members of being supporters of the outlawed New Peoples Army (NPA).

In June 2007, the Tagdumahan received reports that the territory of the Ma-asam Banwa-on will be divided up between three ancestral domain applications: First, there is the claim of Benhur Mansolonhay (a.k.a. Datu Mambiyahe), a Banwa-on *datu* from the Adgawan river area. Mansolonhay already controls an area of 6,095 has. by virtue of his being the lead-claimant of a Certificate of Ancestral Domain Claim (CADC), numbered R 13-158, issued under DAO 2. Now however, he is planning to convert his CADC into a CADT, while at the same time expanding the area under his control northward, across the Adgawan river and into the area belonging to leaders and members of the Tagdumahan.

Second is the claim of Deo S. Manpatilan (a.k.a. Datu Mankombate), who is also the lead-claimant of a 74,827 ha.-CADC claim covering almost the entire territory of the Municipality of Esperanza, to the north of the Ma-asam river. Manpatilan is the grandson of the old Datu Manpatilan, who was forced into hiding after killing abusive logging workers, surrendered to then President Ferdinand E. Marcos, and like Datu Gawilan (*see* Wenk, *this volume*) came back a hero. Datu Manpatilan's son, Lavi, capitalized on his father's prestige to become the Mayor of Esperanza. Deo Manpatilan, his son, continued the family's domination of local politics by becoming Mayor of Esperanza in his turn. He reportedly plans to convert 'his' CADC (CADC no. R 13-154) to a CADT as well. He is also linked to a group of tree-plantation companies[7] controlled by Singaporean and/or New Zealander owners (Delanto, undated), which have been trying to penetrate the area for the last few years.

[7] These are Shannalyne, Inc., Tecland, Inc., Golden Bell Hills, Inc., and Transland, Inc.

Third is the CADT application of Mario Napongahan himself; covering a large area along the southern bank of the Ma-asam river, between Manpatilan's CADC to the north, and Mansolonhay's CADT-conversion to the south. A successful CADT application would help him seize control of the widespread small-scale logging undertaken by many Banwa-on in the area, and give him significant leverage in negotiations with mining companies rumored to be interested in this area. Tagdumahan leaders do not deny that Napongahan's family has lands in the Ma-asam river area. They assert however that the Napongahan family lands are nowhere near as large as Napongahan reportedly claims, implying that he is attempting to take over lands—and timber—which actually belong to other Banwa-on families or individuals.[8]

Apparently, Napongahan is trying to parlay his positions as *katangkawan* and CAFGU leader into ownership of a large CADT area. If so, he would be following the career paths of both Manpatilan and Mansolonhay, who are both local *datu* or headmen, who later became paramilitary leaders and recruiters, and thereby gained the government and military connections to successfully apply for CADCs. Napongahan's ulterior interests cast doubt on his credibility both as an instrument of the state's so-called war on terror, since his accusations of support for the NPA may only be an excuse for displacing or silencing Banwaon families who contest his CADT claim; and as a CADT applicant, since the atmosphere of fear and uncertainty he maintains in the Ma-asam river area prevents any inclusive, free and substantive discussion of the validity of his claim vis-à-vis other Banwaon families' rights under indigenous law or local custom.

In a meeting with Tagdumahan leaders in July 2007, I asked them what they planned to do with regard to the CADT applications of

[8] Land and resource tenure among the Banwa-on and the Adgawan Manobo has so evolved that their territory has effectively been subdivided into a number of "*sek-tor*", each owned by a family or the heads of such families. Each landowner owns the standing timber within her/his holding (cf. Gatmaytan 2005a; see also Gatmaytan 1999).

Napongahan, Mansolonhay and Manpatilan. Interestingly, their responses did *not* include applying for a CADT on behalf of the Tagdumahan or its members.

My sense was that the IPRA, though it allows indigenous groups to apply for CALTs or CADTs, is perceived as a weapon of those arrayed against the Tagdumahan. These include Mario Napongahan, his family, allies and CAFGU unit, and the municipal-level NCIP office, which is seen as unduly supportive of Napongahan's dubious CADT application. All of which painfully underscores how the Banwa-on *have* become divided; in this case, over how they should relate to the state and to its laws.

This view of the IPRA as an intrusive imposition of hostile forces is rooted partly in the Ma-asam Banwa-ons' loyalty to their own body of indigenous laws and practices, known as the *Ipo-an ko Pinaglaw daw Kiyala ha Batasan* (Gatmaytan 2004). Many Banwa-on elders and *panod*[9] feel their own laws should govern their peoples' lives, rather than the IPRA or any other laws sent down from imperial Manila by non-Banwa-on. In this sense, the *Ipo-an ko Pinaglaw daw Kiyala ha Batasan* is sometimes thought of as being diametrically opposed to the IPRA, particularly by the younger leaders.

More importantly, the Tagdumahan leaders' response also reflects their particular experience of government and law. They have witnessed how the IPRA's predecessor, DAO 2, was used to convert large tracts of land belonging to different Banwa-on, Manobo or Higa-non families or individuals into CADC areas under the control of politically and militarily powerful "chieftains" such as Manpatilan and Mansolonhay. Now they see how the IPRA is being used to consolidate the grossly inflated claims of these powerful men, by converting them into deeds of title in their name or of organizations they control.[10]

[9] *Panod* are Banwa-on experts on history and genealogy, and indigenous laws and practices.

[10] Napongahan, for example, is using the Maasam Banwaon Tagbigolan (MABANTAG), an organization recognized by the municipal NCIP office, as his front-organization. The use of such organizations gives the impression that a CADT application is driven by community interests rather than individual ambitions.

Agency and Legal Pluralism

In the increasingly polarized Ma-asam river area, the IPRA has become one element in a politically-charged and dichotomized worldview, with the Tagdumahan Banwa-on on one side, and their perceived enemies on the other. This explains why Tagdumahan's leaders could not imagine using the IPRA as a weapon against their perceived enemies. Thus, even as law is properly considered as an instrument of both hegemony and resistance (Lazarus-Black and Hirsch 1994), the particular way it is constructed by a given group of people at a given time and place is determined in part by local experiences or dynamics. The IPRA, in other words, came to the Tagdumahan not as a gift from heaven, untainted by adverse parties' interests. Rather, it was just one more issuance by the government, in a context where local perceptions of the government have been shaped by a long-running, at times violent dialogue over political autonomy with the Philippine state, and by such experiences as witnessing land-grabbing through DAO 2 by the likes of Mansolonhay and Manpatilan.

If we are to understand the IPRA and its relevance today, we need to see how indigenous peoples 'practice' the law. This means looking into how specific actors in specific settings exercise their agency in pursuit of their respective rights or interests (Long and van der Ploeg 1994). To assess the IPRA, we need to see how well it serves the interests of the various agents who do invoke it. Answering this question properly requires an understanding of the IPRA's framework, concepts and assumptions. This way, any disparities between the interests of indigenous actors and what the law actually has to offer are fore-grounded. All these however have been largely neglected in the rather limited literature. As will be seen shortly, scholars have generally avoided the question of the IPRA, its substance and significance, or have approached this at an abstract level.[11]

[11] Fortunately, this situation is changing. Eligio (2006), for example, has applied discourse analysis to the IPRA.

Indeed, some studies which purport to discuss ethnicity in Southeast Asia actually ignore the Philippines altogether (King and Wilder 2003, Tarling 1998), as if the country were not part of the region at all. Other studies do remember the Philippines but ignore the IPRA and its political and cultural significance for the country and the region (Yao 2001, Maybury-Lewis 1997, 2003). Perhaps these scholars find it difficult to fit the Philippines, its cultural and legal history, or the very fact that it has promulgated a law for indigenous peoples while other countries have not, into their respective frameworks. Still other writers are content to acknowledge the existence of the IPRA, but decline to offer a critical perspective on the law (May 2003, Gaspar 2000, Rodil 2004).

Fortunately, a few scholars *have* problematized the IPRA. Leonen (1998), for example, early on outlined the perceived dangers and potentials posed by the IPRA. Writing so soon after the promulgation of the law, his critique was not based on actual experiences with its implementation.

In a more ideologically-driven vein, CPA and Dinteg (1998) offer a critique of the law that stressed the differences between the law's notions of ancestral land or domain ownership and those of a somewhat undifferentiated "indigenous peoples". They assert that the IPRA's provisions are a mere rhetorical smokescreen by which the state gives the illusion of respecting indigenous tenure rights while actually continuing policies and programs inimical to indigenous interests. However, their arguments were made shortly after the issuance of the IPRA in 1997. As such, they are not based on actual cases or experiences, but on speculations on flaws and future impacts of the law. Like Leonen, they could have assessed the implementation of the DAO 2—the basic framework of which is replicated in the IPRA—and thus provided themselves a more concrete foundation for their analysis. Unfortunately, the value of assessing the impact of the DENR's DAO 2 program remains largely unappreciated,[12] particularly as a means of predicting the impact of the IPRA.

[12] A notable exemption is Resurreccion's (1998, 2000) nuanced study of the debate on Kalanguya/Ikalahan identity as a claim-making mechanism under DAO 2.

I have elsewhere noted how the Philippine state's assumptions regarding indigenous tenure, as reflected in the IPRA's provisions, may pose problems in its implementation (Gatmaytan 1999). This was an early attempt to analyze the IPRA not in abstract or predictive terms, but in terms of how its notions of "ancestral land" or "domains" compare with the actual tenure practices of a specific indigenous community. The study's finding that state notions of indigenous tenure are generalized and homogenizing forces us to ask what other assumptions—about indigenous culture, identity or ethnicity, basis and definition of rights, and capacity for sustainable resource management, perhaps—remain unexamined, even as they have been inscribed into the IPRA. Unfortunately, the study only compared indigenous tenure systems as imagined in the IPRA, on one hand; and as practiced by a community of swidden-farmers in Agusan del Sur, on the other. It did not provide material on communities' interpretation and use of the law in the course of their daily struggles.

In a book surveying Southeast Asian government's policies towards indigenous peoples, Eder and McKenna (2004) consider the Philippines "a relative bright spot" compared to other countries in the region, because of its government's promulgation of the IPRA. The focus of the two scholars' critique was on the alleged divergence between what the law promises and how well the state is implementing it. 'Externalities' to the law such as the state's unwillingness to cede genuine control of resources to communities are thus emphasized. The state and its interests *are* relevant, as the case-studies in this same volume will attest. However, the focus on externalities shifts critical analysis away from what we might call "internalities"; i.e., the law's objectives, its framework and assumptions, its substantive and procedural provisions, its very meaning. As already noted, this area of study has largely been neglected in the literature. Another consequence of the emphasis on externalities is the article's silence on local or community dynamics. The law is thus treated as an unproblematized abstraction, not as a resource in ongoing struggles between actors.

Finally, Vidal (2004) presents four case studies of different Mindanao groups' struggles to protect their rights or claims to land and resources. This may be one of the first studies of community-

level legal strategizing over land and resources in the wake of the IPRA, shedding light on the dynamics of agency and structure in concrete settings. However, her conclusion that the IPRA can be used to contest property relations, making it more difficult for communities to secure their tenure rights misses the point. First, she neglects how laws like the IPRA can *also* be used to protect property relations (Lazarus-Black and Hirsch 1994). Second, legal pluralism is a given (*following* Wiber 1993), particularly in contexts where the state seeks to establish its hegemony over the political and cultural frontier that indigenous peoples represent (Duncan 2004). To ascribe a community's tenure problems to a pluralistic legal order is a form of legal fetishism that reflects a failure to appreciate the salience of individual and collective interests, and the inherently divided character of communities. Conflicts, in other words, do not occur between systems of law, or even between people and laws, but between people, who use laws—among other things—to advance their respective interests.

The point is to understand why the various people involved in a case act the way they do, assess how effective their choices they make are, and see what patterns emerge from their collective experiences. In terms of assessing the IPRA, this demands a focus on the various actors' needs or interests. This means factoring in the heterogeneity of the groups under consideration, and a refusal to fall back on a general, unexplained desire to claim or protect lands or resources. In any case, we must finally ask how well the IPRA helped realize those varying, sometimes conflicting interests. An inherent, but still largely unappreciated limit to IPRA's effectiveness in that regard is its very substance; i.e., its framework, assumptions, concepts and processes.

To return to the case of the Ma-asam Banwa-on, there seems to be a pattern where militarily and politically powerful individuals like Napongahan are willing and able to use the IPRA to consolidate their power vis-à-vis other Banwa-on families and individuals. The case underscores how very relative the question of IPRA's effectiveness is, depending as it does on whose perspective is examined. Note that Napongahan would undoubtedly justify his actions as a move to protect the ancestral territory of the Ma-asam Banwa-on, i.e., those who are loyal to him, and by extension, the state he serves. It also cautions us against a dichotomized approach to studying the IPRA and its impact; where one places an undifferentiated indigenous people on one side, and the state, its client corporations and the non-indigenous peoples on the other. Life is messy, and a dichotomized perspective often obscures the dynamics, nuances and complexities that characterize real life. In this case, we see that the success of the CADT application of the Banwa-ons' *katangkawan*, Mario Napongahan, would actually threaten the lives—and logs—of other Banwa-on families and individuals.

The Peoples' Practice of Law

This volume presents four case studies, each of which again deals with collective or individual actors and their praxis of the law in pursuit of their interests. In three out of four cases, the results are unsatisfactory: Groups with one or more government-issued tenure instruments find these unavailing in the defense of local lands and resources. And even in the last case, the author remained cautious, since the group's CADT remains untested vis-à-vis the mining companies it was supposed to defend against.

I should note that these studies cannot be read as a statistical sample representative of the entire range of experiences and results that communities with CADCs and CADTs underwent or achieved. Having said that, the case studies are very instructive. The focus on specific cases provides a window on structures and agencies relevant to assessing the value of CADTs and other tenure instruments, and by extension, the IPRA. They also provide an enhanced sense of the complexities in which indigenous groups or communities today are enmeshed, complexities that the framers of the IPRA failed to consider, or ignored.

Among the complexities faced by those confronting the issue of indigenous peoples' rights is the legal system itself. By way of providing a background to this critical aspect of the indigenous struggle, this volume includes a paper by Marvic M.V.F. Leonen, the most prominent legal advocate of indigenous rights in the Philippines today. His

essay provides the reader a look at the iniquitous colonial attitudes which the IPRA is supposed to redress, and at the current contentious, at times ambiguous, legal status of the rights to land and resources that the IPRA defines for indigenous peoples. In the process, he provides valuable insights into issues that need to be addressed by indigenous peoples and groups, and their support-NGOs, and into possible directions for their struggle.

Thereafter follows this volume's first study, Boquiren's account of how the Bago and Kankana-ey "tribes" of the Municipality of Bakun, Benguet province sought to protect their territory from outside threats. This study is better seen as part of a larger political project aimed at, as she puts it, "decentering the state"; a shift away from a perspective dominated by the state, its hegemonic categories and rules on land and resource tenure, to those of the indigenous peoples', thereby allowing an alternative approach to understanding what it is that happened in Bakun. We see then that this case is not a simple matter of the state issuing the IPRA, the indigenous 'community' applying for a CADT, and the state eventually granting their application. Rather, Boquiren reveals how local leaders and communities' concern for protecting their territory from multinational mining companies gave rise to a series of negotiations between the people/s of Bakun and the state, local government units (LGUs) and funding agencies. The state is shown to be riven with contradictions, encouraging multinational mining companies to exploit local resources on one hand; and fast-tracking Bakun's CADT application so the President Gloria Macapagal Arroyo can include this among her accomplishments in her State of the Nation Address, on the other. In the same way, the reader encounters the blurred boundaries between community leaders and LGU officials, between community and municipal boundaries; as well as within the applicant group/s itself.

The second essay was written by Martinez, Rey and Villarante for Anthrowatch, an NGO working with, among others, the Buhid Mangyan of southern Mindoro Island. Their essay represents the voice of NGO workers grappling with an issue affecting their partner community. It is a straightforward delineation of a conflict that arose out of the Department of Agrarian Reform's (DAR) insistence on implementing the Comprehensive Agrarian Reform Program (CARP) in a section of the area covered by the CADC—and the CADT-application—of Sadik Habanan Buhid (SHB), a formation of Buhid Mangyan communities. This has resulted in social tensions between the mainly *loktanon* or non-Buhid beneficiaries who received land titles through the CARP; and the Buhid, who are invoking their rights to the same land, as provided in the IPRA. While the dichotomized framework of their chapter poses certain problems, it forces the reader to address the question of just how committed the state is to performing its obligations under the IPRA. The critical tone of Martinez, Rey and Villarante's paper signals a pessimistic assessment of IPRA's implementation in southern Mindoro.

Next is Sanz' study of what I consider the first true test of the value of the CADT: The case of the Subanon of Mt. Canatuan, on the Zamboanga peninsula, western Mindanao, in their continuing efforts to protect their territory from Toronto Ventures, Inc. (TVI), a multinational mining firm. From the mass of data available, she weaves together a narrative that follows the Canatuan Subanon as they attempt to protect their territory first from small-scale miners, and then (in partnership with small-scale miners, among others) from a powerful alliance between TVI, the NCIP and its Council of Elders, paramilitary troops and company security personnel, and most unfortunately, some of their fellow Subanon. This study argues persuasively that in the adjudication of relative rights—for instance, between a multinational company and a *sitio* of Subanon farmers and small-scale miners—the state cannot be an objective, disinterested arbiter. Indeed, Sanz painstakingly details the lengths to which the state, acting through some NCIP officials, will go to *both* simulate the consent of "the rightful Subanon community" to TVI's mining operations, *and* to deny the company's need to secure consent in the first place. Like the Anthrowatch paper, Sanz's chapter is guarded about the value of the CADT, by itself, in protecting indigenous groups' or communities' rights to their ancestral territories.

The fourth essay consists of Wenk's account of the Matigsalugs' continuing efforts to protect and consolidate their very large territory. Like Sanz, Wenk demonstrates an appreciation of the importance of

history in the evolution of local contexts. Her chapter traces the Matigsalug CADT application back to its roots in the 1970s, when cattle ranchers began encroaching into the Davao-Bukidnon hinterland, resulting in the loss not only of lands but also lives. It then follows the violent consequences of these events down to the present time, when the Matigsalug confront the gradual but grave erosion of their territory through piecemeal sales of parcels of land by both Matigsalug and non-Matigsalug politicians. This is one of the few, hence much-needed studies that cast a critical look at evolving indigenous and non-indigenous relations, in a context where the former have secured legal recognition of ownership over their ancestral territory, but where the latter now form the majority of the actual occupants of the territory.

This volume concludes with an essay by Ponciano L. Bennagen, a pioneer in politically-engaged anthropology, a former Constitutional Commissioner, and veteran indigenous rights advocate. He points out the essential ambiguity of the IPRA, noting how it can be read as an instrument for state control of "natural and human resources" or for asserting indigenous self-determination. Based on the four case studies presented in this volume, as well as his own long and wide-ranging experience, he concludes that the IPRA, as implemented by the NCIP, has been "amended" in practice, to become much less than its crafters envisioned. On the other hand, he notes an emerging movement for "re-indigenization"; in effect, a re-valuation of indigenous values, knowledges and practices, and a re-turn to a more relevant political framework, which seeks the recognition of indigenous peoples' right to self-determination.

Mistaking Tenure-Security for Autonomy

The experience of the Buhid affected by the DAR's agrarian reform program, the Canatuan Subanon and the Matigsalug strongly suggest that their resort to titling under the IPRA was unable to provide what they wanted; i.e., security from internal or external threats to their lands and resources. The SHB and the Subanons' CADCs and CADT were all but ignored by the state, just as local politicians and dealers ignore the Matigsalugs' CADC and CADT.

One largely unremarked aspect of the problem is the over-valuation of tenure and tenure instruments. The acquisition of deeds or documents of claim or title is widely seen as a key achievement for an indigenous group or community, after which everything else will—somehow—fall into place. That is, if you are the owner of a tract of land, it should follow that you can do what you want within it, including making rules for land transfers, deciding what projects may or may not enter the area, or how resources are to be shared with non-indigenous groups, if at all. In short, it is assumed that legal recognition of ownership readily translates into political and cultural autonomy, or the power to exercise self-determination.

This over-emphasis on tenure is perplexing, because the struggle of indigenous peoples in the Philippines, at least to my mind, has never been for tenure or titles alone. It can in fact be argued that land-titling has historically been an instrument for the extension of state sovereignty and administration over a political or economic frontier. Rather, the indigenous peoples' movements have actually been for autonomy vis-à-vis the state, a political, cultural and geo-economic space within which they may realize their right to self-determination.[13] In this light, the flood of CALT and CADT applications facing the NCIP represent one widely-chosen means to that end, again because it is widely assumed that security of tenure over one's territory brings with it autonomy.

And so, even as activists and advocates historically focused on demands for a law to protect "ancestral domains", "ancestral domains" here should have been understood as a metaphor for au-

[13] "Autonomy" here is located at the inter-*sitio or -barangay*, rather than the inter-municipal or regional level. In this, it differs from the articulation of "genuine regional autonomy" in the northern Cordilleras, where in contrast to other regions, indigenous peoples form the majority and control LGUs. Compare, for example, the demographic profiles of the communities discussed by Boquiren and Wenk (*this volume*).

tonomy (Gatmaytan 2005b). But perhaps that is hindsight speaking. In any case, many have taken an all too literal focus on "ancestral domains", leading to the neglect of the larger, more fundamental issue of autonomy. The NCIP, for example, is trying to issue as many CALTs and CADTs as it can, but has largely refused to back the CADTs it issued when these are used as instruments for local resource control or political self-determination (Sanz, *this volume*).

Thus, indigenous groups who have secured CADTs are discovering that legal recognition of ownership is one thing, social and political recognition of the same—even by the same state that recognized their ownership—is quite another. Possession of tenure instruments, by itself, is evidently not enough to ensure the autonomy the applicant group or community ultimately seeks. In this specific sense, therefore, the IPRA has not been effective in realizing the underlying interests of the groups discussed in three of the case studies.

In sum, the root-problem that indigenous peoples and groups face is not tenure-insecurity—or more precisely, not *just* tenure-insecurity—but the iniquitous character of state-indigenous peoples relations. At issue is a demand for autonomy or self-determination for indigenous peoples or groups, in the face of the state's continuing interest in dictating their ideological, political and economic status and role (Duncan 2004). Problems regarding tenure are merely symptoms of this larger, deeper issue. In narrowing its response first to a single statute, and then to the titling provisions of that statute, the state cannot but fail to acknowledge, let alone address, indigenous peoples' or groups' desire for autonomy. At best, it gives them the trappings of autonomy, but not its substance; useful perhaps against some land-grabbers, but less so against the state (Martinez, et al., *this volume*), or those whose interests are championed by the state (Sanz, *this volume*). Just as laws imposing heavier penalties on rapists have no effect on the occurrences of rape because the underlying relations between the sexes have not been addressed; having a law that provides for titling will have no impact unless the underlying relations between the state and indigenous peoples are addressed.

Negotiating Autonomy

The fact that indigenous groups or communities think of themselves as being distinct from the rest of the population, or their territories as being of special significance in relation to all other lands is a rough indicator that a sense of autonomy exists or survives (Cohen 1993). It is thus possible to look at the four "communities" described in this volume's case studies as negotiated autonomies, though clearly still subject to further renegotiations. As autonomies, however, they are rather limited: The people concerned evidently do not have the level of control they need and want over their resources; control they had imagined would come to them with their titles.

Indeed, some observers have noted how local land and resource use can become bureaucratized under the IPRA's rules. Less than a lifetime ago, an indigenous farmer intent on supporting her/his family would simply have walked into the forest to work. In an area covered by a CADT however, our hypothetical farmer would have to ensure that his/her plans are consistent with the area's Ancestral Domains Sustainable Development Framework (ADSDF), and the Ancestral Domains Sustainable Development and Protection Plan (ADSDPP) required by the IPRA. The ADSDPP would properly have been reconciled earlier with the development plans of the various LGUs having jurisdiction over the area. If any cutting and marketing of local resources is involved, a resource utilization permit and transport documents from the DENR would be needed. In addition, there are now NCIP regulations controlling communities' use of local resources, which apparently even require, in certain circumstances, a community to secure its own prior consent before using their resources.[14] In short, livelihood and other activities that once required no administrative processing are now hedged about by regulations. As a Battak woman told me, when comparing conditions before and after her village received a CADC: "*Marami nang bawal*" ("Many things are

[14] NCIP Administrative Order No. 1 (2006)

now prohibited"). More importantly, many things are now required, such as literacy and administrative skills, which are not necessarily abundant resources in indigenous areas (Gatmaytan *forthcoming*).

Thus, instead of enabling indigenous groups or communities to build on local values and practices, on their own path to development and sustainable management, they are constrained by bureaucratic requirements imposed by the DENR and other agencies. Such demands reflect a deep-seated government distrust of indigenous capabilities (Gatmaytan *forthcoming*), wedded to a managerial ideology that pretends to scientism and modernism in government (Peluso 1992, *see also* Utting 2000, Li 1996).

All of which are symptomatic of how, instead of winning relative autonomy from the state, the state's presence is becoming even more institutionalized in the practice of daily life of groups or communities. This is not to say that the presence of the Philippine state is felt evenly—or in the same way—in all CALT and CADT areas (Foucault 1980); and resistance, in some form, at some level and in some areas, is virtually guaranteed. However, there is no denying how having legal resources to back its agents' presence or intervention in local affairs benefits the state and its interests.

The question then is whether more or more-meaningful autonomy can be achieved within the framework of the IPRA. In other words, can groups and communities pursuing autonomy *after* gaining their CALTs or CADTs push the state out of their titled territories? Given the law's neglected provisions on self-governance and empowerment,[15] there is perhaps some hope for this. Or are the state-indigenous peoples' relations defined by the statute so restrictive that it will be necessary to ignore, contest or "go beyond" the IPRA? Is it time to stake out a new discursive landscape for the explicit negotiation of meaningful autonomy?

Doubtless, there will be continuing local interest in realizing or elaborating their respective autonomies. Negotiations over these autonomies *will* occur at the level of each indigenous group, community

[15] See Chap. 4 of the IPRA.

or settlement, just as they always have. The results will probably be very variable, making it difficult as ever to derive generalizations about Philippine indigenous peoples.

It is theoretically possible, of course, to form regional or nationwide alliances to confront this issue, in the same way that indigenous organizations and NGOs once came together in working for a law addressing the "ancestral domains" issue. Unfortunately, the unity that made state recognition of "ancestral domain" rights possible has disintegrated. Many organizations, thinking that with the IPRA all their troubles were over, devoted themselves to applying for CALTs and CADTs; an indictment perhaps of the quality of community organizing within the 'sector'. Some institutions renounced their historic role as catalysts for change, to become "service-providers" within a legal structure partly defined and increasingly dominated by the state.

Problematizing the IPRA

Taking off from my reference to NGO complicity in the formulation of the IPRA's substantive content, it may be useful to look into the accountability of the NGO-community for some of the problems with the IPRA today. I believe that many problems encountered with the IPRA arise from its being anthropologically naïve. The somewhat simplistic, even romantic assumptions underlying the approach, concepts and provisions of the statute all contribute to the difficulties in implementing it in behalf of real indigenous groups or communities, with all the complexities and dynamisms life in the present entails (*following* Fox 1991). Unfortunately, the general and scholarly interest in external agencies such as the state and global capital, while vital, has resulted in the neglect of the study of the IPRA itself, as a reflection of the state's (and NGOs') constructions of indigenous identity and culture.

I have argued elsewhere that NGOs, in particular, projected onto indigenous peoples and "communities" their own political fantasies—about indigenous groups' innocence and isolation, the timelessness of their culture, their self-sufficiency and generosity, and their deep, natural concern for the environment—all of which are posed as implicit

critiques of the state and its economic and cultural ideology (Gatmaytan 1999, 2006). When these NGOs collaborated with the state in the crafting of the IPRA (*see* Pavia et al. 1998), these fantasies were carried over, into the law.

Thus, because it is assumed that indigenous communities are economically self-sufficient, livelihood issues are largely ignored in the IPRA, despite the fact that poverty often outranks tenure-insecurity as communities' biggest problem. Indigenous groups and families *need* a way to earn cash to buy their needs and wants.[16] Ignoring poverty would only replicate problems experienced under the old land-reform programs; where beneficiaries received land titles, but because of their poverty, were forced to use their lands as collateral for loans on which they later defaulted. They ended up landless, worse than before becoming "beneficiaries". Similar NCIP and NGO emphasis on tenure and neglect of livelihood would only amount to social preparation of their "beneficiaries" or "partner communities" for the entry of multinational firms. Note how, in Sanz' account (*this volume*), the rift among the Subanon occurred precisely over how the community was going to survive: One group fights for the idea of a community of small-farmers and miners, another for a company to save them from poverty.

[16] Data from the pre-war Bukidnon/Higaonon (Cole 1956, Edgerton 1982) and Subanun (Christie 1909) show that these groups were linked to regional and global trade. Speaking of the Sindangan Subanun in the 1950s, Frake (1955) says none of them "would be willing to attempt to survive without the clothing, cooking utensils, matches, salt, soap and other articles acquired through the sale of rice" and rattan. In his study of a "traditional" 1960s Tiruray community, Schlegel (1979) says "every family must produce some cash in some way", with which to buy salt, weapons, steel tools, clothing, pots and utensils, needles and thread, soap, matches and prestige items such as gongs, necklaces, brassware and dishware. Today, indigenous groups' need for cash would be even greater, given the general decline of local resources and the livelihoods based thereon, and the expansion of their needs and wants.

In the same way, it is assumed that indigenous communities just want to preserve their culture. Hence the IPRA's single, blithe reference to preserving and protecting indigenous culture, traditions and institutions.[17] It seems to me that indigenous peoples' lives are marked by ambivalence towards mainstream or popular culture; a love-hate relationship where they defensively assert the value of what the majority disparages or destroys, and yet are fascinated by mainstream lifestyle because of its links to local notions of power, prestige, even glamour. I was thus surprised at how a Banwa-on community that had kept its lands despite military harassment and the blandishments of commerce so quickly sold off lands and timber when electrification reached them. They wanted money to buy karaoke machines and refrigerators, set up billiard halls, and watch game-show contestants strip off their dignity for a chance to win prizes. Until then, I had had no indication that this 'model community' was interested in mainstream lifestyle. Focusing on culture in relation to governance and sustainability, Antonio La Vina noted how Tagbanwa who had secured a CADC and a CADT over their ancestral islands and waters (PAFID 2000, Coronel 2002) are beginning to neglect the pursuit of traditional livelihoods, relying instead on the entrance fees paid by visiting tourists.[18] These examples belie the law's assumption, and highlight a factor often taken for granted yet critical in community planning and development. Unfortunately, indigenous groups' views of mainstream culture remain little studied in the Philippines.[19]

Finally—at least for the moment—there is the assumption that "community" is an unproblematic concept. This is an error that has been addressed in the anthropological literature (Barth, ed. 1969,

[17] Sec. 29, IPRA.

[18] Personal communication, 5 July 2007.

[19] It would be interesting, for example, to apply Douglas and Isherwood's anthropology of consumption (2001) and Taussig's notion of mimesis (1993) in the analysis of indigenous attitudes towards popular or mainstream culture or lifestyles.

Cohen 1993, 2000, Amit 2002, Amit and Rapport 2002) but which still pervades policy- and law-making in the Philippines. Rather than discrete, self-evident entities that have existed since "time immemorial", many CADT-applicants are products of *bricolage*, cobbled-together, often fragile unities between individuals, families or groups, indigenous and non-indigenous. Thus, Boquiren (*this volume*) speaks of indigenous landowners finally having to decide in which municipality/ancestral domain they belonged. Wenk (*this volume*) notes the uneasy relations between Datu Gawilan's group, and that of Datu Salumay; how the latter initially opposed being included in "Gawilan's CADT"; and how today they manage *their* portion of the CADT-area independently.[20] The legal fiction of an applicant "community"—which may have no pre-existing or actual institutional or functional basis—may thus obscure the constituent groups or families involved (Li 1996), and their respective tenure-claims, with important consequences for development planning and sustainable resource management (Gatmaytan and Dagondon 2004, Gatmaytan *forthcoming*).[21]

The IPRA simply fails to grasp the complexity and dynamics that attend the day-to-day practice of social life in local settings (see McDermott 1999, in Eder and McKenna 2004). Such disjunctions between indigenous peoples as imagined in the IPRA, and as they are in real life underscore another, neglected dimension of what Dr. Owen J. Lynch, a pioneer in indigenous rights advocacy in the Philippines, called "second generation problems". He described the

[20] I would further argue that the vast size of the Matigsalug CADT area is better explained by alliances between (traditionally autonomous) leaders and groups, rather than the history of the Gawilan family.

[21] For instance, composite groups that represent themselves as a "community" for purposes of a CADC or CADT application have been known to cease coordination after securing their tenure, reverting to old tenure and management patterns and ignoring their ADMP/ADSDPP or the need for one. This emphasizes the error of 'organizing' on the basis of securing tenure instruments.

struggle for state recognition of indigenous rights to land and resources as the first generation problem; and the (on-going) struggles to reconcile the IPRA with the rest of the Philippine legal system as a set comprising second generation problems. What has been overlooked is the parallel struggle to reconcile the IPRA with indigenous legal systems, and the cultures of which they are part.

Compromising Autonomy

The preceding discussion will hopefully have illustrated how understanding the impact and relevance of the IPRA is enhanced by supplementing a focus on the actual 'practice of law' at the 'community' level with critical awareness of the IPRA's framework and assumptions. The latter, in particular, is important in understanding why the IPRA fails in specific cases.

This does not negate the value of studying actors and factors outside the IPRA. More can be done to understand the thinking of, among others, multinational corporations, as Sanz (*this volume*) attempts in her essay, or non-indigenous migrants or settlers (Wenk, *this volume*). And then, of course, there is the Philippine state. I believe it is fair to say that Martinez, Rey and Villarante's question (*this volume*) regarding the state's commitment strikes a resonant chord in many indigenous leaders, activists and organizers, and NGO workers.

It would seem that the government has realized that indigenous peoples' rights have a strong potential for subverting the state. The scope and significance of the rights accorded to indigenous peoples and groups it emplaced in the IPRA can be made to work against the interests of the government and of those in power. To protect itself, the government has begun to restrict the range and meaning of these rights. And so while on one hand it allows CALTs and CADTs to go on being issued to indigenous groups, it has also begun undermining their rights under the IPRA. This strategy has the added benefit of maintaining the country's progressive image in the region, without actually risking any loss or diminution of its control of the country's territory and resources.

For indigenous peoples, this process may have begun in the very same Supreme Court decision that upheld the constitutionality of the IPRA, *Cruz and Europa vs. Secretary of the Environment and Natural Resources* (2000). In that case, the Court explicitly recognized indigenous peoples' ownership of their lands. However, it refused to do the same for indigenous peoples' rights to the natural resources within their lands. There are other manifestations of this weakening of the IPRA's potential for allowing indigenous groups and organizations to contest the state's priorities and policies. Foremost is the government-led move to weaken free and prior informed consent provisions of the IPRA, which help protect indigenous groups or communities from unwanted projects or enterprises (LRNRC 2005a).[22] More, the NCIP seems to be collaborating in its own castration, in effect surrendering its legislative authority to process and issue titles to the Land Registration Authority (LRA).[23]

Clearly, the Philippine state is unwilling to allow the IPRA to be used in the critique of its own agenda, which currently includes the cultivation of an "investor friendly environment", especially for multinational mining companies. The mining issue has thus become a major arena where the state and embattled indigenous groups or communities negotiate their respective rights (*see* Boquiren, Sanz, *this volume*).

This is all part of a larger policy-shift, swinging like a pendulum away from community-oriented resource management paradigms—which began with the social forestry programs of the 1970s (Gibbs, Payuan and del Castillo 1990), and arguably culminated in the adoption of "community-based forest management" as the national strategy for sustainable development, in 1995[24]—towards more state-oriented, centralized management paradigms. In December 2005, for example, the DENR tried to cancel all the Community Based Forest

[22] NCIP Administrative Order No. 1 (2006).
[23] Joint LRA-NCIP Memorandum Circular No. 1 (2007).
[24] Executive Order No. 263 (1995).
[25] DENR Memorandum Circular No. 8 (2005) and DENR Administrative Order No. 5 (2000) (See also LRNRC 2005b).

Management (CBFM) contracts it issued to upland organizations and communities. It has "streamlined" the environmental impact assessment system, making it less stringent for companies.[25] Similarly, the Department of Interior and Local Government (DILG) has weakened local governments by declaring that acceptance by a single LGU is sufficient compliance with the Local Government Code's requirement for consultations and social acceptance of projects that may affect the environment.[26]

This reassertion of the state and its power does not bode well for the indigenous peoples' continuing quest for autonomy and self-determination. Indeed, it helps explain why the Subanon of Canatuan and the Buhid of southern Mindoro found their CADCs and CADTs so inutile.

Conclusion

Further study of the Philippine nation-state, and its "tangible and yet fluid processes of state power" as experienced by indigenous groups, is clearly indicated (*following* Yao 2001). To that end, the archaeology of the IPRA should be a very useful exercise. This is true not only in historical terms, but also for understanding a modern nation-state's notions of indigenous peoples and their rights, and the complex dialogue with indigenous groups and NGOs that produced the legal and political curiosity that is the IPRA.

We can thereby put an end to the exhausted discussion of what the IPRA has granted to indigenous peoples, and begin to grasp what the state and its laws take away or deny. This is important if we are to finally move beyond the limited—and limiting—fixation over deeds and titles, and finally address the question of how to collectively pursue the indigenous peoples' right to self-determination.

This is not to negate the historical significance of the IPRA. There will, of course, be instances where CALTs or CADTs will

[26] DILG Memorandum Circular No. 200 (2002), citing a previous DILG legal opinion dated 23 November 1998.

prove themselves useful. But it is becoming clear that titling is not enough; the state's recognition of these title-holders' right to self-determination is needed if the IPRA is to be anything more than a colonial instrument for controlling politically marginalized peoples and their resources. Still, my sense of the nature of the indigenous peoples' struggles or movements in the Philippines is that it moves forward at uneven speeds, in small, scattered, sometimes ambivalent increments, rather than in grand, Tolkienesque battles. The IPRA clearly forms one of the larger of such increments, and it is the task of the current generation of indigenous leaders and organizers to build upon it, rather than to inhabit it.

In the process, we may hopefully lend knowledge, insight and reflection to the continuing struggles of groups like the Tagdumahan Banwa-on, fighting not so much against their putative leader's CADT application, but for their right to live life as they choose, as a self-defined, self-governing community.

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SEEKING THE NORM: Reflections on Land Rights Policy and Indigenous Peoples Rights

RURAL INDIGENOUS communities constantly bear the burden of resolving contradictions inherent within official legal systems. Conflicts between this dominant system and local cultures are always managed at local levels. This can be seen in contemporary local struggles as well as the narratives of tolerance and accommodation with proponents of government sponsored or approved projects within ancestral domains.

The incursion of Toronto Ventures, Incorporated (TVI) into Mount Canatuan in Zamboanga del Norte, Philippines, ancestral domain of the Subanen, is used in this paper as a heuristic. Even in the context of the Indigenous Peoples Rights Act, (IPRA) local communities still need the political sophistication in order to deploy policy pronouncements to protect their interests. This paper examines three strands in evolution of Philippine land policy as it is relevant to indigenous peoples rights and suggests ways to understand policy in order to properly make use of it for local communities.

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The State's official view of who are indigenous peoples frames land policy. Philippine law on indigenous peoples is largely a reaction to colonial representations of indigenous peoples. It is also somewhat inspired by the ecological, rather than the cultural or political, utility of acknowledging local management of natural resources. The definitions and resulting obligations of indigenous peoples in law are too vague allowing for manipulation by commercially inspired government bureaucrats. This is a contradiction inherent in law, and perhaps liberal theory as it is embedded in the present constitution: precise definitions of groups and cultures cannot be accommodated within a generalized legal system. Hence, only by taking control of agencies such as the National Commission on Indigenous Peoples (NCIP) and making government more accountable would there be better chances for rural communities to avail of benefits of current law. Recent history however has not moved towards this direction.

Philippine law also suffers from different conceptions of land. On the one hand, there is the canonical and legal view of land as a resource: a commodity whose uses can be traded and hence regulated by the state in order to bring in "developmental" gains. On the other hand, there are the various cultural and local views of land that situates property concepts primarily in the light of community needs, traditions and values. Recent Supreme Court decisions on the constitutionality of the Indigenous Peoples Rights Act and the Mining Law have failed or refused to make these distinctions. The failure to formally make these distinctions serve as basis for one view to dominate the other. In the Philippine setting, the canonical view of property has become dominant. The subordination of the National Commission of Indigenous Peoples (NCIP) in the Department of Land Reform (formerly the DAR) is thus symbolic.

Finally, property concepts are separated from people oriented developmental imperatives. The award of titles and natural resource contracts are based upon superficial understandings of national development. There is no significant appreciation of diverse local economies. Hence, awards of mining rights are privileged over true recognition of some fundamental local community rights such as free and prior informed consents. Ancestral domain titles do not have the legal and political effects that it was envisioned to have.

Policy is more than the promulgation of rules. It is the consequence of rules prescribed within current social contexts. Advocacy of policy requires a full understanding of how institutions can become more vulnerable to local community responses. There are new arenas of contestation opened by recent social legislation. Who wins in these forums remains to be seen. But, on balance, commercial interests still have the upper hand.

I

Mount Canatuan, in the province of Zamboanga del Norte, is the home of the Subanen, an indigenous peoples believed to have descended from Apo Manglang. For centuries, the mountain has been considered as their sacred ground. It is their ancestral domain. It holds their ancestral, cultural, economic, and spiritual heritage. The area also holds vast deposits of gold.

Large mining corporations took interest in these deposits. On October 23, 1996, Benguet Mining Corporation sought to mine 508.3396 hectares under a Mineral Production Sharing Agreement (MPSA) entered into with the Department of Environment and Natural Resources (DENR). On June 16, 1997, it transferred its rights under the MPSA to Toronto Ventures, Inc. (TVI) – Resource Development Philippines, Inc., a Canadian junior mining speculator. Even before the transfer took place, TVI had already started exploration and processing activities in Canatuan.

From the Subanen's point of view, this was without their consent. To them, this government contract violated the sacredness of the mountain and their ancestral domain. Realizing the immediate need to secure their rights over their ancestral domain, the Subanen of Canatuan, under the tribal leadership of Timuay Jose "Boy" Anoy, applied for a Certificate of Ancestral Domain Claim (CADC). This CADC was issued to them on October 21, 1997.

Five years later, in 2002, the NCIP, the government agency created under the Indigenous Peoples Rights Act of 1997 (IPRA), responsible for "the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs,"[2] issued a Certificate of Ancestral Domain Title (CADT) in the name of the Subanen of Canatuan.

A CADT, under IPRA, refers to "a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law."[3] It affirms the formerly undocumented title that indigenous peoples have over their ancestral domain.[4]

On the basis of the rights represented by their CADT, the Subanen of Canatuan resisted the entry of TVI's mining equipment into their ancestral domain. TVI brought in paramilitary forces to secure their mining operations causing violent clashes with the community and instances of human rights violations. The mining company filed civil and criminal cases against members of the community, and vice-versa. In addition, the mining company organized and supported a faction of the community that openly endorsed their entry into the ancestral domain.

The mining company harassed opposing Canatuan Subanen. Ironically, even Timuay Jose "Boy" Anoy, under whose tribal leadership the CADT was issued, cannot even set foot in his home, in their ancestral domain in Canatuan. If he did, he fears harm from the paramilitary forces hired by TVI.

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[2] See sec. 3(k) of Republic Act No. 8371 or The Indigenous Peoples Rights Act of 1997.

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

[4] Native Title, under IPRA, refers to "pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." See sec. 3(l), Ibid.

The struggle of the Subanen in Canatuan, of asserting ownership over their land, is a reality that prevails among many of indigenous peoples communities within the more than one hundred ten (110) ethnolinguistic groups scattered in seventy-nine (79) provinces and seventeen (17) regions, including the Cordillera Autonomous Region (CAR) and the Autonomous Region of Muslim Mindanao (ARMM), all over the country.

II

The most discriminatory misrepresentation of indigenous populations in the Philippines found judicial expression in the early case of *Rubi v Provincial Board*[5]. This case was penned by no less than Justice George Malcolm, the first Dean of the leading law school in the Philippines and who would later move on to become justice of the United States Supreme Court. Claiming protection from the due process clause, Rubi, a *Mangyan* from Mindoro, filed an original petition for habeas corpus against the provincial government to prevent them from proceeding to forcibly place their communities in civil reservations. The Provincial Government relied on legislation that allowed them to do this for "non-christian tribes". A number of *Mangyans* have been converted to Christianity at the time of the decision.

After reviewing their colonial history in the Philippines and the efforts of colonial administrators, the Supreme Court declared:

> "In resume, therefore, the Legislature and the Judiciary, inferentially, and different executive officials, specifically, join in the proposition that the term "non-Christian" refers, not to religious belief, but, in a way, to geographical area, and, more directly, ***to natives of the Philippine Islands of a low grade of civilization***, usually living in tribal relationship apart from settled communities."[6] (emphasis provided)

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[5] 39 Phil. 660, G.R. No. 14078 (1919).

[6] Rubi v. Provincial Board, 39 Phil. 660.

Justifying the denial of habeas corpus petition, the eminent jurist emphasized:

"In so far as the Manguianes themselves are concerned, the purpose of the Government is evident. Here, we have on the Island of Mindoro, the Manguianes, leading a nomadic life, making depredations on their more fortunate neighbors, uneducated in the ways of civilization, and doing nothing for the advancement of the Philippine Islands. What the Government wished to do by bringing them into a reservation was to gather together the children for educational purposes, and to improve the health and morals — was in fine, to begin the process of civilization. This method was termed in Spanish times, "bringing under the bells." The same idea adapted to the existing situation, has been followed with reference to the Manguianes and other peoples of the same class, because it required, if they are to be improved, that they be gathered together. On these few reservations there live under restraint in some cases, and in other instances voluntarily, a few thousands of the uncivilized people. *Segregation really constitutes protection for the Manguianes.*"

"Theoretically, one may assert that all men are created free and equal. Practically, we know that the axiom is not precisely accurate. The Manguianes, for instance, are not free, as civilized men are free, and they are not the equals of their more fortunate brothers. True, indeed, they are citizens, with many but not all the rights which citizenship implies. And true, indeed, they are Filipinos. *But just as surely, the Manguianes are citizens of a low degree of intelligence, and Filipinos who are a drag upon the progress of the State.*" (emphasis provided)

The resulting discrimination was obvious. Even those who are uninitiated in the process of formal legal reasoning can easily unmask

the decision.[7] Yet the legal foundation for the State's paternalistic attitude to indigenous groups persisted affecting the allocation of rights of individuals belonging to these communities.

Then came *People v Cayat.*

Cayat, an *Ibaloi*[8], was fortunate to have been found languishing in the jail by a young enterprising lawyer. He was convicted of violating Philippine Act No. 1639. That law made it unlawful for any native of the Philippines who was a member of a "non-Christian tribe" to possess or drink intoxicating liquor, other than native liquor. Cayat was inebriated and possessed A-1 gin which was liquor produced in the Philippines but not native to the Ibaloi.

His lawyer framed the discriminatory act legally by promptly filing an original petition for *habeas corpus* with the Philippine Supreme Court. The legal argument was simple. Act No. 1639 violated the equal protection clause of the Philippine constitution.[9] Therefore, it was null and void *ab initio*. Thus, the continued detention of Cayat,

[7] See for instance the interview statement of noted Philippine Historian Dr. William Henry Scott, Sagada, 29 May 1986 where he says: "I have always rejected the term 'cultural minorities' because it seems to divide the Filipino people into two groups—the majority and the minority...I consider it harmful for two different reasons....In the first place, human nature being what it is, it invites exploitation of the one group by the other and is therefore inhumane, un-Christian, and bodes ill for the development of a healthy republic in the archipelago. And in the second place, it disguises the real division of the Filipino people into two groups—the rich and the poor, the overfed and the undernourished, those who make decisions and those who carry them out..."

[8] The *Ibaloi* is an ethnoliguistic grouping composed of different communities organized by clans found in the lower portion of the Cordillera mountain range of Luzon, Philippines. The area is now covered by portions of the province of Benguet and the Mountain Province. It was customary at that time for the *Ibaloi* to have only one name.

[9] "No person shall be deprived of life, liberty or property without due process of law; *nor shall any person be denied equal protection of the law.*"

albeit under warrant of a final judgment, was really without any legal justification.

In *People v Cayat*[10] the Supreme Court, recalling established doctrine in the Philippines and in the United States concluded:

> "It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class."
>
> "Act No. 1639 satisfies these requirements. The classification rests on real or substantial, not merely imaginary or whimsical, distinctions. *It is not based upon "accident of birth or parentage,"* as counsel for the appellant asserts, but upon the degree of civilization and culture. 'The term non-Christian tribes refers, not to religious belief, but in a way, to the geographical area, and, more directly, *to natives of the Philippine Islands of a low grade of civilization,* usually living in tribal relationship apart from settled communities." [11]

The irony was that the most basic principle on non-discrimination—that no person shall be denied equal protection of the law—enshrined in no less than the Philippine Constitution was construed to limit the freedoms of significant populations of indigenous groups.

Legal advocates in the Philippines realized quite early that the more general the textual bases of rights, the less chances there are for

[10] 68 Phil. 12, 18 (1939). Unless specified citations of cases refer to reports of Philippine Supreme Court cases.

[11] 68 Phil. 12, 18 (1939) citing Rubi v. Provincial Board of Mindoro, per Malcolm J.

an interpretation favor of "minority" or "marginalized cultures".[12] Judicial tendency might be to treat the usual state of affairs as the norm.[13] Or, quite simply resources of those who are privileged by the dominant interpretation of a legal system simply dwarf the ability of those in the margins. Cayat was lucky that a young enterprising lawyer took his case. But, the formal adjudicatory system was simply not ready to expand its existing notions of non-discrimination.

In both cases, the variability of cultures in different communities were lost in official interpetation. Generation of lawyers understood what "non-christian tribes" imply. But, the difference in cultures between the *Ibaloi* and the *Mangyan* was lost in public view. Ethnolinguistic differences did not matter to the official legal system. These affiliations defined standpoints of its members but the legal system simply elided these questions of identity. The sophistication of culture, its interaction with individual members was rendered an irrelevant part of legal reality. They were, after all, only variations of "low levels of civilizations".

Succeeding legislation struggled to label indigenous societies. From "infiels" and "paganos"[14], the official label was changed to

[12] The same point was made of gender projects by Brown, Wendy, "Suffering the Paradox of Rights," in Brown and Halley, eds., *Left Legalism, Left Critique* 422 (2002) citing Catherine MacKinnon, *Feminism Unmodified* 73 (1987). On race Brown suggests Cheryl Harris, "Whiteness as Property," and Neil Gotanda, "A critique of 'Our Constitution is Color Blind,' in Kimberle Crenshaw, Neil Gotanda, et al., *Critical Race Theory: The Key Writings That Formed The Movement* (1995).

[13] Minow, Martha, "Justice Engendered," 101 Harv. L. Rev. 10, 32 (1987). Minow claims that there are five judicial tendencies that contribute to this result: first, that differences are treated as intrinsic rather than constructed; second, that the unstated point of reference—i.e. the usual—is treated as the norm; third, that the judge's perspective, though colored by cultural stereotypes, is treated as objectives; fourth, that the perspectives of those being judged are treated as irrelevant; and fifth, that there is an assumption that the current social and economic situation is neutral and natural.

[14] The term used by the Spanish conquistadores.

"non-christian tribes" and then to "national cultural minorities"[15]. It was only recently that the term "indigenous cultural communities"[16] and "indigenous peoples"[17] became the norm.

The provisions attempting to redefine what indigenous peoples are in the Indigenous Peoples Rights Act and the affirmation of their right not to be denied equal protection of the law should in one sense be understood as a means to remove the discriminatory shadow of these provisions and cases. It corrects a historical injustice and even punishes discrimination as a criminal act[18].

But, in terms of progressively providing for more affirmative state action in relation to ancestral domain rights, the law suffers from a most simplistic assumption: various movements of indigenous groups can be generalized. Therefore, in this sense of a generalization, the term indigenous peoples is no better than non-christian tribes.

The inability to distinguish identities between communities certainly matters to the State's recognition of the variability of ancestral domain/territory/ land/ property rights.

III

The Philippine Constitution is no stranger to contradictory concepts of property and its ownership.

The first contradiction relates to the exclusivity of rights that may be exercised when one is legally entitled to ownership. The second relates to the subject or things that may be owned. The Indigenous Peoples Rights Act proposes a weak resolution between these two contradictory pairs resulting in more difficulties for indigenous peoples to assert their rights.

[15] See for instance Com. Act No. 141 or the Public Land Act. Sec. 48 (c) provides rights to "national cultural minorities".
[16] Starting from the 1987 Constitution. See art. II, sec. 22.
[17] Rep. Act No. 8371 formally recognized indigenous cultural communities as "indigenous peoples".
[18] Secs. 21, 23, 24, Rep Act No. 8371.

The first provision in the Bill of Rights prohibits deprivation of property without due process of law[19]. The same article in the constitution guarantees that no property shall be taken except for public use and the payment of just compensation[20].

The basic idea inherent in these provisions is that there exists a constitutionally protected broad sphere of individual autonomy for holders of property rights to determine how and when to enjoy, use or exploit their properties. The limitations imposed on these rights are exceptional and subject to judicial review. The due process clause ensures that regulation is only pursuant to a reasonable end considered to be for the public welfare; that the means chosen is related to achieving these legitimate ends; that the restrictions are not unduly restrictive of individual rights; and that these limitations are well defined in statutes or authorized ordinances.[21]

The limitation on taking of private property is even more restrictive. Only for a public use purpose may property be condemned in favor of the state. Furthermore, the owner is to be compensated justly and in current jurisprudential doctrine equivalent to full and fair market value.[22]

Clearly, how the property is applied is still left to the property holder. The state only erects boundaries for the use, development or enjoyment of the property. It does not dictate for what uses and what purposes property may be deployed.

[19] 1987 CONST., art. III, sec. 1.
[20] 1987 CONST., art. III, sec. 9.
[21] See US v. Toribio, 15 Phil. 85; Fabie v. City of Manila, 21 Phil. 486; Case v. Board of Health, 24 Phil. 256. Also, Association of Small Landowners et al v DAR, G.R. 78742, July 14, 1989.
[22] Manila Railroad Co. v. Velasques, 32 Phil. 286. Province of Tayabas v. Perez, 66 Phil. 467; J.M. Tuazon & Co., Inc. v. Land Tenure Administration, 31 SCRA 413; Municipality of Daet v. Court of Appeals, 93 SCRA 503; Manotok v. National Housing Authority, 150 SCRA 89; City of Manila v. Estrada, 25 Phil. 208; Republic v Castellvi, 58 SCRA 336. Also, Association of Small Landowners et al v DAR, G.R. 78742, July 14, 1989.

Neither provision of course implies whether the holding of rights to property should be individual, collective or even communal or any variation between these three. The corporate owner is, theoretically, protected as much as a rural community provided that these organizations or societies be recognized as entities that have the legal personality to hold property rights. Arguably, for rights to ancestral lands and domains, the Indigenous Peoples Rights Act recognizes legal personality for indigenous peoples[23].

On the other hand, the same constitution mandates

> "The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands."[24]

The state's obligations in this provision are more affirmative. It requires that all property contribute to a concept of the "common good". The State is given the authority to promote "distributive justice" and to "intervene when the common good so demands."

Impliedly, the State can take an active role in terms of the purposes to be accomplished by the concept or use of property. The State however does this through its political arms, i.e. Congress and the various departments and offices under the President of the Republic of the Philippines.

[23] Secs. 51, 54 and 64 of the IPRA grant rights to the indigenous cultural community to pursue fraudulent claims, areas not within the ancestral domains and other remedial measures.

[24] 1987 CONST., art. XII, sec. 6

If private property[25] rights are well defined and culturally appropriate[26], legal protection would be sufficient to ensure self-determination of indigenous peoples. The constitution can therefore be used to justify lesser state interference in community, collective or individual member decisions within indigenous groups as to their use of property. On the other hand, simply because it addresses the collective aspirations of these communities—because they are culturally appropriate—then the goal of meeting the public good through the social functions of property would be achieved.

The Indigenous Peoples Rights Act however does not clearly define the property rights of indigenous peoples. Rather it only provides criteria for its recognition and a weakened process to recognize it. The cultural appropriateness of the rights recognized will, to an uncomfortably large extent, depend on the discretion of the NCIP. In turn, as experience has shown, the ability of the NCIP to properly recognize property rights of specific indigenous groups and communities can be curtailed by the political agenda as well as the sympathy of the President of the Republic of the Philippines.

The IPRA defines ancestral domains as:

> 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/

[25] Private does not mean individual. It means not State owned.

[26] Culturally appropriate for this purpose can mean acceptable to a community or legible to them.

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;[27]

The law distinguishes ancestral lands from domains, hence:

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;[28]

The rights within these lands and domains are primarily governed by customary law defined as:

Customary Laws — refer to a body of written and/or unwritten rules, usages, customs and practices traditionally

[27] Rep. Act 8371, sec. 3 (a).
[28] Rep. Act 8371, sec. 3 (c).

and continually recognized, accepted and observed by respective ICCs/IPs[29]

What these customary laws are depends on the recognition to be given by the NCIP[30]. Thus, in section 65, there is the requirement that disputes involving indigenous peoples are to be settled using customary laws and practices.[31] However, jurisdiction is granted to the NCIP, thus:

"Section 66. Jurisdiction of the NCIP. — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP."

No matter how representative the NCIP will be, it still suffers from the handicap that the law cannot, at its current level of gener-

[29] Rep. Act 8371, sec. 3 (f).
[30] See secs. 3, 7, 15, 35, 58 for instance on the use of customary law. Section 63 provides that "Customary laws, traditions, practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs."
[31] Sec. 65 provides: "Primacy of Customary Laws and Practices – When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute." It is not clear however whether this could apply in cases where members of indigenous communities belong to different identities or are found outside ancestral territories.

alization, provide an accurate account of indigenous holdings of property.

Ownership under the New Civil Code is defined under Articles 427[32] and 428[33]. It is understood as either: ". . . .the independent and general power of a person over a thing for purposes recognized by law and within limits established thereby," or "a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another."[34] Moreover, ownership is said to have the attributes of jus utendi, fruendi, abutendi, disponendi et vindicandi. One therefore is said to own a piece of land when s/he exercises, to the exclusion of all others, the rights to use, enjoy its fruits and alienate or dispose of it in any manner not prohibited by law.

Property rights, at least for ancestral domains, are redefined in IPRA.

"Section 5. Indigenous Concept of Ownership. Indigenous Concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material basis of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICCs/IPs private but community property which belongs to all generations and therefore cannot be sold,

[32] Art. 427 provides: "Ownership may be exercised over things or rights."

[33] Art. 428 provides: "The owner has the right to enjoy and dispose of a thing, without other limitations other than those established by law….The owner has also a right of action against the holder and possessor of a thing in order to recover it."

[34] II Tolentino, Civil Code of the Philippines 42 (1983) citing Filomusi, Scialoja and Ruggiero.

disposed or destroyed. It likewise covers sustainable traditional resource rights."[35]

Unlike emphasis on individual and corporate holders in the Civil Code, the Indigenous Peoples Rights Act emphasizes the "private but community property" nature of ancestral domains. Aside from not being a proper subject of sale or any other mode of disposition, ancestral domain holders may claim ownership over the resources within the territory, develop land and natural resources, stay in the territory, have rights against involuntary displacement, could regulate the entry of migrants, have rights to safe and clean air and water, may claim parts of reservations and may use customary laws to resolve their conflicts.[36]

Duties are however imposed on holders of these titles.

All of these rights are subject to Section 56 of the law.

"Section 56. Existing Property Rights Regimes. – Property rights within the ancestral domains already existing and/or vested upon effectivity of this act, shall be recognized and respected."[37]

Property rights could include those whose ownership are evidenced by a Certificate of Title under the Property Registration Decree[38], those whose rights have vested but have not yet acquired a title and arguably even those who do not possess title but who have been granted rights to use, exploit or develop resources. This matter has not been fully settled.

[35] Sec. 5, Rep. Act No. 8371 (1997). Sustainable traditional resource rights are defined in Section 3 (o).

[36] Sec. 7, pars. (a) to (h), Rep. Act No. 8371 (1997).

[37] Sec. 56, Rep. Act No. 8371. LRC-KSK had suggested to the bicameral committee to limit its operation to only those with torrens titles and with powers of review given the the National Commission on Indigenous Peoples.

[38] Pres. Dec. No. 1528.

The right to claim ownership and develop natural resources should also be qualified by Section 57 which grants only priority rights to members of indigenous cultural communities and Section 58 which allows the use of Ancestral Domains as critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas when deemed appropriate and "with the full participation of the ICCs/IPs concerned." The use of "full participation" instead of "free and informed consent" had also been noticed.[39]

The right to stay in the territory and protection against involuntary displacement is subject to an apparently contradictory provision:

> "No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain."[40]

The power of eminent domain and its parameters are based on the Constitution.[41] It is an ultimate power of the sovereign to appropriate not only public but also private property for public use even without the consent of the owner.[42] This constitutional provision could only be interpreted by the Supreme Court and the process is prescribed as a Special Civil Action under Rule 67 of the Revised Rules of Civil Procedure.

"Taking" in eminent domain cases has been defined as:

> " . . .entering upon private property for more than a momentary period, and, under the warrant or color of legal

[39] See submissions of LRC-KSK to the bicameral committee.

[40] Sec. 5 par. C, Rep. Act No. 8371 (1997).

[41] Sec. 6, Art. III, Constitution: "Private Property shall not be taken for public use without just compensation."

[42] See for instance Bernas, The Constitution of the Republic of the Philippines," 347 (1996). Also Visayan Refining Co. v. Camus, 40 Phil. 550 (1919), Association of Small Landowners v. Secretary of DAR, 175 SCRA (1992) among others.

> authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it ***in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment thereof***."[43] (emphasis provided)

Where "free and prior informed consent" comes in therefore would be problematic and will be subject to several interpretations.

Other rights ensure some degree of respect for holders of Certificates of Ancestral Domain Titles. Thus, a private or public proponent for an infrastructure project therefore must not only comply with the requirement of an Environmental Compliance Certificate[44] and consent from all the local government units concerned[45], it now must acquire a Certification from the NCIP either that there is no ancestral domain over the area or that the "free and prior informed" consent of its holders had already been procured[46]. Today, the procedure for acquiring free, prior and informed consent however is under heavy criticism.

Ancestral land owners however do not have all the rights and obligations[47] of ancestral domain holders. Again, a difficult section to interpret is Section 8 which provides:

> "Section 8. Rights to Ancestral Lands. – The rights to 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*

[43] Republic v. Vda de Castellvi, et al., G.R. No. 20620, August 15, 1974.

[44] Pres. Dec. 1586 and related laws and regulations.

[45] Secs. 26 and 27, Rep. Act No. 7160 (1991) or the Local Government Code.

[46] Sec. 59, Rep. Act No. 8371 (1997).

[47] Sec. 9 which prescribes ecological responsibilities seem to apply only to Ancestral Domains.

of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

(b) Right of redemption. – In cases where it is shown that the transfer of land/propery 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."[48] (emphasis provided)

For purposes of providing some legal argument against the prevalent notion that all resources are still owned by the state, section 5 of the IPRA is a milestone. However, it also brings with it new issues that need to be confronted by any advocacy for indigenous peoples.

Current literature challenges the notion that it is possible to generalize tenurial arrangements for specific cultures.[49] There is growing recognition that indigenous tenure systems change through time. Also, the notion that individual ownership of certain portions of ancestral territory only came through colonialism, in some communities, are now being challenged.[50]

[48] Sec. 8, Rep. Act No. 8371 (1997).

[49] Royo, Antoinette and Bennagen, Ponciano, *Mapping the Earth, Mapping Life* (LRNRC: 2000)

[50] See for instance Zialcita, Fernando N., "Land Tenure among Non-Hispanized Filipinos", in Peralta, Jesus T., ed., *Reflections on Philippine Culture and Society: Festschrift in Honor of William Henry Scott* (Ateneo de Manila Press: 2001) 107-132. Zialcita challenges the notions presented in staple "progressive" history textbooks like Constantino, Renato, *The Philippines: A Past Revisited* (TALA Publishing: 1975) and Ofreneo, Rene E, *Capitalism in Philippine Agriculture* (Foundation for Nationalist Studies: 1980). See also upcoming article of this author on formal and informal justice, UNDP.

For instance, the *Banwaons* of Balit, San Luis, Agusan del Sur understand that while their entire territory belongs to their community, they consider their internal boundaries as fluid and subject to negotiation with others even to the extent of including outsiders who have acquired legitimate claims through hard work. Within their territories, individual claims may prevail.[51]

In 1979, among the *Tirurays* in Figel, a village in Mindanao, Schlegel observed –

> "...Figel people do not conceive of themselves as formally—either individually or as a group—owning land. Individuals exercise private tenure over the land they are working, and the Figel neighborhood's 'territory' consists in a general way of all land which Figel people over time use or have used for purposes of shifting cultivation. This territory, with its very imprecise boundaries, may be thought of as belonging to the neighborhood in common. People of other neighborhoods would not attempt to mark out a field within its general limits. Due, however, to the low population density of the region and to the distance between neighborhoods, such an issue seldom if ever arises. Hunting, and all other forms of appropriation of wild food resources, may occur anywhere in the forests, and neighborhood territories are not considered to be private hunting or gathering preserves of a given community."[52]

[51] Gatmaytan, Augusto B., "Mapmaker: Mythmaker," in A. Royo and P. Bennagen, Eds. *Mapping the Earth, Mapping Life* (LRNRC: 2000) 64.

[52] Schlegel, Stuart, *Tiruray Subsistence: From Shifting Cultivation to Plow Agriculture* (Ateneo de Manila Press: 1979) 29 cited also in Zialcita, Fernando N., *Land Tenure among Non-Hispanized Filipinos*. "Private" in this quotation actually means "individual".

In other words, rights to possession by this indigenous community were conditioned on their ability to make the land productive. Failure to do so would allow the area devoted to agriculture to be reoccupied by other individuals within their village. Within their swidden farms therefore, they were more concerned with making the lands productive rather than establishing individual (private) ownership over the land.

However, in 1981, the same author observed that the introduction of the plow created the condition to induce individual ownership of the land rather than simply exclusive rights to use property[53]. Permanent fields require more investments and energy thus fostering a more permanent relationship to the land.

Kaingin or swidden farming[54] is generally a method of cultivation that uses fire, cutting tools and sticks. After clearing a patch through fire and cutting within a forest, the farmer punches holes on the ground and buries seeds. The method relies heavily on rain and is fertilized by the ashes of the forest and the remains of the plants and harvest of the last cultivation. Although productive, it does not last long. The area is then left to fallow for periods from ten to twenty years within which the soil and the forest regenerate. A new cycle of cultivation and fallow may follow on the original patch.

The ecological viability of swidden agriculture among indigenous peoples has been amply demonstrated.[55] However, these studies were undertaken of communities where population densities were lower, forests still abundant and the migrant intrusion sparse and controlled.[56] It is therefore difficult to make sweeping conclusions as

[53] Shlegel, Stuart, "Tiruray Gardens: From Use Right to Private Ownership," 9 *Phil. Quarterly of Culture and Society*, No. 1, 5-8 (1981).

[54] Alternatively referred to also as "slash and burn" or shifting cultivation.

[55] See for instance Conklin, Harold C, *Hanunoo Agriculture: A Report on an Integral System of Shifting Cultivation in the Philippines* (FAO: 1957).

[56] See Gatmaytan, Augusto B, "Peoples: A View of Indigenous Peoples of the Philippines", unpublished Policy Paper of LRCNRC, 17 (1999).

whether this type of cultivation causes forest denudation or assists in regeneration. Definitely however, the shift in cultivation technology adds pressure in a community's rethinking of tenure rights.

In the Cordilleras, especially in areas where wet rice cultivation is still popular, individual (private) ownership of land dominated even at the start of the twentieth century. Dwelling houses, granaries, camote cultivation, irrigated rice lands were considered by the *Bontoc* as individually owned.[57] Individual ownership of certain land holdings was also observed among the *Kalinga* in the 1920s and 1930s[58], and among the *Ifugao*[59].

The *Calamian Tagbanwa* of Coron filed the first formal ancestral domain claim over "ancestral waters" or their *teeb ang surublien*. The tenurial system of the *Calamanian* Tagbanwa are different from the *Tagbanwa* of mainland Palawan. Distinct from many land based indigenous groups, dependence for traditional livelihood over marine resources also exists among the *Badjaos* of Basilan and Sulu, the *Molbog* of Balabac, Palawan, the *Agta* of Northeastern Luzon and the Ati of Boracay.

In real terms therefore, it is not possible, on a national scale, to generalize the content of tenurial arrangements corresponding to unique communities of specific ethnolinguistic groups. It is only within specific communities that it is possible to understand their existing tenurial systems and also the processes through which these systems change.

[57] Jenks, Albert Ernest, *The Bontoc Igorot* (Bureau of Printing: 1905) cited in Zialcita, Fernando N., *Land Tenure among Non-Hispanized Filipinos.*

[58] See Barton, Roy, *The Kalingas, Their Institutions and Custom Law* (Chicago University Press: 1949) and Dozier, Edward P., *Mountain Arbiters: The Changing Life of A Philippine Hill People* (University of Arizona Press: 1966)

[59] See Barton, Roy, *Ifugao Law* (University of Berkeley Press: 1919)

Apart from the difficulties attending the process of distribution of Certificates of Ancestral Domains under IPRA therefore, the issuance of the present form of legal tenure instruments does not guarantee that all aspects of indigenous resource holding or management is recognized. Neither does this assure that indigenous knowledge systems and processes will be encouraged.

Legal recognition, in some but not all communities, may be prerequisites for sustainable livelihoods. The present state of the law however does not, per se, assure that this will be achieved.

Understandably, interventions by non governmental organizations have not progressed beyond identifying the boundaries of ancestral domains, resources within them and encouraging a process of "managing" these resources. These take the form of simple delineation of boundaries (with or without using sophisticated equipment like global positioning systems or GPS), community mapping, writing ancestral domain sustainable development plans or combinations of all these three activities.

Community mapping by indigenous peoples have been encouraged by recent government responses to the clamor for recognition of ancestral domains. Mapping by indigenous peoples is now increasingly a critical activity not only as a prerequisite for tenure recognition but also as a means for empowerment.

Community mapping, which results in written representations, may be a component of planning by communities. Planning comes in a variety of forms. After the passage of DENR Dao 2 s of 1993, Ancestral Domain Management Plans (ADMP) became the legal requirement. Today, this takes the form of Ancestral Domain Sustainable Development Plans (ADSDP).

Community mapping however has its difficulties. As observed by Bennagen —

> "For it is a fact, admitted by indigenous peoples themselves that they are not a homogenous group unified by an uncompromising commitment to the protection of their rights to their ancestral domains. Many of their groups admit that among the ranks of their leaders are tribal 'dealers'. Tribal dealers are those leaders who have in various ways compromised and seriously undermined the integrity of the ancestral domain and indigenous culture. Already, there are reports of outsiders—non-indigenous peoples, military officials, transnational corporations, etc.—negotiating with indigenous peoples for the sale or use of ancestral domains. Given the vulnerability of indigenous peoples to coercive forces as well as globalist market forces and the admittedly weakened cultural roots of some indigenous communities and their leaders, there is the real possibility that the empowering and emancipatory potential of maps and the law may not be realized. And community maps, by showing features selected by the communities themselves, or by stories telling of themselves, could exacerbate their vulnerability."[60]

The experience of the author confirms this statement.

The consensus seems to be that when a community is united, deeply rooted in its culture, aware of its rights and able to mobilize itself in alliance with partner or support groups it could then be able to make use of the imperfections in the law to work in its favor. When

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[60] Bennagen, Ponciano, "Mapping the Earth, Mapping Life: an Introduction", in Bennagen and Royo, Eds. *Mapping the Earth, Mapping Life* (LRNRC:2000), 11-12, citing Manzano, Florence Umaming, "An Analysis on the Current Status of the IPRA Implementation", (Coalition for Indigenous Peoples Rights and Ancestral Domain: 1999), 65-68; Gaspar, Karl, C. *The Lumad Struggle in the Face of Globalization* (Alternative Forum for Research in Mindanao: 2000); Manaligod, Raffy, ed., *Struggle Against Development Aggression* (Tunay na Alyansa ng Bayan alay sa Katutubo: 1990). This author has had direct experiences working for indigenous peoples communities where commercial interests intervened to procure certificates of ancestral domain claims for these tribal "dealers".

communities use law that does not reflect how they view the problem simply because it is there, then the law works to divide them.[61]

Based on the experience of this author, deciding to be covered by a Certificate of Ancestral Domain/Land Title (CADT or CALT) can be for the following reasons: (1) it symbolizes control over the area vis-à-vis other government agencies and programs; (2) it is a precursor for getting state "permits" to utilize and exploit resources within the domain; (3) it can be used to legitimize and use the coercive power of the state against paramilitary groups; (4) it provides clarification against other existing titles or land tenure instruments.

It however has some disadvantages, namely: (1) it can be taken advantage of by leaders or by other commercial interests; (2) it can serve to formalize segregation or control by others; (3) it instigates or resurfaces internal as well as external boundary conflicts; (4) it empowers a new elite whether rooted in the community or perhaps connected with a support NGO or even a government agency; (5) it may not produce the results that were expected by the community.

When justice systems are accommodated imperfectly by the State, new forms of abuses become possible.

Definitely, in view of some, the experiences of community mapping or acquiring CADTs and CALTs, legal recognition does not always contribute to achieving sustainable livelihoods. The danger of categorizing reality by officially promulgating concepts of ownership or process of procuring such ownership is that it may fail to describe the nuances adequately.

Furthermore, experience has shown that addressing the political need for tenurial recognition may also be intimately related to the capacity to address the economic needs of indigenous communities in unexpected ways. Legal security of tenure may contribute to stabilizing relations with outside entities sufficient to encourage economic and social development. But it may also worsen it. Economic security ensures that political recognition of indigenous ownership becomes less vulnerable. Development interventions should not see these areas as sequential phases but as interrelated dimensions.

[61] LRNRC, *From Picket Lines to Reoccupation: A B'laan Community Goes for Land Reform,* in A Journey of Hope: Implementing the Indigenous Peoples Rights Act of the Philippines, Volume 1- The Quest to Reclaim Ancestral Domains, International Labour Organization, 2005.

IV

Policy is more than the promulgation of rules. It is the consequence of rules prescribed within current social contexts. Advocacy of policy requires a full understanding of how institutions can become more vulnerable to local community responses. There are new arenas of contestation opened by recent social legislation.

But, the question often is whether these arena afford space for the indigenous peoples' multiple standpoints of indigenous people and whether those that speak for them are truly representative. On balance, and after ten years, the IPRA and the institutions that have evolved is still seen as wanting.

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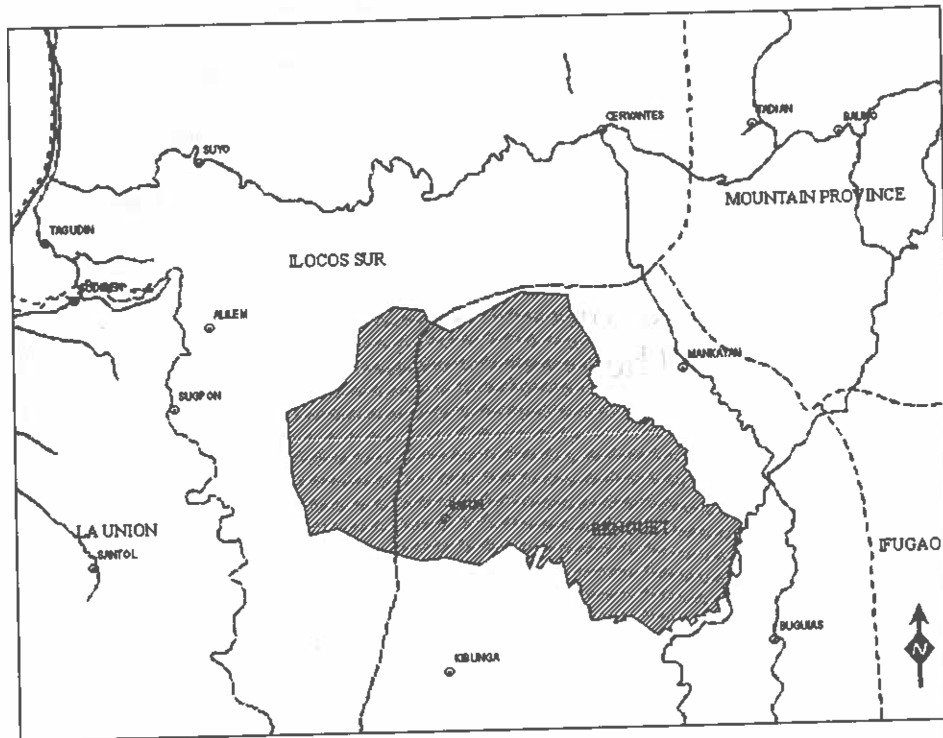

ROWENA REYES-BOQUIREN

DECENTERING THE STATE: Securing Tenure for the Kankanay and Bago of Bakun, Benguet

Overview

Research Problem

THE MUNICIPALITY of Bakun in the Province of Benguet is home to the Kankanay and Bago, indigenous people in the Cordillera region that made history as first in the country to be awarded a Certificate of Ancestral Domain Title (CADT CAR-BAK-0072-0001). The Bakun CADT took four years after the awarding by the Department of Environment and Natural Resources (DENR) of a Certificate of Ancestral Domain Claim (CADC) on 13 March 1998. The conversion to CADT was applied for in 1999. Three years after, on 20 July 2002, the CADT was awarded, two days before Pres. Gloria Macapagal-Arroyo presented her report card in her State of the Nation Address.

How did the people of Bakun secure their tenurial rights? What have been the elements in the people's experience in securing such rights that worked for them? These are the main questions that the case study attempts to answer.

These questions will provide insight into other related issues, such as the rights that indigenous communities gain or lose by securing title

through a CADC or CADT; the conflicts in governance which provide the context in which tenurial security is pursued; the creativity with which these conflicts are addressed; and the consequences these conflicts have on indigenous governance structures and processes.

The process of gaining formal recognition over land rights was itself a product of almost a decade of persistence of the Kankanay and Bago that began with a desire to assume a more direct role in setting the trajectory of their development. Changes in the government's policy framework began to take form in 1993 with DENR Department Administrative Order No. 2 (DAO 2), and which culminated in the enactment of the Indigenous Peoples' Rights Act (IPRA) in 1997. On the other hand, the push for development aggression intensified, exemplified by the passage of the Philippine Mining Act of 1995. These developments provided the context with which the people of Bakun crafted their course of action in order to secure tenure for their ancestral domain.

The key element in this historic challenge was the organizational expression that the response of the indigenous peoples took, along with the maximized exchanges between the customary and formal structures of governance. The focus is thus on reconstructing the historical experience of the Kankanay and Bago, the Local Government Unit (LGU), and peoples organizations as among the primary stakeholders in securing tenure for Bakun within the framework of IPRA. Their experience can illustrate how well existing policy frameworks and institutional arrangements work to operationalize the provisions of the IPRA in keeping with the desire to give due recognition to indigenous peoples rights.

Much of the institutional and organizational development activities in Bakun in the past which facilitated the process of securing tenure, and which resulted in the widely recognized status of BITO as lead Indigenous People organization in such experience, was also the result of external assistance tapped and utilized by BITO and the LGU, largely from a number of key donors and partners : the International Labor Organization (ILO), the Royal Netherlands government, the Department of Agriculture (DA) through its Cordillera Highland Agricultural Development Project (CHARMP), and the

National Commission on Indigenous People (NCIP). Given this background, therefore, the case study was pursued with a second objective, that is to examine the extent to which facilitative external agencies and organizations have contributed to the capacitation of local stakeholders in securing their tenurial instrument.

Background

Physical Setting

The municipality of Bakun is located in the northern part of Benguet province, Northern Philippines. It is bounded by the municipalities of Buguias and Mankayan to the east, Sugpon and a part of Alilem, Ilocos Sur to the west, Cervantes, Ilocos Sur and a part of Mankayan to the north, and the municipality of Kibungan, Benguet to the south. It has a total land area of 30,678.74 hectares that span seven barangays or villages, namely Kayapa, Bagu, Sinacbat, Poblacion, Dalipey, Gambang and Amusongan (the administrative center). The CADT covers a total area of 29,444.34 hectares.

Located 86 kilometers north of Baguio City, Bakun is accessible via the rugged Baguio-Bontoc National Road (also known as Halsema Highway or Mountain Trail), the main arterial road that connects Benguet and Mountain Province. From the highway, an all-weather road that winds along the mountain slopes leads to the town's administrative center, Barangay Ampusungan.

The town is predominantly mountainous, with slopes ranging from rolling to moderate to steep and very steep slopes. Of the total land area of 30,674 hectares, some 15,647 hectares (51%) are classified as forests; 8,228 hectares (26.82%) as mixed agricultural farms locally termed *nem-a;* 2,303 hectares (7.51%) as pasture and grasslands; 2,162 hectares (7.05%) as vegetable farms, and the rest under institutional and other land uses (NEDA, 1997). The municipality's secondary growth forests were previous logging concession areas of Lepanto Consolidated Mining Company, Kairuz Lumber and Benguet Mining Corporation.

Bakun, Gambang, Bagu, and Kayapa are the four main river systems in the area. Bakun thus provides many environmental services to the local community, to the Cordillera and other regions in Northern Philippines. The Bakun watershed is the source of domestic water supply of the local community. More importantly, it is the source of irrigation water for the rice fields and expanding vegetable farms in the area. Irrigation systems in the barangays are maintained by members of irrigators' associations. Two rivers are currently supporting the operation of the Luzon Hydropower Corporation and the Northern Mini Hydro Corporation.

Community Characterization

The Kankanay and Bago comprise roughly 91.78% of the total population of 17, 240 constituting 2,544 households (PBS, 2002). Population density is placed at 0.41/hectare. Barangays are largely populated by Kankanay households. The Bago are mostly in Bagu and Kayapa, the barangays closest to Ilocos Sur. Meanwhile, Poblacion, the historical political center, has mixed Kankanay and Bago households. Like the external agencies, leaders refer to the local population as Kankanay and Bago tribes.

Approximately 87% of the population live below the poverty line. The average annual income of a family ranges from P57, 000.00 to P 60,000.00 annually. Most households rely on farming for their main livelihood source. Over the last two decades, commercial vegetable farming has spread to even the most remote villages, with the attendant land conversion of forests and cropping areas devoted to staple crops. Upper elevated areas produce cash crops like potato, cabbage, carrots, sweet peas, snap beans, garden pea, *wombok*. Lower elevation areas produce sweet potatoes, gabi, ube, cassava, ginger, pechay, peanut, corn, and fruits. Other sources of income include livestock production, small-scale gold mining (*labor* or *sayo*), gathering of bamboo and rattan, sari-sari stores, wage work in vegetable farms, lumber-sawing, carpentry and furniture making. Very few individuals are employed in the municipal office and in cooperatives on account of low levels of attainment of higher education.

Historical Background

The formation of Kankanay and Bago settlements in Bakun is traced to fluid demic movement from the Kankanay region in the north (western Mountain Province) and Ilocos from the west. Genealogical data point to the pre-18th century movement of ascendants of the Pulicay-Fernandez clans who are considered political elite families of Bakun. Meanwhile, a north-easterly movement from Ilocos is recounted in the story of Lepa-ac from Batogan (boundary area between Benguet and Ilocos Sur), and Ke-ang from Pilpilid. Later, Waleng from Tagudin brought rice, marking the beginning of rice farming in Bakun. Meanwhile, other parts of northern Benguet were being settled from not just the northern Kankanay region, but also from the east, with Awa (in Tinoc, Ifugao) and Kabayan as narrated communities of origin. Migration into Bakun continued throughout the succeeding centuries, as a result of *busol* (enemy) attacks and a smallpox epidemic, during which some families moved from Mankayan villages into Bakun.[1] These oral histories provide clues to the early history of Bakun as settlement area of the Kankanay and Bago.

Northern Benguet was then largely a thickly forested area for hunting and foraging for animals, honey, rootcrops like the *gallod, akad, kallaya,* while gabi was grown along river banks. From settlement histories, swiddening was resorted to around the 18th c for sweet potato and millet. Rice terracing is recounted in family histories, influenced by two streams – from the north, the Namiligan-Banao area, and Kabayan in the east (most likely as a result of a northwesterly expansion from Ifugao). [2]

While the Kankanay have a more definitive linguistic and historical basis for its particularization as an ethnolinguistic group, anthropologists do not consider them, or even the Bago as "tribes" in the real sense. Yet, for the people, their distinctiveness from the Kankanay, Tinggian or Iloko counterparts is spelled out in practices and beliefs which, though manifestly derived from the traditions of these larger groups, have evolved sufficiently to support their current claims to distinct ethnic identity.

Customary System

The Kankanay and Bago have a rich socio-cultural heritage. Community solidarity is sustained in the performance of *pakde,* a religious community affair to maintain unity, which is done after a village leader dies, after a disaster, after bountiful harvests, and when there is prosperity and peace. All community members stay for the duration of the *pakde,* lasting a day and night of feasting and rituals; in the *pakde* holder's residence during the day, and in the evening, at the *pakedlan* (designated place of worship and prayers). This practice of staying within the village is called *ngilin* or rest day, which also marks the start of the planting season, and the harvest. It is similarly observed by households to mark important periods in the life cycle of its members, such as during birth or death. During such occasions, meetings and community affairs scheduled by the municipal government are postponed in order for the members of the community to participate.

Harmonious relations are safeguarded by the conflict resolution process of the *tongtong,* which features consensus-seeking as method, and reconciliation between parties as objective. Under this oral customary justice system, all issues and conflicts are decided upon and settled amicably through elders. Conflicts involving family members are resolved within the family circle, while conflicts involving two or more families are resolved by the elders of the involved families. Once a decision is reached, this is respected by the contending parties.

The *saguday* refers to ownership, by a clan, family, or community, of a piece of land such as rice terraces, muyong, or other inheritable properties like gongs. The importance of land is reflected in the practice of burying the umbilical cord of a child within the premises of the family's home, the source of sustenance and the final resting place. Rituals are observed throughout the life cycle of an individual also within the homeground of the family member.

Ownership of land is recognized in the form of rice terraces, *nem-a* or swidden, *muyong* or tree farm, mine tunnels, and *sa-ad* or residential lot; the bounds of ownership are marked by canals, *kabite* or stone walls, and permanent fence for pasturelands. Residents maintain the forests as these are considered part of the watershed, and also serve as hunting grounds.

Muyong is a term which locally refers to plants such as fruit trees. The area to which such trees are planted, when provided with shade, is called *minuyungan.* The woodlot is the source of building and fencing materials for the family and clan. Medicinal herbs, wild edible vegetables and fiber for cloth are likewise traditionally obtained from the *muyong.*

Depending on soil and terrain suitability, the *nem-a* is planted to a wide range of crops such as string and lima beans, peas, sweet potato, *gabi* or yam, squash, and fruit trees. Cowpeas are used as hedgerows, while banana and sugar cane are grown along the gullies. After sometime, the Bakun farmer leaves his swidden area to fallow, but returns to it (as a *bine-as*) about five years later for repeated use.

Indigenous engineering skills are demonstrated in rice terracing and special ponds. Diversity in agriculture is observed, with "sustainable as opposed to modern mono-cropping agriculture" as desired technology. Intercropping is practiced for crops like fruit trees, banana, fruit-bearing vines and shrubs along seasonal crops like sweet potatoes, millet, barley, upland rice, other legumes and vegetables.

Small scale mining, particularly lode mining, is an economic activity that has remained limited in operation.

The formulated ADSDF provides a more detailed description of the elements of the customary system of the Kankanay and Bago. The indigenous knowledge system (IKS) was evolved and developed over generations, as the people worked their land, seed, managed and protected other resources within the domain such as the forests, rivers and minerals.

The ADSDF is based on indigenous values, like reciprocity, as seen in local practices such as the *badang* and *playas.* A number of traditional values that have positive impact on governance, community organization, ancestral domain protection and natural resources management were also harnessed, such as *ta-an* (respect or trust), *ten-en* (one word is enough), *e-uya* (to give way to others), *badangan* (love for one's enemy), *ayuwanan* (helpfulness), *anusan* (patience), *bagbaga* (responding respectfully), *bayagabag* (repentance for misdeeds), *sunod*

(readiness to accept punishment), *tep-pel* (self-restraint), *ba-in* (shame) and *inayan* (fear of spirits).

This fear of spirits regulates residents' relations with the environment. Along with hunting, mining is regulated by a belief in the *pinading* or *kakading*, spirits who roam the pastures, fields, pathways and burial grounds. Forests are guarded by the *tumongaw*, *mante-e si bilig* (who roam in the hills), and the *antipakaw* (who dwells along mossy rocks or in some trees) from whom permission must first be sought before the cutting or felling of trees or the clearing of sections of the forest for swiddens. In like manner, the *pinten* secures the cleanliness of rivers and springs. Any wrongdoing in the use of these natural resources meets a form of punishment, such as illness or a fine, in which a *mambunong* (native priest) or *mankutom* (also called *mansip-ok*, a seer or medium) intercedes.

Decentering the State: Bakun's Experiences in Securing Tenure

Land and Resources Issues in Bakun before the IPRA

During the Marcos dictatorship, Pres. Decree no. 705 required all lands with slopes 18 percent in slope or higher to be classified as forestlands of the State. While the evident intent of this decree was the protection of forestlands, the government ironically also granted logging concessions to sawmills and logging firms.

In Bakun, three sawmills owned by mining companies were granted logging concessions in order to provide timber to support mining operations in nearby Lepanto and Itogon town. Beyond the housing materials for mining staff and workers, timber was being bused as protective support for the underground mine tunnels.

The local communities had very little to do with the logging concessions, to the point that they did not help in fire management whenever there were forest fires. They reasoned that fire management in the concession area was the responsibility of the companies. Gradually, even the local practices and arrangements for the management of village commons and collective land uses were weakened, as the local government unit came to perform its administrative functions. Meanwhile logged over areas, especially those close to the national road, were converted to host commercial vegetable gardens, particularly in Barangays Gambang and Dalipey, thus initiating shifts in the local people's farming systems.

Securing Tenure: The CADC Process

Government response to the clamor of indigenous peoples for recognition of ancestral land rights came in the form of the DENR's DAO 2 of 1993, which paved the way for the issuance to indigenous peoples of certificates of Ancestral Land Claim and Certificate of Ancestral Domain; and DAO 96-34, which provided that a CALC or CADC could serve as mechanisms to exercise indigenous rights to manage their areas using primarily their indigenous knowledge systems and practices.

The drive to apply for a CADC came from a gradual realization among a few elders who also happened to be articulate members of the local legislative body (e.g., Terso Bayawa) protect the resource area from perceived destruction from several interested mining companies. The residents of Bakun were facing a number of issues then, immediately after the Philippine Mining Act of 1995 was passed. First was the attempted re-entry of a mining company, Newmont, that had applied for an Industrial Forest Management Agreement in Bakun (Gambang, Dalipey, Ampusongan) and Kibungan. BITO members complained, wrote to the DENR, until their interests were ultimately upheld by DENR Secretary Victor Ramos.

The second issue also involved a foreign company, Dalton Pacific, which wanted to start a gold mine in Gambang for which it hired influential leaders as supervisors. There was lack of information on the proposed mining project, and this caused concern among community members. BITO called all parties to a hearing. Negotiations took over a year until 1998. The villagers expressed their opposition in a trite retort: "we also have gold—green gold", referring to their vegetable farms. Villagers rejected the project, in order to protect their water source (Arquiza, p. 35). The local legislative body also opposed the project, even when, according to a company representative, less than 20% of households were against the project. This

was a critical period in the formation of a people's organization that would now face big development projects like large-scale mining. The local leaders began forming their first ideas about establishing an organization. They also realized that the opening created by DAO 2 may be used to the advantage of the community: with a CADC, the indigenous people would have an instrument that can resist the entry of destructive development projects.

In 1993, the Bakun Kankanaey Organization was organized to lead in the preparation of documents for a CADC application. It was later renamed Kankanaey-Bago Organization in 1996, when its constitution was reformulated to include the Bago people. The name was again changed, to Bakun Indigenous Tribes Organization (BITO), when it was registered with the Securities Exchange Commission (SEC) in 1998. On 13 March 1998, Bakun was issued their CADC covering the entire ancestral domain of 29,346 hectares with 12,729 beneficiaries. BITO prepared an ADMP which the municipal government adopted in 1999.

Meanwhile, in October 1997, Fidel Ramos had signed the IPRA into law.

Social Engineering through BITO

BITO's establishment was inspired by the presence of informal groups composed of elders in each village as part of the customary system. Of the 153 *papangoan* or purok leaders, six held positions in the barangay level at the time. Recognizing this structure of leadership and governance and prompted by the threats coming from mining and logging investors, these village leaders spearheaded the campaign for opposition. The integration of the council of elders from the various barangays into a single municipal formation was influenced by the organizational set up required by DENR that the ancestral domain holder should be under a Board of Directors. The leaders and members of BITO insisted that they would maintain the council of elders, hence the *papangoan* set up emerged as a municipal-wide formation in 1997.

The BITO is composed of a general assembly consisting of the ancestral domain residents and their indigenous leaders, a 15-member council of leaders headed by a chairperson and an 8-member project staff headed by a project manager. Each of the seven barangays has two representatives to the council, except for Kayapa. These representatives were chosen unanimously by their home-communities on the basis of indigenous standards: the leader must be morally upright, committed, dedicated, articulate and able to serve the people. The structure shows clearly how the community organization is founded on the traditional leadership system and how it is being reinforced by new organizational concepts.

This people's organization is recognized for its having survived the challenges over the years since it was established in 1996. To develop local capacities, BITO focused on the development of projects and sourcing of financial and technical support. Particularly in the early years, it was much in need of financial assistance to maintain its operations, hence it sought the help of the municipal government. The LGU, recognizing their vital role in the community, responded by letting them use a room in the municipal building as its office, and also extended office supplies and materials. And through their supportive cooperation, the relationship of the organization and the LGU proved a successful venture.

It was in late 1997 when the Bakun municipal government welcomed the opportunity to work with the ILO-INDISCO. This development provided a means for providing BITO technical and financial inputs necessary for the management by the Kankanaey and Bago people of their ancestral domain. As the organization developed, it set itself the goal of sustainable management of the ancestral domain.

The KALIPI, a federation of women's organization and the Baku Saguday Youth Organization were also established to help BITO in protecting and managing the ancestral domain.

Among the projects of the BITO since 1997 are the following: promotion of cultural values, environment and natural resource management, organizational management, livelihood development, promotion of indigenous knowledge systems and practices and gender mainstreaming. It is now self-sustaining, maintaining 9 management staff and 7 community facilitators.

CADC Conversion to CADT

The BITO saw the IPRA as a further opportunity to chart its own development direction. It applied for conversion of the CADC to a CADT in October 1999. The CADT for Bakun was issued on 20 July 2002. The actual awarding took place in the town of Bakun. The task was not easily accomplished, inasmuch as it entailed a tedious process that required technical and financial support that had to be sourced out of inter-agency complementation.

A major consideration for NCIP in choosing Bakun as its pilot for the conversion of a CADC to a CADT was the recognition that the ancestral domain boundary disputes are manageable there, compared to other CADC holder municipalities (Interview with NCIP Regional Director, 2005). This situation was made possible by a number of factors, such as the prior organizational development and institution building processes started by BITO and the LGU, with support from the ILO-INDISCO project; and the availability of further technical and financial support from the CHARMP.

Indeed, when the time for CADC conversion to CADT came, BITO as applicant had more than sufficient experience in relating with external agencies. The BITO team was consistently linking with the NCIP for technical assistance and coordination, just as it had always cooperated in the selection of the elders/*papangaoan* for NCIP processes. Community baseline data was already systematically obtained as a component of BITO's ILO-INDISCO assisted project.

The process of CADC conversion to CADT began in 1999 and lasted up to 2002, with several months of reduced activity as resources had to be sought. The process was later fast tracked when it was recognized that it could meet the SONA commitment of the Office of the President. It began with an information education campaign, by which NCIP coordinated schedules of meetings with BITO and relevant LGUs. Contact with the communities was initiated through the council of elders/leaders.

Next came the field validation of the CADC. A Special Provincial Task Force composed of NCIP, DENR, BITO, Bakun LGU, CHARM and the local communities conducted evaluation and field validation of the documents and records supporting the CADC, which now had to be upgraded since the CADC was issued prior to the enactment of the IPRA.

This phase entailed actual boundary conflict resolution and field validation, which took over a year in time. This was partly because the process of delineating the ancestral domain boundary highlighted tensions between Bakun and its neighboring municipalities, such as Kibungan, Mangkayan and Buguias of Mountain Province, and Alilem, Sugpon and Cervantes of Ilocos Sur province. The various LGUs of these other municipalities were concerned that the affiliation of villages with the Bakun ancestral domain would have an effect on their municipal territory or jurisdiction, which would have consequences in terms of their internal revenue allocation from the national government. Thus the ancestral domains initiative of Bakun had to contend with this form of inter-municipality politics. To address these tensions, BITO, the communities directly affected, and the LGUs of Bakun and the other municipalities used formal and traditional (*tulagan*) agreements, embodying the parties' mutual affirmation of the negotiated boundaries.[1]

A related problem was the effect of the ancestral domain title on real estate tax declarations, which in many parts of the Cordillera, serve as a documentary substitute for land titles. Those areas covered by tax declarations shall be treated as special cases wherein the settlement of its final location shall be made in the presence of both mu-

[1] These agreements are: July 2, 2002 at Ampusonagan, Bakun, regarding ancestral boundary between Ampusongan, Bakun and Madaymen, Kibungan; July 3, 2002, at Pongo, Gambang, Bakun regarding ancestral domain boundary between Gambang, Bakun and Taneg, Mankakyan; July 4, 2002, at Bakun, Benguet regarding ancestral domain boundary between Dalipey, Sinacbat, Bagu, Bakun and barangay Sapid, Cabiten, Mankayan, on delineated by DENR-LTI-CHARMP; and July 5, 2002 at Gambang, Bakun regarding the ancestral domain boundary between Gambang, Bakun and barangays Amgaleygaley, Lengaoan and Buyacaoan, Buguias.

nicipal assessors and barangay officials. When a lot owner has previously maintained tax payments in the other municipality, he or she must make a request for cancellation of the other declaration. In the case of any undeclared lot, the matter would be decided the moment the ancestral domain boundary will be surveyed. The delineation process thus forced claimants with undeclared holdings to decide in which municipality they will join. Where there is no tax declaration, the total area of the contested portion was to be equally divided.

After these tensions were resolved, NCIP consolidated the necessary documents,[2] and in due time, a Certificate of Ancestral Domain Title was issued and registered in accordance with the memorandum of agreement executed between the land registration authority and the NCIP.

[2] These included the field validation reports on boundaries between Bakun and Mankayan, Bakun and Kibungan, Bakun and Buguias as stated in AO 2 Section 15 , a copy of the Census of Bakun communities, survey plan of the DENR, copies of reports on the Resolution of Boundary Conflicts between Sugpon Tribal Council, Sugpon, Ilocos Sur and Bakun Tribal Council, Bakun, Benguet; Ancestral Domain Boundary Conflict Resolution between Alilem, Ilocos Sur and Bakun, Benguet; Ancestral Domain Boundary dispute Resolution between Bakun Indigenous Cultural Community, Bakun , Benguet and Cervantes Indigenous Cultural Community, Cervantes, Ilocos Sur; Survey of conflict areas after resolution was undertaken; Joint agreement/Resolution between Bakun and Kibungan; and the Joint agreement between Bakun and Buguias. In addition, a certification from elders/ representatives of Bakun on the final survey plan, the Bakun baseline survey, Kankanaey-Bago domain sustainable development and protection framework were also submitted. These were all forwarded to the NCIP central office, together with the SPTF report, on July 14, 2002, in accordance with DAO 2.

Other Stakeholders and Support Agencies

Other than BITO, the other stakeholders in the conversion process included the LGU, DENR, NCIP and the DA. The CHARM Project had a subcomponent called Land Tenure Improvement which involved the said agencies. A Special Provincial Task Force composed of NCIP, DENR, BITO, Bakun LGU, CHARM and the community undertook the ground surveys and validation activities.

Currently, Bakun municipality is one of the sites that is presently benefiting from various projects provided by the DA-CHARM Project. These services come in the form of irrigation systems, domestic water supply systems, farm-to-market roads, and foot bridges. In addition, reforestation and agro-forestry projects are being implemented in partnership with the POs. Further, an array of agricultural support services is also extended to the communities. Where appropriate, participants from the LGUs as well as from line agencies are also represented in these trainings.

With funding support from CHARMP, the NCIP helped in the formulation of the Indigenous People's Ancestral Domain Sustainable Development and Protection Plan (ADSDPP), which embodies the local people's development aspirations.

In 2003, a project developed by the International Fund for Agriculture Development and coordinated by the World Agroforestry Centre (ICRAF) invited proposals to test mechanisms that would reward upland poor communities for environmental services they provided. The CHARM Project Support Office of the DA and the BITO responded to the call. It proposed Bakun as a potential site because of the unique character of the area. The main goal was to enhance the livelihood and reduce poverty among the Bago-Kankana-ey Tribe of Bakun while supporting watershed conservation and management. The proposal, approved in 2004, is the second RUPES site in the Philippines.

tion by doing resource mobilization through transformed social collectivities such as a municipal-wide inter-ethnic ("inter-tribal") formation, networking with external agencies and organizations, and training community members in non-traditional enterprise development technologies. For these accomplishments, Bakun's image as a solid success in decentering the state was realized through BITO, making Bakun the first CADT grantee in the entire country.

There are new emerging issues in Bakun's experience, however. The municipal-wide formation of the inter-ethnic organization still has to define, establish, and maintain its position vis-a-vis the diverse interests of the population in the villages. Residents from the few Bago-dominated villages are generally opposed to a dam-project being developed by a business firm from outside the municipality. This puts them in opposition to the Kankanay-dominated municipal government unit, which tends to favor the project. BITO's position on the issue is neither articulated or pursued by the inter-ethnic decision-making body of the elders.

In addition, political rivalry for a seat in the local government seriously weakened the people's organization. In some respects, this has developed into competition between BITO and the LGU. Political plans of the top leaders of the organization seem to have diffused the ethnic terrain in local governance, with a leader of BITO now acting as LGU leader and major supporter of LGU projects, to the extent of even restraining actions of BITO. On the other hand, the non-LGU leader cannot harness LGU support for either BITO's initiation of development or policy review projects at the municipal-wide or village-level.

Such an impasse is expected to affect future directions of the struggle of the commons. Initiatives to decenter the state to strengthen ancestral domain are still nascent. The best practices need to flourish if the commons must be protected.

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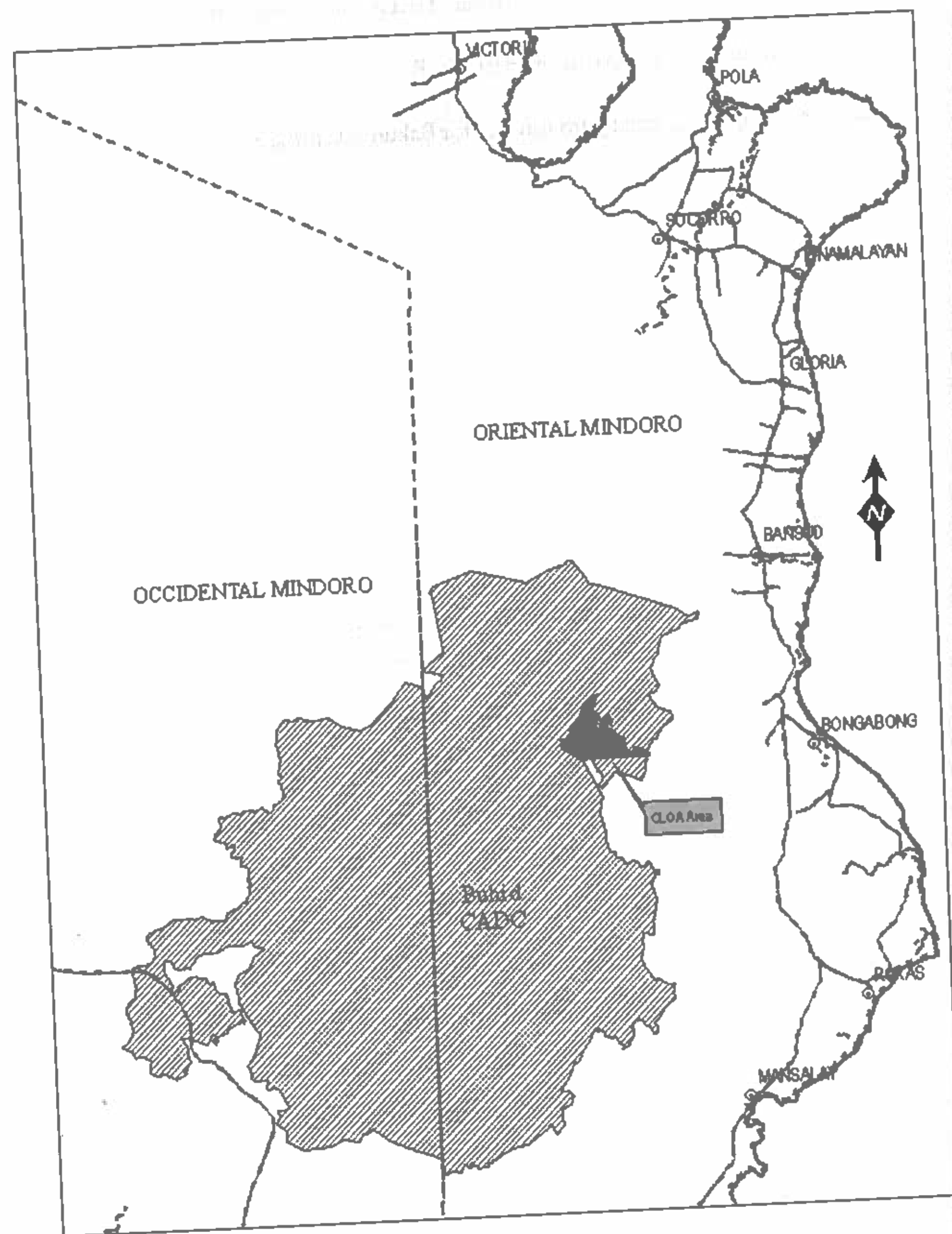

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INDIGENOUS LAND RIGHTS AND THE AGRARIAN REFORM PROGRAM: The Buhid Mangyan Experience

Introduction

The Buhid Mangyan and Agrarian Reform

A CURRENT PROBLEM being faced by the Buhid Mangyan in Oriental Mindoro is that a part of their ancestral domain has been appropriated by the then Department of Agrarian Reform (DAR) for distribution to landless peasants, not necessarily the Buhid, under the latter's agrarian reform program. The area for agrarian reform, comprising about 1000 has. of land and resources, is located in the Western portion of the municipalities of Bansud and Bongabong

This case study explores the Buhid's historical experience with different legal instruments concerned with their land rights in/security. In particular, it centers on the Buhid experience with the Comprehensive Agrarian Reform Program (CARP) of the government as implemented by the DAR (now the Department of Land Reform). Thus, the study aims:

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To probes at how the CARP's framework and implementation contradict with- and undermine the Buhid's conception of ownership and management which resulted to conflicts between the DAR and the Buhid;

To document the processes by which the Buhid asserted their rights to their lands through the utilization of existing legal tenurial instruments as well as extralegal means, such as petition signing, to counter laws and other regulatory measures negatively affecting their tenurial security;

To look at how the Buhid were able to arrive at vital decisions regarding their choice of tenurial instrument to utilize and the challenges they faced from other sectors showing interest to the land they call their home.

Scope and Limitation

This study examines the processes and engagements that the Buhid went through in pursuit of their rights to their ancestral domain, which is a contested area. Particularly this study covers events and data relevant to the Buhid's securing of a CADT (under IPRA) and other tenurial instrument within the AD, in opposition to the granting of a Certificate of Land Ownership Award (CLOA) to non-Buhid farmers by the DAR. Other problems within the ancestral domain that are not directly connected to the study's focus were not covered in this study.

Even though getting information from the DAR Provincial Office that handled the survey in the Buhid's Ancestral Domain (AD) would have made the research results more comprehensive, the researcher unfortunately was not able to do so. During the time of the research, the office was headed by a new Provincial Officer, and the researcher was not able to meet a representative of the office in the time of the writing. Non-IPs who are said to be potential claimants of the surveyed area were also not interviewed, primarily due to constraints of time and lack of means of contact with them.

Other than the Buhid, some members of the Bangon group also lay claims on the area in question. This study, however, is limited to documenting the experiences of the Buhid.

The field research took place in August - September 2005. However, since the time that AnthroWatch made its first visits to the Buhid AD in 2004, it was already able to gather data on the Buhid's concerns related to the land conflict.

Background on the Community and Tenurial History

Ethnographic Profile of the Buhid Mangyan

The ancestral domain of the Buhid is located in the south-central part of the island of Mindoro. It encompasses some 94,022.54 hectares of land and covers the administrative boundaries of the provinces of Mindoro Oriental and Occidental. Portions of the municipalities of San Jose, Rizal, Calintaan, and Sablayan in Mindoro Occidental and Bongabong, Bansud, Roxas and Mansalay in Oriental comprise the Buhid CADC.

The Buhid area is mountainous with river systems cross cutting different communities. It encompasses forests where the Buhid had depended on for their daily subsistence and for their participation in the cash economy since their contact with the lowland market economy became unavoidable. Majority of the Buhid rely on planting corn, banana and tubers for a living. They also grow coffee and *rambutan* in some areas.

Traditionally a self-sufficient community practicing shifting agriculture supplemented by hunting and gathering, much has changed due to the encroachment of outsiders in some parts of the ancestral domain despite of the efforts of the community to minimize the influx of migrants and outsiders who have taken advantage of the resources within the ancestral domain (Sadik Habanan Buhid, 2003?).

Customary Land Laws and Tenurial History

According to Lopez-Gonzaga, the name Buhid literally means "upland" or "hill" in their local language (53). She says that their use of the term implies two basic meanings: their relationship with the "upland" which they "traditionally occupied and exploited for their subsistence" and their self-differentation from the "flatland Mangyan" and other non-Mangyan lowlanders (54). The first meaning especially

reflects the Buhid's rootedness to their land as they have occupied the hill regions of Mindoro since time immemorial. The presence of the Mangyan in the province is attested in the records of the colonial Spaniards, who appropriated the term to refer to the sector of the population that refused colonial and Christian incorporation (15).

In 1986, Thomas Gibson's ethno-study described the "Buid" (also referring to the Buhid tribe) as those who:

> "subscribe to what may be called a labour theory of property. As Buid agriculture involves no permanent investment in the land, land in itself was not thought of in the past as being subject to private ownership. It belonged to the spirits of the earth, and so long as these spirits were not offended, land was freely available to whoever wanted to farm it. A person owned only what he or she planted, and when the last productive cultigen in a swidden was harvested, all further claim to a plot lapsed."

The swidden fields nowadays, however, are already named according to their tiller. However, the Buhid still practice the custom that the swidden field should be used, to justify calling it one's own. Buhid are also protective of their land, and would not ideally allow outsiders to claim any part of it.

Among the Buhid, men and women alike may own swidden areas. Not only those who have families of their own can acquire land, but unmarried individuals can tend their own swidden as well, as long as they can grow their own produce and till their own soil.

It was customary for the Buhid to share their harvest with the community. But since cash economy has already penetrated their way of life, the kind of sharing that they used to do like providing exactly equal shares of a ritual pig among all the inhabitants of a community (Gibson, 1986: 43) is no longer a regular custom. Reciprocity, however, still exists, especially debt payment which comes not only through monetary means but in kind as well.

Among the Buhid, use of land by individual or family is recognized and respected. Today they still observe land partition that more or less corresponds to those of their predecessors. The Buhid of Mindoro Oriental observe certain rules regarding the transferability of individual of familial lots inside the ancestral domain. A Buhid who would like to sell his or her land may do so, but should consider as priority purchaser the Buhid owning land adjacent to his or her lot. The *loktanon* (lowland migrants) in general should not acquire or own land inside the ancestral domain, but if no other Buhid could afford the lot being sold by a Buhid, a *loktanon* may purchase the lot. This process of transferring ownership of land does not involve legal titles or lease papers; the agreement is internal to the parties involved. Thus, there is little in the way of community regulation of such transfers.

The Buhid's encounters with the *loktanon* increased after the Second World War and intensified as the lowland resources became scarce (Lopez-Gonzaga 59). According to interviewees, the use of resources and land by non-indigenous people or even other indigenous groups did not bother them [the Buhid] as long as it was not excessive and intrusive of their own sources of livelihood.

In the early 1980's, Buhid community leaders formed the Sadik Habanan Buhid (SHB), a people's organization of the BM in Oriental Mindoro. This endeavor was in relation to the community's desire to delineate their *bangkolong* (ancestral domain) and obtain legal proof for their claim.

The Buhid Mangyan Experience of State Laws and Policies

From Social Forestry to Ancestral Domains

In recent history, a major law the BM had to contend with was the Presidential Proclamation 2073 in 1981, which identified 4000 hectares of land in Bongabong as alienable and disposable (A & D). Parts of the Buhid AD such as sitios Ugun Liguma, Akliyang, Mungus, Bukbuk, Maptong, Malaksi and Almayus, were reportedly covered by the said area and were allotted for distribution under the Low Income Upland Communities Project(LIUCP) of the government.

The Buhid was one of the communities that considered the Community Forest Stewardship Lease Agreement (CFSLA) as a

means towards land security. The CFSLA was a 25-year lease arrangement by which groups of people may occupy and utilize their lands on the condition that the latter would employ ecologically-sound and productive methods of forest use. It is part of the Integrated Social Forest Program which started during the Marcos regime. The CFSLA became the first institutionalized means for the Buhid to lay claim on the area which comprises the south western part of Roxas, Bongabong, as well as portions of Bansud and Mansalay. More than 19,000 hectares of the land delineated by the Buhid was granted to them through a stewardship lease in 1989 (Sumbad, Yaum, personal interview, August 31, 2005). Also, On May 7, 1992 the Department of Environment and Natural Resources (DENR) granted the Buhid tribe Certificate of Community Forest Stewardship (CCFS).

Another policy that the Buhid found favorable to their interest was the Department Administrative Order 02 (DAO 2) of DENR which provided for the identification and delineation of ancestral domains. Under DAO 2, communal and familial use of ancestral lands may be given Certificate of Ancestral Domain Claims (CADCs) and Certificate of Ancestral Land Claims (CALCs) for ancestral lands of clans or families. DAO 2 made no assurance of land security beyond the certification of ancestral domain claims. The Buhid leaders were cognizant of these limitations, yet in the years prior to the Indigenous Peoples Rights Act (IPRA), the DAO 2 was already the most suitable legal means of securing their land tenure. The Buhid applied for a CADC under the DAO 2 in 1993, which was granted to them in June 5, 1998. The recognized ancestral domain has an approximate area of 94,022 hectares, encompassing 106 sitios and covers the administrative boundaries of Mindoro Oriental and Occidental. Portions of the municipalities of San Jose, Rizal, Calintaan, and Sablayan in Mindoro Occidental and Bongabong, Bansud, Roxas and Mansalay in Oriental comprise the Buhid CADC.

Concurrent with their application for a CADC, they reiterated their petition to have the portion of their ancestral domain covered by Proclamation no. 2073 prioritized in its recognition process. In a petition addressed to the Provincial Environment and Natural Re-

sources Office (PENRO) dated August 12, 1995, Buhid communities in Bongabong and Bansud and the SHB further stated that they wanted the said areas to be part of the CADC even if the said areas were to be distributed under the PP 2073.

1997 saw the promulgation of the IPRA, which provided for the conversion of CADCs into CADTs. Buhid community leaders in general regarded the titling process offered by the IPRA as a significant means to achieve legal recognition for their rights to the land they have dwelt in since time immemorial; and to protect it against usurpers. The community decided to comply with the requirements of the act and applied for CADC conversion to CADT. The Buhid are still struggling for the award of a CADT from the NCIP.

Encounters with the DAR: Experiencing "Agrarian Reform"

The concept of ownership as defined under the CARL differs from the concept of ownership provided by the IPRA. Non-transferability of ancestral domains to non-IPs contradicts the right of CLOA holders to sell or lease their land 10 years after acquisition of the certificate. Thus, in the event that Buhid CLOA claimants so decide to avail of this tenurial instrument while the rest pursues the titling process under IPRA, the rights of both holders may be compromised.

"Common" ownership is also possible under CARL. DAR AO 33 of 1993 detailed the policies on the issuance of a collective CLOA, which may be subdivided to individual owners and registered under the Land Registration Authority after the 10-year transferability restriction period. The AD portions that are subject to CLOA distribution may avail of this option, and this would emphasize the conflict between the two laws. Since the land may still be subdivided and sold to outsiders, the CARL is therefore contrary to, and corrupts to the customary laws of the Buhid.

The conflict between the Buhid and the Department of Land Reform (formerly Department of Agrarian Reform) dates back to the early 1980s, when some unknown people conducted a survey of the area, allegedly for purposes of having portions of the Buhid ancestral domain distributed as part of agrarian reform. The then District Forester of Bongabong confirmed that the surveyed lands were

forested, and so advised DAR not to distribute the leases and titles of the surveyed area.

In the early 1990s, the Buhid received news that the DAR will again conduct a survey within their ancestral domain. The community made resolutions asking DAR to stop surveying their land. In the mid-1990s, the SHB also gave their CADC's technical description to the DAR to prevent the latter from claiming ignorance of their ancestral territory's boundaries.

In July and August 2004, DAR again intruded into the AD without asking consent from BM, from the NCIP or from the Mayor of Bongabong. This time, they surveyed the barangays of Tawas and Hagang in Bongabong and in Malo, Bansud (Y. Sumbad, personal interview, August 31, 2005). The survey lasted for three months, according to community leaders in Maptung. SHB representatives confronted the DAR survey personnel, who still persisted with the survey.

Review of the Legal Bases of Agrarian Reform

A contentious law which affects Buhid land rights is Proclamation no. 2282 of 1983, which ordered the reclassification of public lands totaling 1,502,246 has. in 12 regions in the Philippines as alienable and disposable lands. This was in support of the Ministry of Human Settlements' Kilusang Kabuhayan at Kaunlaran (KKK) Land Resource Management program, which aimed to provide livelihood opportunities to the rural poor. Even though it was revoked by the Aquino administration, the proclamation would have a more serious implication during the Ramos administration, when Memorandum Order no. 107 (1993) was issued.

This memorandum order declared agricultural lands administered by the KKK as alienable and disposable agricultural land that shall be turned over to DAR for disposition. In compliance with this memorandum order, a Memorandum of Agreement was executed by and between the Provincial Environment and Natural Resources Officer Ragudo and the Provincial Agrarian Reform Office of Oriental Mindoro in September 1994, through which all classified agricultural lands of some 4,255 hectares covered by the Kilusang Kabuhayan at Kaunlaran (KKK) project were turned over to DAR for distribution to farmer beneficiaries. All the problems relating to the alleged patents and CLOA issuances inside the Buhid claim are thus consequences of the proclamation.

Former Provincial Agrarian Reform Officer (PARO) Alexander Juane mentioned in a memorandum issued October 2004 addressed to DAR Region IV-B director Homer Tobias that around 600 hectares of the said 4,255 hectares had initially been covered by CARP in 1995, but was not certain whether the area referred to was inside the Buhid AD. In addition, he reported that 1000 hectares of this KKK landholding had been patented by DENR prior to the turn-over.

The SHB and the Kapulungan para sa Lupaing Ninuno (KPLN), a federation of 7 Mangyan tribal groups, identified five communities that were covered by DAR's project: Maptung, Bukbuk, Ugun Liguma, Almayus, and Safa Dagat, which are situated in Barangays Hagan, Lisap, and Tawas in Bongabong and Malu/Villa Pagasa in Bansud. Consequently, four other communities were said to be affected since their Buhid residents own land inside the aforementioned areas: Ngungus, Fulang, Maguad and Talsi in Barangays Hagan in Bongabong and Malu in Bansud.

Problems with Agrarian Reform Implementation

Negative Impacts of the Agrarian Reform Program

The most upsetting part of the agrarian reform program for the Buhid was that most of beneficiaries in the above stated areas were non-IPs or loktanon. The loktanons began conducting swidden cultivation in the BM's kaingin areas. The BM and the loktanons both assert their rights to the land and the resources found therein. However, the loktanons seemed to be the more favored sector in this case. Thus, the steps took on by DAR created conflicts in the community.

This issue impacts stakeholders and support groups and agencies in several ways:

At the community level, it has caused and or reinforced conflicts between the Buhid and the non-IP land beneficiaries who share common spaces and resources; it altered the Buhid's resource use as

the environment is also modified; and undermines the Buhid's rights to their ancestral domain and their cultural integrity. More importantly, the destruction of Buhid's forests due to kaingin activities of non-IPs who claimed the areas surveyed by DAR have affected the livelihood of many of Maptung's Buhid residents. Buhid leaders Agnipan, Iit, Enggid, (all residents of Maptung), among others, have lost portions of their lands planted with banana to DAR's clearing for the survey, which were occupied and utilized by non-IPs afterwards. This in turn reduced their sources of sustenance. Similar cases are also happening in adjacent communities within Hagan and in Almayus (I. Naig and other Buhid leaders of Maptung, personal interview, September 14, 2005).

The Buhid are apparently amenable to co-management arrangements with non-IPs when it comes to resource use. As Maptung Buhid leaders have pointed out, they were willing to share their resources with non-Mangyans so long as their use is moderated and agreeable. Unfortunately, the overlapping (and conflicting) tenurial instruments seem to reinforce the disparity in the opposing stakeholders' perceptions of land and bases of ownership, which in turn reinforces the tensions between them. As Mangyans are usually non-confrontational, some *loktanon* were inclined to be abusive and imposing of their claim to the land.

Violations Committed by DAR

The Buhid Mangyan have long been clear and consistent with their demands and stand on the issue since DAR's agrarian reform program came about in their AD. There objections on the implementation of the Agrarian Reform Program rests on the following arguments:

DAR's activity inside the Buhid AD did not undergo the proper free and prior informed consent (FPIC) process. DAR has placed non-IPs in portions on the ancestral land claims, when the non-IPs do not even hold any right to the land prior to DAR's surveying of the area. Intrusion of the sacred places and burial grounds by DAR and the non-IPs placed therein by DAR has violated the BM's tradition and culture. DAR has included forested areas in their survey.

The BM considers the DENR as the primary government agency that has a say in these areas, not the DAR. According to MO 107, areas covered by the KKK project with adverse claims should not be turned over to DAR. The area surveyed by DAR has included a portion of the CADC of Buhid

DAR's intrusion of Buhid's ancestral domain is a clear act of disrespect for their rights to self-governance, having bypassed authorities and procedures inbuilt to the social system of Buhid. Above all, it has made the AD more vulnerable to encroachment and abuse of resources and sacred places by non-IPs. This further puts the rights of the Buhid to cultural integrity in jeopardy, especially that some of the loktanon in the area are not considerate of the Buhid's taboos.

Buhid communities and the SHB submitted a petition to the Office of the Secretary of DAR in April 2005 pushing for the recognition of the Buhid's right to their ancestral domain and for the prohibition of the CLOA distribution to non-IPs inside their CADC.

Searching for Indigenous Rights' Place in the Agrarian Reform Program

The case at hand reveals two basic problems faced by indignenous peoples in their quest to attain legal tenurial security: problems with

Fig. 1. Old burial ground enclosed in the surveyed portion of the Buhid AD, cleared by non-Mangyans.

Fig. 2. *Fragile but meaningful defences. Raghop's land is fenced from an adjacent non-Mangyan farm, planted with bananas (photograph by the authors).*

the law or its implementation, as exemplified by DAR violations; and the existence of laws which neglect IP interests. Both reflect in differing degrees, the true extent of the the State's commitment to securing the ancestral domains of the country's indigenous peoples.

Aside from the problems in the implementation of the Agrarian Reform Program, the experience of the Buhid leads us to probe closely into the problems in the framework of existing legal tenurial instruments (be it an administrative order or a full-fledged law) and, more particularly, of the Comprehensive Agrarian Reform Law. The Buhid experience exposed how the CARP and other legal tenurial instruments (e.g. MO 107) contradict and undermine the Mangyans' conception of ownership and management which resulted to conflicts between the DAR and the Buhid. In spite of the existence of IPRA, known to be by far the most comprehensive law on IP rights in the history of Philippine legislation, the Buhid experience show how the said law was, in practice, very easily undermined and ignored in the implementation of the CARP. Especially in this time when the NCIP, the agency mandated to implement the IPRA, has

been put under the supervision of the DENR, such drastic moves leads one to question the place of IP land rights in the country's agrarian reform program, and beyond that, in the government's priorities.

Aside from the sad reality of government inattention and inadequacy, the case study revealed the even sadder reality that in the Philippines, tenurial security is still based on one's ability, willingness and determination to defend his or her rights to land, whether one uses legal or extra-legal means of struggle. The study emphasizes how ancestral domains' vulnerability to encroachment is not eliminated by legal tenurial instruments alone; and that the possession of legal tenurial status is only half the battle.

On the other hand, the Buhid's experience also exemplifies how indigenous peoples or organizations have learned to appropriate other state programs and laws for their own ends. While their rights are threatened by one State program and law, they have utilized still other State laws and regulations to protect their own indigenous notions of land and resource rights. This strategy highlights the contradictions within the State's own political and legal framework vis-à-vis indigenous peoples and other sectors.

As such, the Buhid experience is an apt representation of the contradiction-laden relationship between indigenous peoples and the State.

Recommendations

Strengthening Indigenous Tenurial Mechanisms

The case study showed how a strong IP organization is the most important factor in ensuring the community's strong resolve to assert for their right to their ancestral domain.

The role of the SHB in relaying information and developing collective decisions should be further strengthened and continued. Clearly, an extensive consultative process in a spatially broad and disaggregated community is not easy to maintain, thus resources spent for gathering the community leaders also have increasingly become critical to the organization. SHB thus needs to look into potential projects or activities that can augment its resources. Finally, Buhid

legal mechanisms must be strengthened. While they have rules regarding the use and transferability of individual or familial lots inside the ancestral domain, this in itself is not enough. The rules themselves must be obeyed by the Buhid membership, and corresponding penalties imposed for violations of those rules.

Harmonization of NCIP and DAR Policies and Programmes

The NCIP and DAR should be serious with its plan to thresh out policy conflicts especially with the growing risk of disunity among affected communities. These agencies must ensure the involvement of the affected IPs , IP organizations and IP advocates so that the integrity and validity of the process may be guaranteed.

In addition, creation of a working group composed of policy-level representatives of NCIP, DAR, DENR and lawyers who are well-versed with issues in both the IP and peasant communities may facilitate the process. More importantly, the harmonization efforts must not compromise the interests of the indigenous peoples. It may take on the responsibility of gathering documents, accounts and investigation reports from affected communities, reviewing pertinent orders and laws, consolidating suggestions and options from concerned local offices and organizations, and drafting new policies that would lay the conflict to rest.

Vigilance among IP advocates

More than ever, support organizations and POs need be attentive to the actions of government institutions with regard to IP concerns and should be analytical of the dynamics of power relations among these agencies. NCIP's incorporation to DAR may be to NCIP's advantage in terms of resource-sharing, but may have adverse implications in terms of project and policy implementation that primarily serve the IPs over the peasantry.

Dialogue between advocates of the IPs and the peasants must also be strengthened since the issue of land right among the IPs is also a twin issue of landlessness in the peasant sector.

Continued and intensified advocacy of IP rights

Continued advocacy may include: Public awareness campaigns regarding the implications of policy conflicts at the community level; establishing venues for discussing IP concerns and sharing of experiences in advocacy work; supporting pro-IP academic researches by being open and willing to collaborate with academicians (with good intensions) whose interests are pro-IP; utilizing media in advocacy; and broadening awareness on the issue of land rights across sectors.

Furthermore, a coalition of IP rights advocates may help consolidate individual and organizational efforts toward this end. This may also enhance the sustainability of campaign activities.

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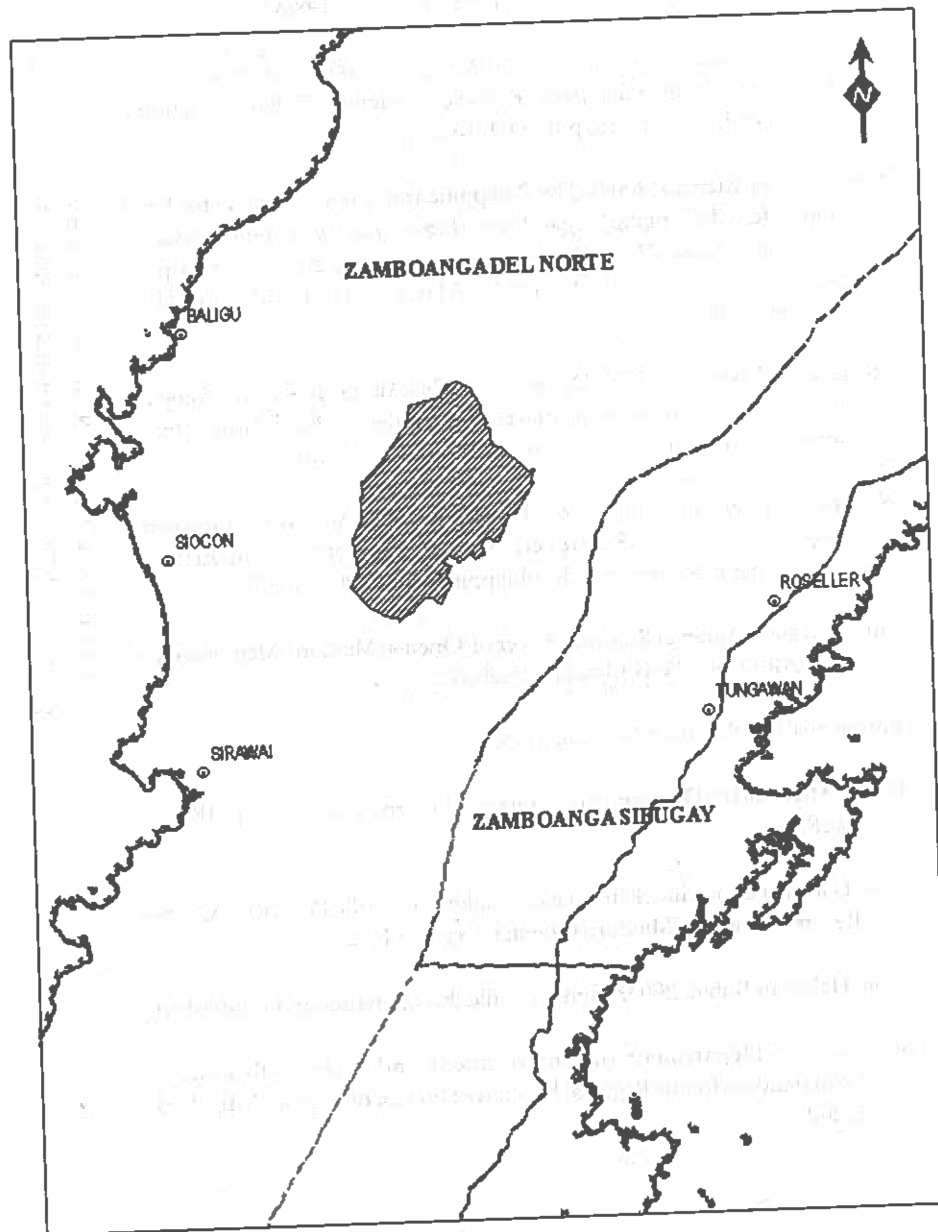

PENELOPE SANZ

THE POLITICS OF CONSENT:

The State, Multinational Capital and the Subanon of Canatuan

Introduction

THIS CASE STUDY focuses on the Subanon community of Canatuan. Long subject to extractive projects linked to the global market, such as logging in the 1970s and mining beginning in the mid-1980s, they have long engaged with state agencies to advance and protect their rights and interests. Through their efforts, the Subanon of Canatuan became among the first recipients of the DENR CADCs (in 1997), and the CADTs (2003) under the IPRA. Despite the possession of these tenure instruments however, it remains a troubled community. They have proved unavailing when the community was confronted with a multinational mining company.

TVI Resource Development Philippines, Inc., a Canadian multinational corporation, planned to extract gold from Canatuan. To explore and extract the mineral resources from an area owned by an indigenous community, it had to secure the free and prior informed consent (FPIC) of the community. In pursuing FPIC, it engaged state agencies, local government units, civil society groups and the community itself through various ways.

This study explores the dynamics between actors within and outside the community as they establish and project their positions on the question of consent to the entry of the mining company.

In approaching the case of the Subanon, the United Nations Working Group for Indigenous Peoples (UNWGIP) and the UN Sub-Commission on the Promotion and Protection of Human Rights's framework, which was authored by Antoanella-lulia Motoc, was used. But upon confirmation with the NCIP that no FPIC process was conducted despite the execution of a Memorandum of Agreement in 2002, discourse analysis was appropriated.

From Foucault's notions of the archaeology and genealogy of knowledge, power is a focal issue. It is both a constructive and restraining force. It is productive, and central to the formation of the discourses studied. It follows then that law, as discourse, is never neutral; "states and certain classes rely on law to uphold particular arrangements of power" (Hirsch and Black 1984).

Limiting the perspective to FPIC alone however, trivializes the contradictions and encounters found between the community and the state, sadly to the detriment of the former. Thus, it is imperative to bring forth the history of struggle of the Subanon in determining the kind of development they would like to pursue in their ancestral lands and domain. In the process, a number of issues relevant to indigenous peoples' rights will be addressed and presented in conclusion.

Mapping the Terrain

The Place: Siocon and Canatuan

Siocon municipality, in Zamboanga del Norte province, has 26 barangays, six of which lie in coastal areas. It is one of the four coastal municipalities that form part of the "Triple S-B" economy.[1]

[1] Triple S refers to the municipalities of Siocon, Sirawai and Sibuco, while B refers to Baliguian. The triple S-B economy is endowed with vast land and fishery resources. Yet they remain one of the most depressed municipalities in the region.

With a total land area of 50,320 has., it is the "rice granary of Zamboanga del Norte", says Mayor Cesar Soriano[2]. It is also known to yield the highest fish harvests from both off-shore and fish-farm produce in the region. Seventy percent of Siocon's labor force is engaged in agricultural farming and fishing.

Beyond the coast are hills and mountains, 31,669 has. of which are legally classified as forestlands. This area protects the local watersheds, which support the considerable irrigation system not only in Siocon, but also in the other "triple S-B" municipalities.

Siocon's population reflects the tri-people character of Mindanao. Christians constitute 74% of the population; Tausug and Yakan Muslims, mainly located in the coastal areas, comprise 27%; and about 9% are Subanon, concentrated in the hinterlands. Canatuan is occupied predominantly by Subanon.

Canatuan is a *sitio* of Barangay Tabayo, of Siocon. The community shares its name with the mountain at whose feet the *sitio* lies.

"Canatuan" is derived from the Subanon word ***konotuan,*** which is a metaphor for life being cut short, like a leaf that is clipped from its stem, as the Subanon say. In the past, this enchanted mountain claimed the lives of any Subanon who climbed

[2] Interviewed last February 2004 during the Gukom meeting in Siocon

it in their travels or pursuit of game. They would either die or simply vanish in the forest.

It is said that Apo Maguiba Sanag made a covenant with the Immortal Being who resides in the forests on the mountain. He promised to protect and revere Canatuan in exchange for the Subanons' safe passage into the mountain. Thus, it became sacred ground, where the Subanon pray and perform rituals such as the *boklog*, which is their most important ritual, usually performed as thanksgiving every seven years.

The People: Subanon Oral History

According to Timuay Noval Lambo, a revered authority on Subanon history and culture, his people's history incorporates a series of diasporic movements spurred by their attempts to avoid Islamization.[3] His historical account is interwoven with a genealogical narrative,[4] which begins in Nawan, present-day Zamboanga City. There, their ancestor Timuay Itsak had four sons, named Dumalandan, Gumabon-gabon, Tabunaway[5] and Sumagilid-gilid, and a daughter

[3] The data presented here only refers to the Subanon of Zamboanga del Norte, who share a number of similar ethno-linguistic features. Based on fieldwork, I have identified at least four Subanon sub-groups based on ethno-linguistic variations.

[4] The genealogy presented here was charted with the assistance of this writer during a seminar workshop on Subanon genealogy held on February 8-10, 2004 in Dipolog City, Zamboanga del Norte. It was attended by CADT claimants who are members of the Pigsalabuhan Bangsa Subano (PBS), an organization of traditional leaders of Subanon communities in Zamboanga peninsula. During the workshop, Timuay Noval Lambo's account was validated by various *timuay* from neighboring communities.

[5] Casino (2000) presents two other versions of the Tabunaway story. Kadil (2000) presents two sources of genealogical data on Tabunaway; that is, the Muslim *tarsila* and Subanon oral history. Timuay Lambo's account represents a third source on the story, alongside Kadil and Casino.

named Dahumpalay. When Muslim Iranun began raiding Nawan, Tabunaway led his brothers east, to Buluan, now part of Ipil, Zamboanga del Norte. There, they agreed that Tabunaway would remain in Buluan, Dumalandan would go further north, and Sumagilidgilid, east toward present-day Zamboanga del Sur.

Tabunaway begot three sons namely, Dumibaloy, Mo-ong and Solinog. When the Iranun began raiding Buluan as well, the three sons decided to move on. Dumibaloy went to Kipit, Solinog went to Tupilac, and Mo-ong crossed the peninsula to Siocon.

Mo-ong had two sons, one of whom was Apo Manglang, whom Timuay Lambo describes as the "wisest and bravest" of them all. It is said that the Subanon way of life flourished under Apo Manglang. He is credited with the establishment of Subanon government in Siocon, as well as with ordering the assassination of Fr. Del Campo, a Jesuit missionary who was assigned there in 17the century. However, just before he died, Apo Manglang urged his son Toki to return to Nawan. The diaspora of the Subanon thus began anew. However, it was agreed that those who remained in Siocon would be governed by Timuay Anoy.

To fend off further Muslim attacks on Siocon, Apo Manglang formed the first *gukom*, which was comprised of the leaders of the *pito kodolongan* or "seven rivers". This refers to what are now the traditional Subanon territories; namely, Patawag, Kipit, Pongonudan, Baliguian, Siocon, Malayal-Lintangan in Zamboanga del Norte, and Patalon in Zamboanga del Sur. These seven areas are linked to seven rivers, whose headwaters are in Mt. Canatuan. Today, the people of these areas consider themselves descendants of Apo Manglang.

Subanon Justice System

The term "*gukom*", depending on usage, may refer to the Subanon justice or governance system; to the *timuay* or *bogolal* who settle disputes;[6] or a high council of *timuay* assembled to settle an issue or con-

[6] A *timuay* is a village-level headman, who has ritual, political and legal authority; a *bogolalal* is a council of *timuay* or other leaders.

flict that either cannot be handled by the local *timuay* of a river territory, or that spans across territories.

It is in this third sense that the *gukom* founded by Apo Maglalang is to be understood. Today, it is embodied by the *Tupo Nog Pito Kobogolalan Pogokbit Nog Golal Nog Pito Kobogolalan Gonat Sog Pito Kodolongan* (The Descendants of the Seven Traditional Leaders of the Seven Rivers), or simply *Pito Kodolongan* ("seven rivers"). It is currently led by Timuay Noval Lambo, its *Gulang Gukom*.[7]

The *Pito Kodolongan* has the following functions: To negotiate and conclude peace accords with Subanon groups outside of the seven rivers; to maintain peace and unity among the people of the seven rivers; to settle disputes of any form within the seven rivers; and to settle or decide conflicts among community leaders in a particular river area, if the parties have failed to reach a settlement despite exhausting all remedies provided under customary law.

The *Pito Kodolongan* was last convened in 1974, when the Subanon faced threats from MNLF insurgents[8]. "The *gukom* process is very much alive in each territory," says Timuay Lambo. Indeed, as will be discussed below, the *Pito Kodolongan* played a part in the story of Canatuan, this time to settle the controversy pertaining to the legality of the Council of Elders, created by the NCIP in 2003.

Contested Terrain

Changing Land Uses, Changing Landscapes

For much of their history, the Subanon of Canatuan mainly engaged in *kaingin* or swidden agriculture, supplemented by hunting and fishing.

[7] I.e., "Elder Among *Timuay* and *Gukom*".

[8] The MNLF attacked Linpapa, Lintangan and Malayal in Sibuco, killing Subanon women and children and desecrating their river. In retaliation, the Subanon, led by Noval Lambo, raided Muslim communities such as Pangian, Nasal, Panganuran, Nala, Pasil, and other barangays in Sibuco.

Canatuan's environs and landscape began to change in the 1970s with the entry of Zamboanga Wood Industries, Inc., or ZamboWood, a Canadian-owned mining corporation. In 1989, after ZamboWood's license expired, Canatuan became part of the operations area of Great Pacific Timber and Development Corporation, a holder of a DENR-issued IFMA plantation contract. Thanks to these government-backed contracts, the area has lost much of its original forest cover.

During the 1980s, gold was discovered in the area. Small-scale miners from neighboring Gutalac, Zamboanga del Sur (now Zamboanga Sibugay) began pioneering mining operations on the mountain. At that time, no one actually resided on Mt. Canatuan itself. Jose "Boy" Anoy, who lived closest to Mt. Canatuan then, resided in Paduan, a *sitio* at the foot of the mountain. Eduardo Cayabyab, a small-scale miner who entered the area in mid 1980s, recalls, "His was the first house we encountered [when we arrived in Canatuan]".

In any case, when other small-scale miners heard of mining activities in the area, they arrived in droves. To avoid conflict among them, Canatuan was divided among fourteen tunnel-owners. By the 1990s, their population had mushroomed to 8,000. It should be mentioned that though small-scale miners were mainly "Bisaya", Subanon from neighboring towns have also migrated into the area. They either worked as *abanteros*[9] or panners of tunnel owners. Other Subanon operated small ball-mill plants.

History of Contestations

The influx of migrants into the area was so alarming that in 1989, the original Subanon in Canatuan and Siocon *poblacion* held their first rally to protest small-scale mining activities. Under the leadership of Jose Anoy, who was a deputized forest guard of Canatuan, the Subanon of Canatuan applied for a CFSA under the DENR's social forestry program.

[9] I.e., Tunnel diggers.

In December 1991, the Siocon Subanon Association, Inc. (SSAI) was organized and registered with the Securities and Exchange Commission.

Meanwhile, Ramon V. Bosque, a migrant small-scale miner, secured a prospecting permit over the entire mining area in 1990. The following year, he entered a royalty agreement with Benguet Mining Corp., a Philippine mining firm. In 1992, he and Benguet Mining Corp. applied for an MPSA over the area. SSAI and two other Subanon peoples' organizations, opposed the MPSA application. In 1993, 609 members of the SSAI signed a resolution opposing the application of Bosque and BC.

For their part, the other small-scale miners also opposed the MPSA application, which threatened their own access to gold ore. They organized the Canatuan Small Scale Miners Multi-Purpose Cooperative (CSSMMPC), led by Bosque's brother-in-law, Eduardo Cayabyab, and endeavored to apply for a permit to operate under Republic Act 7076 or the Small-Scale Mining Act. Most significantly, they allied themselves with Anoy, and when the latter led the application for a CADC for the community under DAO 2 in January 1994, they provided financial assistance to the Subanon.

In October 1994, an exploration agreement with option to purchase was executed between Benguet Corporation and TVI, covering the MPSA application filed by Benguet Corporation and Ramon Bosque.

Also in 1994, another Subanon group headed by Marciano Sapian (now deceased), a self-proclaimed *timuay* with connections to TVI, filed a competing CADC application—this one assisted by the TVI—over the areas covered by the MPSA (Vidal 2004). Partly because of such maneuvers, the processing of SSAI's CADC application was delayed for three years.

On 23 October 1996, an MPSA was issued to Benguet Mining Corp., covering an area of 508 has. in Canatuan. On 16 June 1997, the company—which had virtually bought out Bosque—handed over its rights and interests in the MPSA to TVI, through a Deed of Assignment in the latter's favor.[10]

It was only on 21 October 1997 that the DENR issued R09-CADC-113 to "the Subanon Indigenous Cultural Community" of Canatuan, covering 6,523.68 has.

Escalation of the Issue

Beginning in 1997, petitions, pickets, rallies and barricades were being launched by CSSMMPC and SSAI, and were answered by shootings, violent dispersals and other human rights violations by security personnel of TVI, as well as by the police forces and paramilitary CAFGU of the government.

In 2000, to strengthen its claim to the area, SSAI—still led by Anoy—applied for the conversion of their CADC into a CADT, as provided for by the IPRA.

Onsino Mato, a *soliling*[11] and the Secretary of SSAI, spoke before the 19th Session of the UN Working Group on Indigenous Populations in Geneva, Switzerland In July 2001. He reported the abuses the Subanon suffered at the hands of TVI and the military, including physical harm and intimidation, blockades against food and health services, and the desecration of Mt. Canatuan, which was considered sacred ground by the Subanon.

This prompted the DFA to request the CHR to investigate the case. On May 2002, the CHR investigating team reported that the conflict in Canatuan stemmed from DENR's issuance of an MPSA over an area within ancestral domain of the Subanon of Canatuan. The report also noted the various offenses committed by TVI and its security personnel, as well as the company's failure to secure the free and prior informed consent of the Subanon.

In response, the MGB stated that "(t)he rights of the CADC holders are no less inferior to the mining rights of TVI. Both rights

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[10] The MPSA originally issued to BC was recorded in the name of TVI on 14 May 1998.

[11] An assistant to a *timuay*.

can exist and be harmonized through a Memorandum of Agreement (MOA)".[12] The DENR and the MGB issued separate issued recommendations in separate documents (Gloria 2004), but their positions do not actually differ and can be summarized as follows:

1. DENR, in cooperation with NCIP and the Cooperative Development Authority (CDA) shall impose the execution of a Memorandum of Agreement between TVI and the rightful Subanon community in accordance with IPRA;

2. NCIP shall undertake immediate cultural mapping to determine the rightful Subanon community in the area;

3. A joint investigation on the alleged violation of human rights by TVI shall be undertaken by the Department of Justice, CHR, and the National Bureau of Investigation;

4. And small-scale mining and small ball-milling operations may continue in the MPSA contract area, upon the execution of an agreement with the rightful Subanon community and TVI, and under strict terms and conditions on environmental protection and efficiency operations.

A few days later, on 31 May 2002, the President of the Philippines visited Canatuan, and promised the people that she will issue them a CADT. Over a year later, on 12 June 2003, the NCIP did award a CADT to the Subanon of Canatuan.[13]

[12] Summary report of MGB IX Regional Director Mamao Macapodi dated 31 July 2002, cited in Gloria (2004).

[13] CADT No. R09-CADT-SIO-0403-0005 was issued in the name of members of 226 Subanon households on April 11, 2003. The CADT covers the *sitios* of Mambong, Poduan, Malusok and Binukol, in Barangay Candiz; and *sitios* Canatuan, Cosan, Lumut, Gumibu, Ginubang, Gulangan and Balubuan, in Barangay Tabayo.

The Rightful Subanon

Capturing SSAI

On 25 November 2001, a meeting of Subanon leaders was called by NCIP at the Siocon town-center, far from Canatuan. Nevertheless, a number of SSAI leaders were able to attend. Many of them were troubled, however, when they learned that Jose Anoy and other anti-TVI leaders such as Onsino Mato had not been informed of the meeting. They walked out.

Those who stayed elected one Juanito Tumangkis,[14] a Subanon with pro-TVI views, as Chair of the Board. Sapian, who had filed a CADC application that contested SSAI's own, was also chosen as one of the members of the SSAI's Board. Others were former SSAI members who disagreed with Anoy's anti-TVI stance. Many were employees of TVI, and have no claims or interest in the area based on customary law.

The Tumangkis faction thus seized control of SSAI, which it represented as the legitimate voice of the Subanon of Canatuan. Specifically, Tumangkis claims that his faction of the SSAI "at present is the Administrator of the Certificate of Ancestral Domain Title (CADT) issued to all the Subanons of Siocon, Zamboanga del Norte".

In response, Anoy and his faction questioned the legitimacy of the elections. They also set up the *Apu' Manglang Glupa' Pusaka'*, to distinguish themselves from SSAI, which had now been discredited

[14] Juanito Tumangkis is a Subanon who was allegedly a former member of the MNLF. Originally a resident of Patalon, he was charged with a crime but was saved from possible imprisonment by his legal counsel, Atty. Fausto Lingating. Tumangkis was given amnesty. In 1988, he worked as security guard of ZamboWood (Gloria unpublished). Tumangkis also ran a cyanidation plant in Canatuan. Disputes ensued when he charged PhP 2000/ month on top of the usual fees he charged small-scale miners for using his processing plant. He was also among the Subanon led by Marciano Sapian, who filed a competing application for a CADC.

in their eyes. Instead they represented the *Apu' Manglang Glupa' Pusaka'* as the legitimate voice of the Subanon of Canatuan.

Tumangkis and his faction soon showed their pro-TVI stance. In February 2002, it issued a manifesto calling for the dismantling of the "illegal" mining operations and structures in Canatuan, which lent legitimacy to TVI's efforts to evict small scale miners from the area. Worse, in November 2003, Tumangkis, as leader of the Subanon of Canatuan signed a Memorandum of Agreement with TVI, allowing it to operate in Canatuan.

In return, TVI has issued its royalty payments to the Tumangkis faction. As of May 2005, Tumangkis and his allies were also planning to set up a 50 ha. community site at Sitio Tanuman, Brgy. Tabayo, Siocon, about 5 kms. from Canatuan; scholarships; securing the services of a midwife; the construction of classrooms and livelihood loans.

Manipulating Consent

The Anoy faction, backed by supporting Church-based organizations and NGOs, questioned the legitimacy of the election, as well as Tumangkis' right to speak for the Subanon of Canatuan. To address the controversy, one Lista Cawanan, Jr., the NCIP Provincial Officer for Zamboanga del Norte, appointed a Council of Elders (COE) for Siocon. The Anoy faction and its supporters objected, pointing

out that many Council members were not residents of the area affected, and that some of the Council's members were even TVI employees. Tumangkis, in fact, was appointed by the NCIP as the Chair of the Council.[15]

Despite such objections, the NCIP convened a meeting of the Council of Elders in September 2002 in the presence of the Subanon community of Canatuan. In that meeting, a resolution *opposing* TVI's mining operation was passed, a result that indicated significant local opposition to TVI and its plans, and eroded the credibility of the Tumangkis faction's claim to represent the Subanon of Canatuan.

To counter this development, one Ponciano Agbadan, another NCIP official, called for a second Council of Elders meeting in Zamboanga City, a day's travel from Canatuan, on October 15, 2002. A number of those who arrived for the meeting questioned the proceedings, saying that the meeting was contrary to NCIP's own regulations, which required community participation in decisions affecting their interests. During the meeting, a TVI employee named Danilo Bason proposed a resolution in support of TVI. This was objected to, as directly contradicting a Council resolution on an issue that had already been settled in the September 2002 meeting in Canatuan. When it became clear that a vote would be forced through despite these objections, eleven members who could not stomach the brazen manipulation of the proceedings walked out. This second meeting produced a resolution *supporting* TVI's mining operations.

The Pito Kodolongan Speaks

From February 2 to 6, 2004, the *gukom* of the *Pito Kodolongan* was convened upon Anoy's request to "resolve the conflict affecting the Subano community whose forebears first established the rules and regulations as integral part of the customs, traditions and practices

[15] It later emerged that TVI pays an "honorarium" of PhP 6,000.00 to those attending Council of Elders meetings.

handed down from one generation to another" (Lambo 2004). Specifically, it would determine if the Council of Elders (COE), which was initiated or composed by the provincial officer of the NCIP in Canatuan is in accordance with Subanon customary law.

Traditional leaders from other Subanon communities had been scandalized by creation of the COE. "There is no such thing as Council of Elders in our customary laws," states Atty. Fausto M. Lingating, a *timuay labi* from Zamboanga del Sur who, along with Sidan Tii and Fernando Mudai, has filed a case against Cawanan at the NCIP Region 9 Office, alleging that the latter's constitution of the COE was an act of grave disrespect towards Subanon culture.[16]

In any case, the *gukom* deliberated on the lineage of each of the 30 members of the COE to see if they were of *timuay* lineage, hence with the authority to lead or speak for the Subanon of Canatuan. Most members of the COE, who were summoned to attend the gukom process, did not show up. Tumangkis argued that it should not be held in Siocon *poblacion* but in Canatuan.[17]

The findings of the *gukom* reveal that 21 members of the COE[18] were not of *timuay* lineage. On the other hand, it affirmed that Jose Anoy was a direct descendant of Timuay Anoy of Siocon, and had the requisite *timuay* lineage. It added that there is no such thing as a Council of Elders in traditional Subanon political organization. Following is Timuay Noval Lambo's statement on their findings:

[16] In June 2004, the NCIP Region 9 office dismissed the case filed by Lingating, Tii and Mudai for lack of standing, the petitioners not being residents of Canatuan.

[17] Interview conducted in April 2004.

[18] COE members who are not of *timuay* lineage or traditional *bogolal* (leaders) are Fernandez Anda, Ampanan Ansani, Andres Ansani, Danilo Bason, Alito Dandana, Lydia Dandana, Rudy Dandana, Susana Davi, Lembalan Elian, Celestino Guinagag, Vicente Guinagag, Akil Lingala, Antonio Lingala, Etal Lumayas, Panga Lumayas (deceased), Alberto Mais, Juanito Pagilisan, Marciano Sapian (deceased), Danilo Tumangkis, Juanito Tumangkis, and Pancho Tumangkis.

"Under our customary laws and traditions, no person can be appointed as a traditional leader if he does not belong to the bloodline of Timuay. If he is not a traditional leader in the Subanon community, his authority as a Timuay has no binding effect".

"The appointing officer, Mr. Lista Cawanan Jr., NCIP provincial officer- IPIL, committed a gross violation of the Subanon customs, traditions, and practices. Subanon customary laws strictly prohibit the appointing of non-traditional leaders in the Subanon community. Mr. Lista Cawanan Jr., being a pure Subanon and a ranking tribal leader in his community, is presumed to be knowledgeable of the Subanon customs, traditions and practices. Yet he violated the Subanon customary laws when he organized the Council of Elders of Canatuan, the majority composition of which are non-traditional tribal leaders."

"That there was wanton disregard to follow the Subanon customary laws and insidious attempts to hoodwink the Subanon community at Canatuan, Siocon, Zamboanga del Norte for self-aggrandizement."

The *gukom* went on to impose penalties and sanctions upon Cawanan and the members of the COE. These findings were submitted to the NCIP in August 2004.

The NCIP, the state agency tasked with ensuring respect for indigenous culture, ignored the *gukom's* decision, and certified the legitimacy of the Tumangkis faction on 1 June 2004. In January 2005, they went on to assist the Tumangkis faction in drafting the ADSDPP for the CADT area. It would seem that, as far as the government—the NCIP, and the MGB and DENR—is concerned, "the rightful Subanon" are those of the Tumangkis faction.

Reflections

At this point, several points for reflection have to be noted:

First, between an indigenous group's traditional political organization and institutions, on one hand, and an organization of self-styled leaders set up in accordance with the state's requirements for SEC registration, on the other, which has greater credibility and expertise on matters affecting indigenous leadership or representation? Doesn't the IPRA's emphasis on protecting indigenous rights to self-determination and –governance suggest that we should respect traditional political organization, as described and practiced by traditional political leaders?

On a related question, what does the phrase "rightful Subanon" mean in the politics of representation? Who determines the exclusion, inclusion, recognition, rejection, adoption, or even "invention of leaders" (Gatmaytan 2005), the state, its agencies and apparatuses, or an indigenous people's traditional political organization? Can IPRA assist us in addressing this issue, when it is based on false assumptions and misconceptions about indigenous peoples and cultures?[19]

Third, we should consider NCIP's understanding and exercise of its mandate. NCIP is supposed to be of equal status with other state agencies, but it did not assert its mandate as protector of indigenous rights in this case. Instead, it not only subscribed to the legal discourse deployed by DENR and TVI that the latter's MPSA predates the community's rights, but it also acceded to DENR and MGB recommendations when it should have asserted its authority by insisting that the free and prior informed consent process should be exercised before the execution of the Memorandum of Agreement, specially in such a hotly-contested context as this.

[19] The IPRA, for example, assumes that indigenous peoples communities are homogenous and their concept of property ownership is communal.

Multinational Company at Work

Information Campaign

Although a Memorandum of Agreement was executed between TVI, the SSAI and COE despite questions about whether the free and prior informed consent of the Subanon of Canatuan was in fact secured, it is still worth reviewing the attempts of the company to comply with the Philippine laws requiring an information and education campaign, social acceptability and obtaining community endorsements for their Environmental Compliance Certificate.

"We presented to the students of Jose Rizal Memorial College, and the barangay officials of Siocon Municipality," said Engr. Fidel Bontao, TVI Environment Manager. He says another public forum was also conducted sometime in 1996. Leaders of farmers, fishermen, fish-farmers associations, non-government organizations and various agencies attended. "There was a Canadian engineer speaking about the project and I translated it".

"At that time, we have good relations with the local government which was under Mayor Jesusa Pastor's administration",[20] notes Bontao. The present LGU leadership and Sangguniang Bayan council, he says, has a different position. Pastor affirmed this in an interview.[21] She recalls that the Subanon and small-scale miners brought placards and other protest paraphernalia to register their opposition during TVI's information campaign. But development was needed in Siocon, argues Pastor, "TVI spoke of farm-to-market roads and school buildings in far-flung areas".

Social Acceptability

Bontao claims that there is public support for TVI's operations. People are wary of such claims however; there are too many reports of underhanded tactics being used by TVI to show it has public support for its operations.

[20] 1988-1998.
[21] Interview held last December 2004.

For example, in June 2004, TVI announced through their website that at least 600 Subanon in Sitio Canatuan had signed a manifesto supporting the company's project.[22] In October of that year, the Save Siocon Watershed Paradise Movement (SSWPM), a multi-sectoral organization composed of associations of farmers, rice millers, fish-farmers, irrigators, former MNLF fighters turned peace and development advocates, and Subanon protesting TVI's operations, gathered six affidavits contesting the authenticity of the signatures of support.

One affiant, Taibun Taconing attests that he was not aware that his name and signature were included in the manifesto supporting TVI's operations. In fact, he opposes TVI. He also states that he does not know how to write, so his alleged signature on the manifesto was very questionable. In fact, Taconing "signed" his affidavit with his thumbprint.

Similarly, affiants Meding L. Tumaban, Danilo Tumaban, and Rowena Bason also say that they were not aware that their names were among the 600 signatures in support of TVI. They are in reality against TVI mining operations in Sitio Canatuan, as they declared in their affidavits. The two other affiants, Jolly M. Sagubay and Rey Fiel, allege they were respectively misled and pressured into signing the pro-TVI manifesto.

"How do we know that attendance sheets were not used for other purposes such as attaching them instead in manifestos and petitions that endorse mining operations?" asks Concepcion A. Capitania, Municipal Local Government Office-Department of Interior and Local Government officer, who observes that the people in Siocon have now become wary of signing their names on these sheets. The Subanon aligned with Anoy, for example, simply refuse to attend dialogues or consultations, let alone sign attendance sheets or resolutions, as a sign of their opposition to the company.

[22] See http://tvipacific.com/063004supp.shtml.

Local Government Endorsements

One of the DENR requirements for TVI to be able to extend its exploration period and partial declaration of mining project feasibility[23] in 2002 was the approval and/or endorsement of TVI operations from at least two affected barangays.

The company submitted three barangay endorsements:

1. Resolution No. 08, Series of 2002 by the Sangguniang Barangay of Tabayo, Siocon, Zamboanga del Norte;
2. Resolution No. 06, Series of 2002 by the Sangguniang Barangay of Kilalaban, Baliguian, Zamboanga del Norte;
3. Resolution dated Oct. 4, 2002 by the Sangguniang Barangay of San Jose, Baliguian, Zamboanga del Norte.

It is interesting that Barangays Kilalaban and San Jose are part of Baliguian, a neighboring municipality of Siocon unaffected by TVI's mining operations. TVI's use of these two barangays is explained by the fact that by 2002, 25 out of Siocon's 26 barangays had already made a stand against TVI mining operations.[24]

But what is more intriguing is Barangay Tabayo's endorsement. On March 24, 2003, the Sangguniang Bayan[25] of Siocon summoned Barangay Tabayo's officials to respond to two issues.

First, Kagawads Vivencia Davi and Eriberto Lobrigas, elected council members of Barangay Tabayo, questioned the resolution saying that they were not aware their barangay deliberated on it and approved it. In the resolution, their names are among those who approve of TVI's operations, when they are against small-scale and

[23] Sec. Horacio C. Ramos of DENR signed the order on Oct. 28, 2002.

[24] Subsequently, 181 of Siocon's 286 barangay officials signed a declaration opposing large scale-mining on October 2003.

[25] Municipal council.

TVI mining operations. Moreover, according to Councilor Lunie Lucas, who chairs the Committee of Environment, when the Sangguniang Bayan reviewed the minutes of the meeting dated September 18, 2003, they discovered that Davi and Lobrigas were actually absent.

In response, Bonifacio Patoh, Barangay Captain of Tabayo and a Subanon, insists that the two were aware that Tabayo's barangay council was planning on passing a resolution approving it.

The second issue was the discrepancy between the document passed to the Sangguniang Bayan entitled "Resolution No. 6, Series of 2002", and "Resolution No. 8, Series of 2002" that was used as a basis for MGB's approval of TVI's application for renewal of exploration permit.

As mandated by the Local Government Code of 1991, any resolutions passed by the Barangay Councils require that a copy be provided to the Sangguniang Bayan. But Tabayo's Barangay Council failed to furnish the SB with the complete document of the resolution in question. Sangguniang Bayan members also pointed out that the document lacked the necessary and appropriate signatures certifying the its contents as true and correct. Thus, it should be considered null and void.

However, before the session adjourned, it was resolved that the Sangguniang Bayan of Siocon should be provided a complete version of the document. To this day, according to Lucas, Tabayo's barangay officials have yet to submit it.

Finally, it was made clear that Barangay Tabayo endorsed TVI's renewal of its exploration permit in Resolution No. 6. The barangay resolution relied upon by the MGB was Resolution No. 8. Parenthetically, it is interesting to note that a year later, nine barangay officials of Barangay Tabayo, signed a declaration opposing the entry of large-scale mining.

Despite the clear defects of these barangay resolutions, the MGB approved TVI's application for renewal of its exploration permit.

Views from TVI

"We have created expectations," Yulo Perez, TVI's Mine Manager confides. TVI provides a monthly honorarium for Council of Elders members of at least P 6,000. This covers their personal expenses for their monthly meetings. Yet, the management has to deal with additional demands from members of the Council of Elders that range from providing gasoline for one member's motorcycle trip, to a son's upcoming wedding. "Sometimes they ask for unreasonable things," he adds.

Tumangkis discloses that they have recommended the dismissal of TVI's employees because they find their behavior unacceptable to Subanon customary ways. He relates that TVI asked the Council if it is possible to build another structure within the CADT area. They have approved it but the project did not push through, he says.

Recently, the Council asked for an additional 1 percent in royalty. As of December 2004, TVI has yet to respond to their demand. Meanwhile, the mining company and the COE are preparing for a relocation of their 'community' (the pro-TVI at least) and the construction of a school building.

When asked about the FPIC, Tumangkis and some of the members of Council of Elders understand that consent should first be obtained from the affected community. But in terms of the processes, they still have yet to be fully informed. This is a gap that is not viewed as important; they refer all legal matters to Atty. Pablo Bernardo.

Conclusions

Contemplating Consent

In analysing the experience of the people of Canatuan in relation to the issue of free and prior informed consent, it is imperative that it should be contextualized and examined in terms of their engagements with the state, which ranged from writing letters of appeal, petition signings, rallies, picketing, filing of court cases to securing an audience with the United Nations, to appreciate the depth and

breadth of their struggle to defend their ancestral domain and assert their control of the resources within their territory.

Despite such initiative and perseverance, it is clear that the Philippine government, through the MGB, DENR and even the local government unit of Siocon, has continuously disregarded community appeals for cancellation of permits and mining applications since the very onset of the issue in the 1980s, and despite the subsequent issuance of a CADC and a CADT in their favour. It was only when Anoy's faction was able to address an important United Nations agency that the government was forced to address the demands of the people of Canatuan. This speaks of a "profound cultural and ideological difference" in the way rights, development and governance are understood by the Subanon opposed to TVI, on one hand, and the state, the corporation, and those who support it, on the other (following Gatmaytan 2005).

The case of Canatuan moves us to reflect critically on IPRA's effectiveness in protecting and promoting indigenous peoples rights vis-à-vis development projects instigated by the state and by corporations. This study has indicated how relationships within Canatuan and within Subanon familes are being ripped apart over the question of development; the situation may be exacerbated in other areas in the Zamboanga peninsula by ethnic tensions between *Bisaya* and Subanon,[26] between Subanon and Muslims, and between Muslims and *Bisaya*.

Though IPRA is a legislative landmark in indigenous peoples struggle, it should not be regarded as the cure-all for all indigenous woes. In fact, indigenous groups and non-government organizations should be more vigilant than ever because with the IPRA, the state is not only able to conduct surveillance, but also homogenize—indeed, as this study suggests, literally invent—indigenous groups and culture, instead of respecting actual local practices.

[26] This was observed during fieldwork in the areas of Midsalip, Zamboanga del Sur in May 2003 and in Lison Valley, Zambaonga del Sur in March 2004.

The law's provisions on free and prior informed consent were supposed to be an instrument of empowerment for indigenous peoples, which allow them to determine their economic, social and cultural development in relation to development pursuits of the state and other actors. But as the reader can see, the process can be circumvented, and by the state itself no less. Moreover, the procedure was amended in 2002, and is again being reviewed to make it even more hospitable for foreign investors and firms, and align it with the state's market-driven economic paradigm.

Finally, in assessing the IPRA's value in protecting indigenous rights, one should consider how the NCIP, the agency that was supposed to fight for indigenous peoples, simply subscribed in this case to the legal discourse deployed by TVI to avoid the need for securing free and prior informed consent; i.e., that since TVI's rights to minerals were established through an MPSA issued before the area was certified as ancestral domain of the Subanon of Canatuan, there is no need for their consent. The irony there is that the IPRA's provisions on pre-existing rights were used by the NCIP *against* an indigenous community. Clearly, this fledgling government agency botched in fulfilling its mandate; it could have insisted that community consent should first be obtained. Instead, it meekly collaborated in what the MGB and DENR wanted. Thus, no free and prior informed consent was secured in Canatuan.

Strengthening Indigenous Rights

This study also brings to the fore a number of other issues.

As already noted, the IPRA suffers from false or generalized notions about indigenous peoples and cultures. A case in point highlighted by this case study is the law's assumption that indigenous communities are homogenous. As the reader has seen, however, Canatuan is divided between Subanon who are from Canatuan and those who migrated there as small-scale miners, between Subanon in favour of TVI and those opposed to it, between Subanon who respect their political institutions, and those who do not. Anthropologically insensitive (Gatmaytan 2000), the IPRA has a frozen, static view of indigenous peoples. Can a law that fails to appreciate the realities of indig-

enous peoples' lives today—that they are not pristine isolates, but have long been engaged in negotiations with political, cultural and market forces at various levels and scales—be truly useful in the long term? This underscores how the IPRA's substantive content should be critically reviewed.

This case study also highlights how, being an important actor, NCIP's misdeeds, errors or insensitivities can have a profound impact on the welfare of a community. The NCIP personnel's ignorance of their own culture is disturbing enough; their intentional invention of institutions and leaders, and defiance of indigenous culture destroys all faith in their integrity. Moreover, their operational structures should also be scrutinized particularly in terms of monitoring of existing contracts and rights. TVI's exploration permit expired in 2002. To be extended, free and prior informed consent was needed. The NCIP however failed to push for this, but instead colluded with DENR and MGB in denying the need for consent, or overlooking the defects of the barangay endorsements submitted by TVI.

The free and prior informed consent procedures should also be revised. It should not be treated as a one-size fits all legal process. A particular guideline should be prescribed for a particular extractive industry.

As Atty. Lingating's case underscores, the NCIP should be held accountable for its mis/representations regarding indigenous cultures. Unfortunately, the case he, Sidan Tii and Fernando Mudai filed was dismissed by the NCIP for lack of standing. The critical question here is, since it concerns the violations of cultural traditions and institutions of the Subanon, is it not right if NCIP abides by the indigenous justice system of the Subanon? Who else is more knowledgeable about Subanon political institutions than the traditional Subanon authorities on political institutions?

These issues however are located within a larger field of contestation; i.e., competition for resources. The government's bias for foreign-owned large-scale mining clearly is impinging on the rights of indigenous communities. It also impinges on the rights of small-scale miners, some of whom are also members of indigenous groups. One of the many side-issues to this case revolves around a discourse

that pits illegal and environmentally destructive small-scale miners against registered, tax-paying and—because of access to capital, technology and equipment—environmentally friendly corporations. Small scale miners contribute to the national economy; why doesn't the government develop a mutually beneficial relationship with them, help them develop their awareness and technology? How else should indigenous communities exercise their priority rights and benefit from mineral resources within their territories except through small-scale mining?

Like the small-scale miners, the farmers, fish-farmers and fisherfolk downstream from Canatuan are also affected by TVI's mining operations.[27] Should they not be allowed to participate in deciding whether or not Mt. Canatuan should be opened to corporate mining, specially since in this case, many of them are Tausug or Yakan, hence entitled to NCIP's protection? Should their pleas be ignored and disregarded until they show signs of Minamata-like diseases?

Finally, it is clear from the Subanon experience in Canatuan that community organizing that includes strengthening of indigenous governance and decision-making processes should be strengthened, as to take advantage of legally recognized indigenous rights and instruments of empowerment; e.g., free and prior informed consent.

[27] Since the 1980s, "our children are afflicted with skin diseases and silt is fast accumulating in Barangay Bucana and in other coastal areas," complains Hadji Sharifa Kumala Mujala, who represents the Bangsamoro people in Siocon. "Our fingerlings die-off easily," says Rosendo Canlas, president of the Siocon Fish Farmers Association. He also observed reduced fish harvests after mining operations commenced in Canatuan. In November 30 1996, New NANDAU Today reported that Subanons Gorgonio S. Balawag and Ponciano Abacial, who were fishing in Litoban River, suffered from fungal infections caused by chemicals.

This should be undertaken in tandem with efforts to strategically address communities' economic needs.

These are only some of the many possible suggestions and reflections drawn from the case of the Subanon of Canatuan. It is hoped that their experience can contribute to the further development of the indigenous movement in Mindanao and in other parts of the country.

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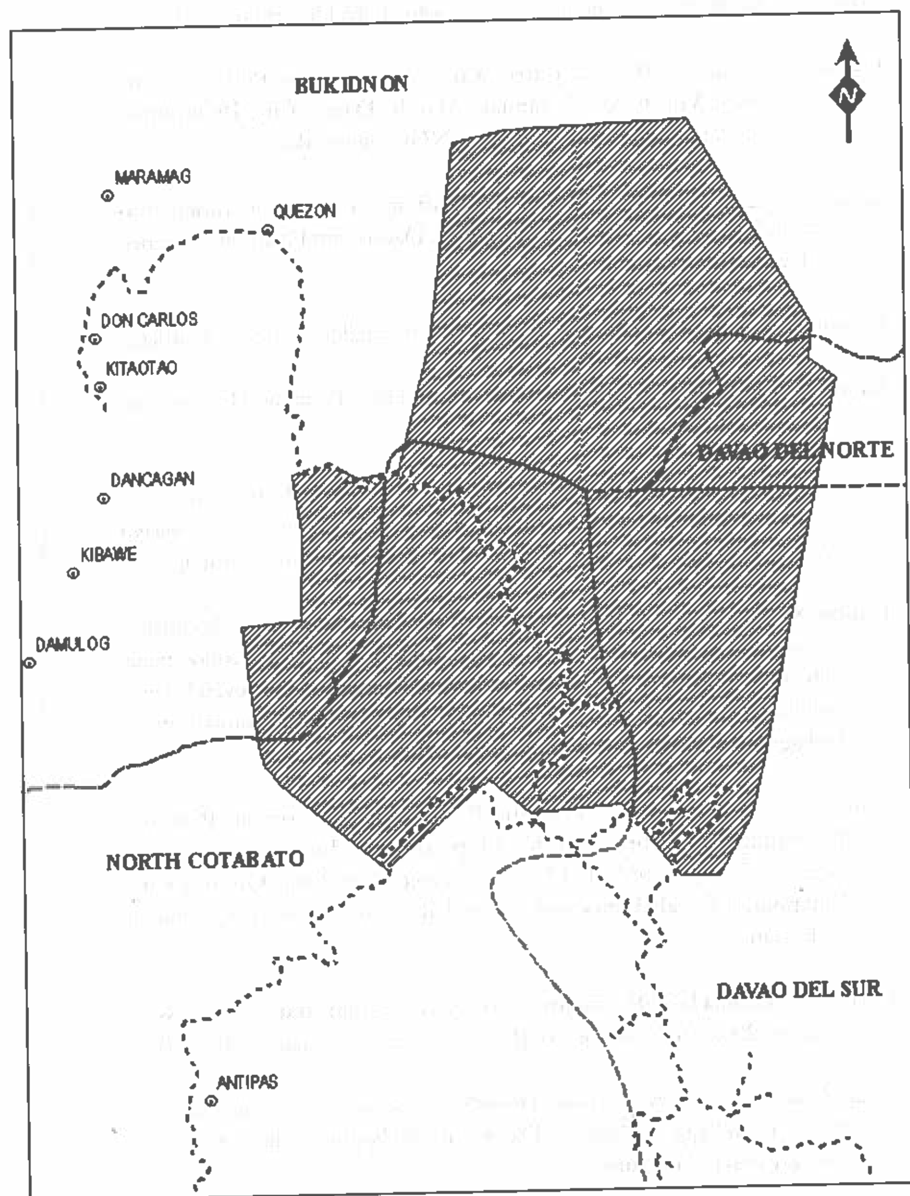

IRINA WENK

Indigenous-Settler Relations and the Titling of Indigenous Territories in Mindanao: The Case of the Matigsalug-Manobo

Introduction and Preliminary Statement

The ancestral territory of the Matigsalug covers parts of the provinces of Bukidnon, Davao del Sur, Davao del Norte and North Cotabato on the island of Mindanao. It is the largest indigenous territory covered by a government-certified title of communal ownership in the Philippines so far. The Matigsalug themselves—owing to their outstanding recent history—have been a show and trial case for varied programs and policies affecting indigenous peoples. From being feared rebels opposing encroachment into their territory by outsiders, they turned into recipients of the state's aid and patronizing benevolence in the second half of the 1970s, only to later make a claim to territory under DAO 2. In the new millennium, they delineated and enlarged their territory and received a certificate of title on the basis of the recently enacted IPRA. The Matigsalug have thus drawn the government's attention in several ways and received support from international donors as well as from various national advocacy organizations. Like all other indigenous groups of Mindanao, they have suffered displacement and dispossession as a consequence of heavy in-migration of lowland Filipino settlers. These circum-

stances were what drew my attention to the Matigsalug case. As Ph.D. candidate in Social Anthropology at the University of Zurich, Switzerland, I am interested in historically evolved antagonistic as well as accommodative indigenous-settler relations and tenure insecurity in upland Mindanao.

Delineation and titling of indigenous territories have become significant components of the international struggle for recognition of and debate on indigenous peoples' rights. Initiated in Latin America and intensely discussed, disputed, and partly implemented in Canada, Australia, and New Zealand, the policy reached the Philippines in the early 1990s. In response to civil society and indigenous peoples' pressure, global development policy trends, and international advocacy, the Philippine government passed a comprehensive law on indigenous peoples' rights unprecedented in the modern legal history of Southeast Asia. Through the IPRA of 1997, the state recognizes and pledges to promote the rights of the country's indigenous peoples. On the basis of this statute, indigenous groups can delineate and claim a communal but private title to their territory or Ancestral Domain, called the CADT. However, when surveying in Mindanao, it becomes evident that indigenous peoples are no longer the exclusive inhabitants of areas they claim as Ancestral Domain on the basis of time immemorial occupancy, i.e. Native Title. As a consequence of heavy in-migration of settlers originating mainly from the Visayas region of the Philippines to Mindanao between 1948 and 1970/80s, and many of these settlers' subsequent migration into the uplands in search of "greener pastures", lowland Filipinos have long established themselves in many a territory claimed by indigenous peoples today. Even today, they are in the process of doing so and in some cases constitute majorities in upland areas. Delineation and titling of indigenous territories, therefore, does not mean bounding ethnically homogeneous enclaves but distinctly heterogeneous spaces, in which the claimants hardly resemble the image of homogeneous indigenous communities found in the IPRA.

In this paper, I want to explore to what extent IPRA provides means for addressing conflictive claims to land and natural resources, antagonistic relations with settlers and other external actors, and for halting further encroachment into indigenous territories.[1] The significance of demographically heterogeneous spaces for delineation and titling processes—through which "indigenous" territories are often (re)created—shall be the point of departure.

The main limiting factor to the research, i.e. to directly engaging with residents, was my limited knowledge of the *Cebuano* language. It should be noted that the field research undertaken in 2004 marked only the beginning of a longer period of field engagement in 2006/07. For this reason, insights presented here are considered preliminary and are likely to be revised in the near future.

Background

Ethnographic Profile of the Matigsalug

The Matigsalug are a sub-group of the Manobo, one of the main ethno-linguistic groups of Mindanao. They inhabit the middle Davao River area covering parts of southern Bukidnon, North Cotabato, Davao del Sur, and Davao del Norte and number between 24,000 and 26,700 people approximately.[2] Their territory consists of flatlands and undulating hills as well as steep mountains with elevations of 100 to 800 meters above sea level. About 44 percent of the Matigsalug's territory is considered mountainous, with slopes ranging from 30 to 50 percent and above (PPDO 2003:4). *Barangay* Sinuda lies in a flat

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[1] See Ph. D. proposal submitted to the NCCR North-South, URL: http://www.nccr-north-south.unibe.ch/document/document.asp?ID=1202&refTitle=Conflict%20Transformation&Context=IP and Wenk (2007).

[2] The first figure is drawn from Application census, AnthroWatch (2002) and includes Ata-Manobo living within the same territory. The second is from Peralta (2000:40,101).

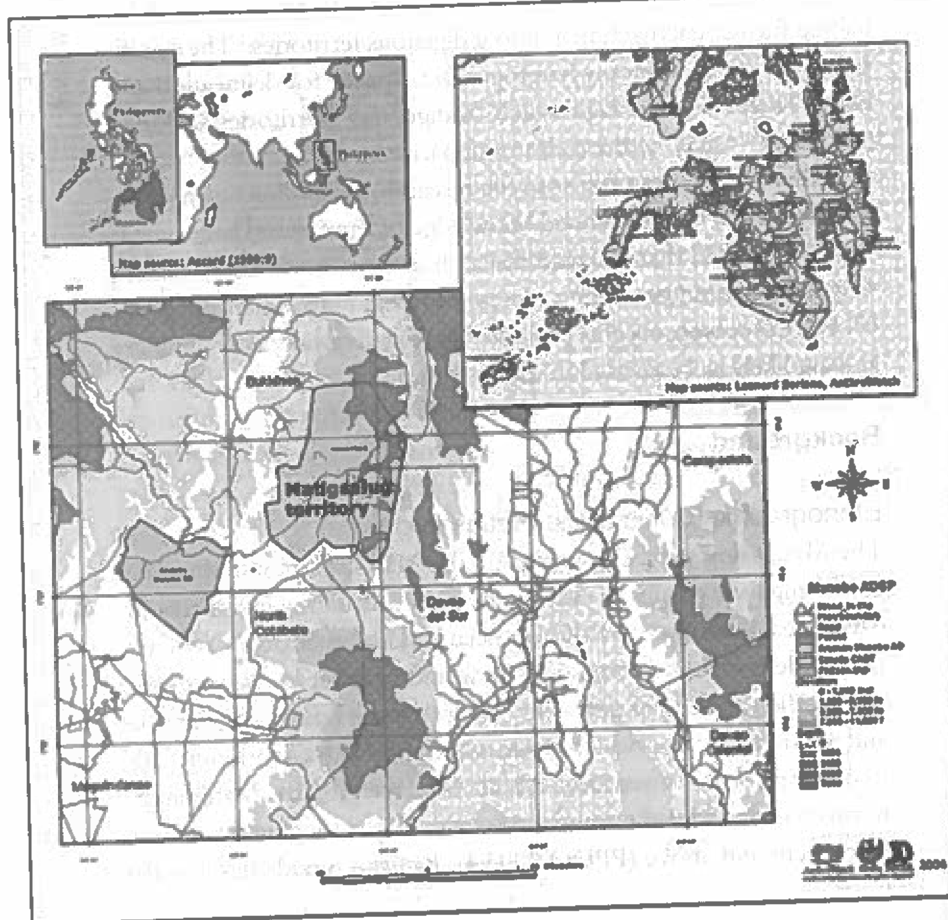

Fig. 1. *Location of case study area in Mindanao.*

extended valley along the Davao City to Cagayan de Oro highway, its *sitio* are located in the surrounding hills.[3]

Politically, the Matigsalug, as all other indigenous peoples of Mindanao, recognize several orally skilled and powerful male individuals as headmen, either called *datu* or *timuey*, who are not integrated into a centralized political system.[4] The *datu* exercises multiple functions on the social, economic, ritual, judicial and political level. Within the last three to five decades, there has been a trend towards the emergence of supreme leaders and, thus, towards more hierarchical tribal structures. The supreme tribal leader or *pinu'n datu* in the Matigsalug vernacular is assisted by a council of elders (*sungkalug datus*) and there is tribal council composed of *sulay datu* in each *barangay*. On the settlement level, there are *sitio* tribal leaders in charge of daily affairs. Women leaders called *ba-e* occasionally become members of tribal councils; however, tribal politics and governance remains the men's domain. Datuship as we know it today is a relatively recent, turn of the 20th century, phenomena. Today's recognized leaders of settlements and in some instances whole regions were in most of the

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[3] According to existing government maps, Sinuda is part of the Municipality of Kitaotao, Bukidnon. According to a recent GPS survey, and validation with satellite images, conducted by AnthroWatch, Sinuda actually forms part of Barangay Sumalili, Arakan, Province of North Cotabato (personal e-mail communication with Sabino Padilla, 20.5.2005). The people themselves say this part of their ancestral domain is part of Kitaotao. This is only one example of unclear local boundaries within a contested frontier area. This political issue, however, shall not be further discussed at this point. See Wenk (2007) (draft) and forthcoming Ph.D. thesis for a more detailed discussion and analysis.

[4] In the Philippines, *datu* or *timuey* are translated as "chief" or "chieftain". However, this denomination is not used by the author, as headmen of tribal societies in Mindanao do not correspond to what is known as "chief" or "chieftain" in social anthropology, which refers to individuals occupying an office with centralized authority.

19th century simply warriors or *bagani* who had gained the respect of their fellow men through ferocity in battle. With the evolvement of larger settlements and decline in the importance of such roles as warrior, arbitrator, go-between, and shaman as a consequence of American colonial pacification and other sociopolitical and economic transformations, individual headmen gradually incorporated these tasks and expanded their political power (Manuel 1973:179f, 190ff.). Datuship continues to exist today but has become more adapted to modern organizational structures as a consequence of community organizing efforts by NGOs and international donors.[5] Tribal political structures coexist with government structures on *barangay*, municipal, and provincial level. Indigenous areas today are therefore also socio-political environments of legal pluralism with explicitly and implicitly act out conflicts over the supremacy of tribal vis-à-vis government authority.

Shifting cultivation is still predominant among the indigenous population but the practice is severely limited, as fallow periods are short and agricultural cycles no longer adaptive to natural regeneration processes of a (once) tropical forest area. As a consequence of in-migration, massive deforestation, land pressure, and government programs, indigenous peoples had to shorten optimal fallow periods and have increasingly abandoned their semi-sedentary way of life within the last half-century (CCP 1994:122; Peralta 2000:40). Forest cover within the Matigsalug territory has been reduced significantly and was down to 16 percent by the end of the 1990s (FEMMATRICs 1998:8f.). The transformation of primary forest into grassland—which in the case of Matigsalug territory covers

[5] The supreme tribal chieftain of the Matigsalug, Datu Roelito A. Gawilan for example, is at the same time, the chair of FEMMATRICs. FEMMATRICs as a people's organization has a 56 member Board of Trustees comprised of respected Matigsalug leaders as well as a secretary, treasurer, and management staff based in Sinuda.

Fig. 2. *View of denuded Sinuda valley and the surrounding hills (photograph by Christoph Schwager, 2004).*

more than 58 percent[6]—makes it very difficult for indigenous farmers to convert land into productive farm lots (Agbayani 1993:53). Yet, the Matigsalug still rotate their upland fields and burn the *cogonal* grass before planting corn, sweet potatoes and other root crops as well as a number of vegetables. Only 23.5 percent of the land is considered suitable or is actually used for agriculture. Land allocated to upland rice production covers a meager 3.5 percent of all suitable land. Flat land for wet rice production and double cropping is scarce and largely confined to the Sinuda valley. It is either retained in the hands of a few leading Matigsalug families or is occupied and cultivated by

[6] Data on actual land use and vegetation cover within the Matigsalug territory is drawn from the ADMP formulated in 1998 (FEMMATRCs 1998). These figures are somewhat outdated, and do not cover the entire titled area. Nonetheless, they give an idea of trends in land use and are presented here for lack of more recent land use data.

settlers. According to observed and narrated changes within the last two to three years, land for paddy fields has rapidly expanded and must today exceed the above indicated figure of a mere 0.55 percent of the total land area. Hunting, fishing, trapping and food gathering as auxiliary subsistence activities have become rare nowadays.

In 1995, the Matigsalug were the fifth indigenous group that managed to have its claim to territory recognized by the government in the form of a CADC. However, such certificates issued by the DENR did not extend ownership rights to the claimant groups and provided limited tenurial security. These prominent needs of the indigenous peoples were only addressed in the IPRA in 1997, which provided a means for converting CADCs into CADTs. The Matigsalug were awarded their CADT in October 2003.

The titled Matigsalug domain fully includes 28 *barangay* as well as parts of 14 others in the provinces of Bukidnon, North Cotabato, Davao del Sur, and Davao del Norte, covering an area of 102,324 has. It is thus the largest indigenous territory titled in the Philippines so far. Due to historical circumstances elaborated below, Sinuda is the socio-economic and political centre from which all activities originate. The total population within the titled domain is 27,980, of which approximately 12,419 belong to an indigenous group, mostly Matigsalug. The non-indigenous settler or migrant population is substantial and lies between 55.6 and 64 percent, depending on the census calculation.[7] Of the 27 barangay fully covered by the CADT, eighteen have a settler majority. Of these, sixteen have settler populations over 60 %; and of the latter, seven have settler populations of more than 90 %. On the other hand, only four barangays have settler populations less than 15 %. The average population density of 27.3 persons per square kilometer appears

[7] First figure is my own calculation based on the application census, AnthroWatch (2002). It includes the 27 full *barangay*; the second figure is from the said census, but includes more areas than actually certified according to the official certificate of title (CADT 2003).

strikingly low compared to what is found on average in the province of Bukidnon (128 p/km²), in Mindanao (192 p/km²), and on national level (255 p/km²).[8] In upland areas such as the one in focus, however, where shifting cultivators have faced extensive depletion of natural resources, competition over remaining natural resources is critical and the generated conflicts substantial.

Changing Concept of Land and Basis of Indigenous Claim to Territory

It was only after World War II that the Manobo slowly became conscious of the commercial value of land. While the corporate ownership of land was known, recognized, and enforced—fines were imposed for trespassing in communal territory by outside groups—land itself was never a source of inheritance unlike individual or family possessions. The practice of shifting cultivation neither enabled the continued occupancy of a fixed geographical space, nor brought forth individual and fixed ownership of land. With the introduction of different crops such as coffee and *abaca* (Manila hemp) in the Davao area under American colonial rule, as well as monetarization, many Manobo began settling more permanently. The shift from warlike to peaceful activities as a consequence of colonial pacification efforts further facilitated these developments. With the government's introduction of public land surveys in the 1950s and the incipient flow of land-seeking migrants into their territory, those Manobo groups most exposed to these developments gained an understanding of the value of land beyond their commonly held conceptions (Manuel 1973:139ff.): Settlers introduced the concept of private ownership to a people who had never seen land as a commodity. And slowly but continuously, land parcels changed hands from the indigenous shifting cultivators to incoming settler families. In the 1960s/70s, Manuel (1973:143) observed "... people are clamoring

[8] National census 2000, National Statistics Office (NSO), Philippines

for more land surveys by the government in order that their ancient claims could have a legal basis". This was several decades before the emergence of legal instruments enabling indigenous peoples to lay claims to and title their ancestral territories under DAO 2 and eventually the IPRA of 1997.

Today, the Philippines' indigenous peoples' demands are premised on the historically incontrovertible fact that they own their ancestral domains by virtue of prior and long-term occupancy of the same and not by virtue of state law (Gatmaytan 1992:11ff.). It is thus a compromise indigenous groups agree to, when they accept titles to *their* land from the central government, which itself claims to be the rightful owner of the land in question.

The IPRA allows indigenous groups to title areas held under claim of ownership since time immemorial. "Time immemorial", as indication of how long a people must have been occupying a territory—indeed a concept worth its own study—is defined in the statute as a period of time as far back as memory can go. In order to make sure that the time immemorial criteria is adhered to, ethnographic and historical proofs of claim formulated for CADT applications sometimes slightly overstretch historically traceable facts. In the case of the Matigsalug it was estimated that starting from the ancestor Apo Tahuranon, they can trace back 51 generations in their genealogy of tribal leaders. Based on the universally accepted standard of 30 years per generation, this would amount to 1,580 years of continuous or uninterrupted occupancy of their ancestral domain (Rodil 1999:2,79ff.).

Apart from such impressive genealogical time spans, evidence of indigenous peoples' links to the land as basis of a claim to territory are oral history, legend, mythology, ethnonyms, and customs. Adhering to the discourse of the international indigenous peoples' movement, the basis of the Matigsalug claim to territory, as found in the official government document attached to the certificate of title (CADT 2003:2,6f.), reads as follows: "Land is the source of their identity and provides the material and spiritual link between the past, present, and future generations. Indigenous peoples regard themselves as the custodians of their domains and their age-old knowledge of

the environment has assured the survival of the tribe for many thousand years. Their history, the greatness of their ancestors and the supremacy of their culture have been immortalized in the poetic chants of their native priests. The ancestral domains over which indigenous peoples assert and claim ownership served them as residential areas, hunting grounds, agricultural lands and burial grounds, and they have collectively and individually owned rivers and other bodies of water, forests, minerals and other natural resources as far back as memory goes."

Other Stakeholders in Matigsalug Territory

Christian Filipinos who in-migrated from regions in- and outside of Mindanao within the last 40 years represent a demographic majority of at least 56 percent within the titled domain today. These settlers form no homogenous category and are distinguished in Matigsalug emic categories according to time of arrival, economic position and behavior vis-à-vis the indigenous inhabitants as *karaan nga Bisaya* ("first Christians" or "old Bisaya"), *recent settlers*, and *rich Bisaya*.

The *first Christians* made their way into the former hunting ground of the Matigsalug at the end of the 1950s until 1974, coming in the wake of logging and ranching activities. They were few and welcomed by the Matigsalug as bearers of "development", from which the Matigsalug leadership expected to benefit in various ways. The settlers were given land to occupy and develop by the leading *datu*, and in some instances, notional kinship ties between *datu* families and the newcomers evolved. Some intermarried. Unfamiliar with the environment and pioneers in the truest sense, these settlers were dependent on the Matigsalugs' generosity and could ill afford to antagonize the latter. Today, those first Christians who still reside in the area view themselves as part of the "community" having equal rights with the Matigsalug to benefit from whatever "comes from the title". They are engaged in agriculture, mostly growing corn and wet rice, sell flowers, and run sundry (*sari-sari*) stores and eateries along the highway.

Although these first settlers do not constitute a major threat to the Matigsalug claim to authority over their domain, this first generation of settlers has significantly contributed to one of the most press-

ing problems, the presence of *recent settlers* and *rich Bisaya*. During the 1980s, when land was still easily available, the first Christians invited their relatives to come and join them. Later, they started selling land to newcomers. These more recent settlers, however, no longer depended on the indigenous inhabitants' goodwill to establish themselves and were not very eager to build up amicable relationships with the Matigsalug. Most problematic today, however, are those *Bisaya* who have of the financial means and political connections or influence on local and city/provincial level to acquire large landholdings for recreational or plantation purposes. They may be characterized as absentee land claimants who do not interact with the local population. They have neither respect for indigenous culture nor do they recognize the chartered rights of the indigenous peoples to the area. In comparison to this last category of settlers, the Matigsalug bear less grudges against the poorer but nonetheless entrepreneurial recent settlers who primarily occupy land along the highway. Since most of them do not assert ownership over the lots they occupy and live on land undesirable to the Matigsalug, the latter tolerate their presence.

Barangay councils and municipal governments within the titled domain are mainly composed of and controlled by recent settlers. These local government officials tend to be unaware or ignorant of the IPRA, and have little understanding of the indigenous peoples' demands, rights, and culture. In regards to land transactions, *barangay* councils and the Federation of Matigsalug-Manobo Tribal Councils or FEMMATRICs compete for authority, especially since the passing of IPRA. While the former base their claim for authority on the Local Government Code of 1991,[9] which entitles *barangay* councils to revenues from all land transactions, the tribal federation should have sole authority when it comes to land and natural resources issues since the awarding of the CADT in 2003. Alienation of any portion of land within the ancestral domain is prohibited under the IPRA, yet *barangay* councils have continuously engaged in such illegal transactions.

[9] Republic Act No. 7160.

In order to minimize conflicts between these two existing bodies, the Matigsalug attempt to integrate interests of both councils by promoting tribal leaders as *barangay* councilors. In rare cases, members of the indigenous elite are elected government officials on municipal level. Hardly to be differentiated from the regular *Bisaya* politician in both motivation and level of corruption, these individuals with indigenous descent are eager to secure themselves clientelistic tribal loyalties through occasional dole out activities and selective but effective support of land titling activities. This usually happens in opposition to provincial and city governments, which seldom recognize the indigenous peoples' chartered rights and tend to ignore the existence of titled ancestral domains within their geographical and political sphere of influence.

A further stakeholder within the titled domain of the Matigsalug is the NPA, the armed wing of the Communist Party of the Philippines. Active in the Philippines since the end of the 1960s, the NPA has long been active in the forested hinterlands of Mindanao. There, the guerilla cadres are primarily composed of *Bisaya*, but they recruit indigenous people as fighters. Indigenous inhabitants in many areas often find themselves caught in the crossfire between the military and the insurgents. A few years ago, people from several mountain settlements were displaced due to military bombings, the inhabitants taking temporary or permanent refuge in Sinuda. The Matigsalug reject the NPA because its presence brings the military into their midst; recruits young men who then leave their families to join the insurgency; and collects revolutionary taxes in the form of food contributions from villagers. According to the Matigsalug, the guerilla has "no respect for our culture" and disregards the authority of the leading *datus*. There are a number of reported NPA excesses and killings of tribal leaders and within the last 25 years. The sustained conflict also prevents people from working in swidden farms, as soldiers restrict them from moving outside the immediate village boundaries in areas of heightened NPA activities.

In the late 1990s, several groups split from the NPA due to internal differences, one of which has aligned with indigenous vigilantes to fight the NPA. Recently, news of an especially ferocious and military-

backed "vigilante group" active within the Matigsalug territory made regional newspaper headlines.[10] Some of the leaders of what is known as the *Alamara* are former military-trained members of para-military units.[11] Its members are said to be indigenous (Matigsalug) warriors or *bagani* violently set against the NPA. Some indigenous youth today join these fighters in order to seek revenge for the NPAs' killings of relatives.

Such circumstances are not exceptional in Mindanao's indigenous areas. They date back to the second half of the 1970s when many indigenous groups—especially recalcitrant ones—were resettled into reservations or so-called "strategic hamlets" and organized as vigilante groups to be used in Pres. Marcos' counter-insurgency war. Until today, these indigenous groups are supported (and partly armed) by the military to fight the Left-oriented insurgency. And it is easy to see why they continue to do so: with a CADT now in place, territorial defense through legal but also armed means, has become the core of indigenous policy and self-governance, to ward off the NPA or other unwanted outsiders.

[10] MindaNews. Wednesday, 9 January 2002. "Vigilantes want us out of our ancestral domain – Lumad." By Rex G. Ortega. URL: http://www.cyberdyaryo.com/features/f2002_0109_03.htm (13.4.05). CyberDyaryo, Tuesday, 17 August 2004. "Indigenous Peoples Condemn Ethnocide". URL: http://www.cyberdyaryo.com/press_release/pr2004_0817_01.htm (26.8.2005).

[11] *Alamara*, a Manobo word, is not the proper term for what is taking place within the area today as it means "collective attack" or "uprising" and better suits the events of 1975. Rather, it is a *p/mangayaw* or "vengeance war" against the NPA, to avenge the deaths of their relatives based on the notion of collective responsibility. Outsiders like the media use the term *Alamara* to designate a group of Matigsalug *bagani* who engage the NPA within the ancestral domain.

Discussion of Land Issue

History of Conflict

The Matigsalug's struggle for control over their ancestral territory did not begin with the application for a CADC in 1993. Rather, they talk of 30 years of struggle, at the very beginning of which is a nativist protest that grew into violent rebellion in 1975 against outsiders grabbing their land.[12] In 1955, a ranch was established in *Barrio* Dalurong which lies within today's CADT area. The local *datu* had signed a paper through which he agreed to the establishment of a ranch in their midst. However, he had not understood the real content of the document. He and other leaders subsequently sent petitions to revoke the signature to the Governor of Bukidnon, but in vain. In 1964, 1,963 has. of prime land in the municipalities of Kitaotao and Dangcagan were leased to the Mindanao Livestock Corporation owned and operated by Valeriano Bueno, a relative of President Marcos (Lao 1992:162). The Matigsalug who lived in that area, a total of 206 families, were ejected. When some resisted and killed one of Bueno's "cowboys"—as the ranchers' private armed guards are called—Bueno ordered all-out retaliation. This was carried out by his cowboys with the help of the Philippine Constabulary in the White Kulaman area in 1965. 140 Manobo houses were burned and their inhabitants expelled; they sought refuge in neighboring Dalurong (Rocamora 1979:16). The refugees were prevented from returning to their settlements, and wandering cattle destroyed their crops. There followed a time of hunger and illness (Rodil 1999:64f.). In 1969, the CNI, then the government agency for indigenous affairs, opened a resettlement area of 1,548 has. in Simod valley, Municipality of Kitaotao, for the resettlement of 258 Manobo families.[13]

[12] Collective action which targets migrants because of their foreign origins and perceived threats emanating from them, is called *nativist*.

[13] This is presumably the government's response to the eviction of the 140 Manobo families in White Kulaman and Dalurong, though no indication of this was found in the scarce references. Simod valley is today referred to as Sinuda.

Following the establishment of a cattle ranch, logging operations began in 1959 under the Kalinan Timber Corporation (KTC). The loggers set up their camp in the Bukidnon-Davao-Cotabato corner area, today referred to as Buda. Major causes of trouble with the loggers were that KTC began taking over land cultivated by the Matigsalug and a few early settlers for rice and corn production; and second, that they cut trees in sacred places. Finally, their security guards mauled some local residents (Rodil 1999:67, 74f.).

In 1970, three Ilonggo settler families moved into Simod valley with the intention of setting up a ranch. At that time, the valley was still covered with primary forest and sparsely settled since the Matigsalug mainly used it as a hunting ground. The leader of the settlers, Jess Kabugsa, was related through marriage to the most influential *datu* in the area, Datu Lorenzo Gawilan.[14] In 1972 he won the elections for *barrio* captain with Gawilan's support. The Matigsalug supported Kabugsa because they expected him to teach their children the knowledge (for example in agriculture) of the *Bisaya*. But Kabugsa had others things in mind, and as soon as he established himself in local politics, he hired cowboys to drive out the few Manobo families living in the valley and keep away incoming ones, while inviting his relatives from other provinces to come and join him. Kabugsa and his followers not only tried to control the *barrio* council and through it, the land, but also attempted to break Gawilan's influence by accusing him of arson and carrying firearms; Gawilan was imprisoned twice on the basis of these accusations.

In light of these developments, the Matigsalug leadership realized they were losing control over land as well as political power. A final trigger for their violent response to encroachment was the murder

[14] Datu Gawilan's influence reached well beyond the Matigsalug territory and he had additionally extended it through intermarriage with a woman of the Pulanhigon, another Manobo sub-group. For a historical account of the evolvement of his family's region-wide influence, cf. Manuel (1973).

of six Manobo by the armed guards of Valeriano Bueno in White Kulaman for allegedly having stolen a cow, on February 3, 1975.[15] Datu Gawilan—then hiding in the mountains to escape a third arrest and sobered by the government's inadequate response to their complaints—decided to fight and summoned his people in the mountains. He received support not only from the Matigsalug but also the neighboring groups such as the Pulangihon. The angered Manobo began attacking logging camps, military posts, and settlers in a vast area covering parts of the provinces of Bukidnon, Cotabato, and Davao del Sur. The rebellion lasted from May 10 until July 1975, and approximately 300 persons were killed, among them 50 military men.[16] Into each dead body, the Matigsalug inserted a sharpened bamboo stick that held a paper with the following message: *"Revenge for the land of birth. These messages are not sent to you through the living; rather those who are dead will be the ones to deliver them."* The notes were signed by *Datu* Gawilan and caused much amazement amongst the government soldiers who found them.

Datu Gawilan and his men eventually laid down their weapons at the beginning of July 1975, as resistance could not be sustained for much longer. He and his closest followers were subsequently flown to Simod by helicopter and 19 *datu* were then taken to Manila, where they negotiated with Pres. Marcos and eventually signed a peace agreement. The President granted them full and unconditional amnesty in a well-staged media coup where tribal leaders in full costume pledged allegiance to the state and affirmed their loyalty to the regime (Acosta 1994:199; Rodil 1999:56).

All logging, pasture, and agro-industrial leases within the territory claimed by Datu Gawilan—except those he consented to—were

[15] For a detailed account of the so-called "White Kulaman Murder", cf. Various Reports, 21 March 1975, pp. 22-25; Rodil (1999); Rodil (2003); Wenk (2006).
[16] The reported number of victims varies widely, depending on the informants or sources, and reaches as high as 800 (cf. Rodil 1999:71).

cancelled.[17] Marcos authorized Gawilan to negotiate with neighboring "rebels" to return to the fold of the law; he ordered him to go back to this ancestral land, teach the people to do what is good, tell them how to plant permanent crops, and send the children to school (Rodil 1999:71). Marcos also promised to set up a "Matigsalug Municipality".[18] During the two weeks following the negotiations in Manila (July 14-16 1975), small government planes picked up Kabugsa and other unwanted settlers and brought them out of the area. On his return, Datu Gawilan summoned his followers in Simod and told them to move down from their mountain settlements and be united in the valley. Simod consequently became the first tribal reservation/strategic hamlet in Bukidnon, administered by the infamous PANAMIN under the likewise infamous Manuel Elizalde, Jr.[19] Its name was changed to *Sinuda* in honor of a brave female ancestor of the Matigsalug who had been buried in that valley (Rodil 1999:83).

[17] The *datu* agreed not to cancel KTC's concession as they thought is was to their benefit. They had gotten used to riding to the city and other places on the back of logging trucks. They realized only later that KTC denuded the forest and gradually deprived them of their economic base. KTC left the area in 1988 when there were no more trees left to cut (Rodil 1999:74ff.).

[18] This municipality would have covered 64,000 has., according to some Matigsalug *datu*. Acosta (1994:229) states that the size of the promised municipality covered only 14,000 ha.

[19] For a detailed account of PANAMIN's machinations between 1968 and 1973, cf. Rocamora (1979); Anti-Slavery Society (1983); Edgerton (1983); Okamura (1988); Duhaylungsod/Hyndman (1993); Eder/McKenna (2004). After Simod, PANAMIN set up reservations in Kalagangan and Iglugsad in San Fernando; in Miarayon, Talakag (where the second major rebellion took place just shortly after the one in Sinuda); one each in Kitablaran and Freedom, Malaybalay; and one at Lake Pigturanan, Pangantukan. Simod received "satellite reservations" in Pontian, Dalurong, and White Kulaman (Rocamora 1979:16; Edgerton 1983:174

PANAMIN immediately started its dole out program whereby food, tools, seeds, medicine, and wood for house building were dropped from planes and distributed to the Manobo. The dole out lasted between 1 to 5 years (according to different informants), during which many Matigsalug neither returned to their mountain settlements nor engaged in farming; they became highly dependent on outside aid. Meanwhile, PANAMIN set up tribal councils and named Datu Lorenzo Gawilan the "supreme tribal chieftain" of the Matigsalug. Those indigenous leaders loyal to the government received monthly salaries of between US$15 to 40 (PHP 120-300). Datu Gawilan and Datu Ladlaran of Miarayon—the latter led a second nativist rebellion just shortly after that of the Matigsalug (cf. Edgerton 1983)—were exceptional cases; they received monthly payments of up to US$450 (Acosta 1994:154f., 181 note 32; Edgerton

Fig. 3.
The peace agreement: Pres. Marcos, Manda Elizalde and Datu Lorenzo Gawilan, July 1975, Manila (photograph by the author, from an old photograph in the residence of the Gawilan family, Sinuda).

1983:166).[20] The extension of material wealth combined with government-sanctioned political authority to these "traditional" *datu* meant a great expansion of their power. Leaders like Datu Gawilan readily accepted their new role as "peace negotiators" to contain other indigenous attempts to resist, and convinced "troublemakers" to resettle within his area of jurisdiction (Rodil 1999:79).[21] Beyond their leaders' role in the containment of rebellious indigenous neighbors, resettled groups such as the Matigsalug were instrumental in the government's counter-insurgency war at the Bukidnon-Cotabato border, where the NPA gained ground in the early 1970s (Edgerton 1983:167; Abinales 2000:5). To counter the guerillas' expansion, residents of PANAMIN reservations were trained and armed as CHDF to patrol the nearby mountains and guard settlements (Edgerton 1983:176; Anti-Slavery Society 1983:128; Acosta 1994:12).

The government, through PANAMIN, insisted that inhabitants of tribal reservations give up swidden farming and introduced modern agricultural technologies. At the same time, PANAMIN, in the words of Rocamora (1997:18), promoted "primitivism" by having them weave baskets, make beadwork and sing traditional songs in front of TV crews flown in from Manila. High population densities in and around the reservation center resulted in the final depletion of forests (Acosta 1994:229). Consequently, life in the valley became difficult, and with the end of the government's dole-out program, many Matigsalug moved back to the hills in the early 1980s.

[20] Today, this would be a peso equivalent of PHP 21,660. This was more than a teacher's monthly salary at the time.

[21] Place names are instructive in this regard, as the following two examples show: *Barangay* Lorega, within the Matigsalug CADT area, derives from Lorenzo Gawilan, and is where a rebelling group from Claveria, Misamis Oriental, was resettled to. *Barangay* Gambodis in Arakan, Cotabato, also within the titled area derives from Gawilan, Magaling, Buenafe and Disalan. The latter three led a rebellion which Gawilan successfully averted. They surrendered and resettled with their followers in Arakan.

Settler Encroachment and Land Acquisition Since the Early 1960s

About 100 settler families had moved into the Matigsalug territory since the onset of ranching and logging activities, many of whom settled in the immediate vicinity of Datu Gawilan in *Barrio* Kahusayan. Initial relations with settlers were good, as both sides confirm today. Datu Gawilan gave the settlers land and told them, "You can live here and farm if you have things to plant but you can't own this. If your children still want to live here, they can." In the early 1970s, many of these *first Christians* likewise felt threatened by the behavior and land grabbing of Bueno and his men, the settlers who established themselves in Simod, and the KTC, and joined Gawilan in the rebellion, though not directly engaging in the fighting. Other settler families who settled in the area of Tawas, a *barrio* south of Simod, feared the anger of the Matigsalug and temporarily fled to the nearby hills. After the surrender, Datu Gawilan had these scattered settlers fetched and told Elizalde not to remove those who had supported him as the Matigsalug could learn a lot from them. He said, "*Ipugas kay maayo ang bunga niini*" ("the good seeds shall be sown because they bear good fruits"). The "rotten seeds" like Kabugsa and his followers, in contrast, were resisted. Kahusayan and Tawas were thereafter made into Christian settlements; those *Bisaya* whom the Matigsalug leadership considered useful (i.e., good) where resettled there and officially "adopted" by Datu Lorenzo Gawilan. 28 *Bisaya* families settled in Tawas, and 15 in Kahusayan. "Adoption" meant that these first Christians were taken care of by Datu Gawilan and considered as members of his family and part of the wider Matigsalug community. This identity is still invoked by these settlers today to distinguish themselves from recent newcomers.[22] In the two

[22] According to an adopted settler, Datu Gawilan signed "adoption papers", which were stored in a PANAMIN office.

Christian settlements, Datu Gawilan allowed each settler family to choose land to settle and farm; if a chosen lot happened to be cultivated by a Matigsalug, the latter was told to give way to the *Bisaya* and make use of another piece of land elsewhere.

As this account of local history points out, settlers form no homogeneous category and are not perceived as such by the indigenous inhabitants. Nativist protest was directed against those outsiders who disrespected the Matigsalug, who grabbed land and displaced them. Settler families who at least made the appearance of accepting the authority of the Matigsalug, and more importantly, whom indigenous leaders perceived to be useful for their own advancement were readily accepted and even invited. The adoption of over 40 settler families however, had unanticipated consequences.

During the first period of settler in-migration (late 1950s to 1974), the Matigsalug did not consider the presence of settlers as negatively affecting them. There was enough land for all and furthermore, settlers did not move with their fields like the Matigsalug did; interference with indigenous land use cycles and overlapping claims were thus initially avoided. Yet, more and more settlers entered in what has been described as "chain migration" (Costello 1992:40), i.e. already established settlers invite their relatives and friends to follow, often reserving parcels of uncleared land for them. At the same time, settlers tended to expand their lots and saw the land they occupied as becoming theirs over time. Apart from acquiring land through the willingness of indigenous headmen to cede areas to incoming settlers and the gradual expansion of these lots for their own or a relative's use, early settlers frequently acquired land in exchange for a pig, some salt, sugar, sardines, blankets, tobacco, and the like. If they were small-scale merchants, they claimed land as token payment for debts the natives soon incurred when purchasing exorbitantly priced goods from settlers (Lopez-Gonzaga 1983:131). Neither in cases of transfer of usufruct rights from indigenous inhabitants to settlers, nor in cases of exchange of goods for land or land to pay off debts were land transfers documented. This is one of the main challenges in addressing adverse land claims within the Matigsalug territory today.

During a period of about eight to ten years following the rebellion in 1975, in which PANAMIN administered the Matigsalug area with its centre in Sinuda as a strategic hamlet/tribal reservation, virtually no settlers entered. The only outsiders accessing the area were government officials and military personnel, with which the Matigsalug were now aligned as vigilantes.[23]

It was only after 1985 that a new generation of settlers made their way into the Matisalug territory. While previous modes of land acquisition continued, some settlers compensated the Matigsalug at least partially for the labor they had invested in the lots the settlers now claimed. But most incoming outsiders profited from the naïve generosity of the indigenous inhabitants and saw no need for adequate consideration, as the following contradictory statement of a settler who moved to the Matigsalug area in 1985, highlights:[24] "*... I was able to buy from the natives here. I was the one who occupied it* [the land], *so I have the right to it. Because you* [the migrant] *were the one who took their place, due to the length of your stay in that land, you will have the rights over the land ... Their characteristic is different because if they grew fond of a certain Bisaya, their 'system' of selling would just be like sort of giving it away because if we really take into account the actual cost or worth of the land, the payment is not really adequate. They* [the Matigsalug] *also don't want to be neighbors with a Bisaya who is mean, or not generous unlike them who are very generous.*"

Over the years, settlers increasingly controlled the land through a system known as *prenda* or mortgage. A Matigsalug gives land in mortgage to a settler for a period of 3 to 5 years. He thus assumes a mortgage of approximately PHP 40,000 for 2 hectares. If the Matigsalug is unable to redeem the mortgage after the expiration of the agreed term (no interest is charged), the agreement is extended. In some cases, the Matigsalug finds himself another *Bisaya* willing to pay

[23] On the problem of vigilantism in the Philippines, cf. for example Van der Kroef (1988).
[24] Interview on May 11, 2004, Sitio Kabalansihan, Barangay Sinuda.

more than PHP 40,000, so that he will be able to return the initial amount to the first settler and have the second one stay on the lot. In any case, the debt "rolls" from one term to another, or from one settler to another, until finally, the *prenda*-arrangement converts into an undocumented—and usually unuttered—transfer of ownership from the Matigsalug to the settler. Prior to the awarding of the CADT, *prenda*-arrangements were the most frequent mode of land transfer. Many Matigsalug do not seem to recognize that *prenda* has resulted in a large-scale loss of land to settlers, clinging to the perception that they are land owners, while the settlers were tenants, as in the early years of settler entry. While this is legally true—no official documents of transfer of ownership were processed in virtually all cases—the relevant question is not so much who owns the land but who *de facto* controls it; in this respect, the Matigsalug have clearly been on the loosing side.

Towards the end of the 1980s, the adopted settlers started selling land to newcomers. Hence, land is today sometimes in the hands of a third generation of incoming settlers and it is difficult to trace the Matigsalug who originally occupied a particular lot, particularly since the Matigsalugs' conception of land was not one of private ownership. Despite the existence of a CADC since 1995, land transfers from early to recent settlers continue behind the Matigsalugs' back. The transactions took place with the involvement of the *barangay* councils. If lucky, the Matigsalug via indirect channels were later able to seize some of the issued deeds of sale. FEMMATRICs and its private lawyer consider land transactions from first Christians to recent settlers illegal because the former never owned the properties they sold but only held usufruct rights granted to them by the leading *datu* at the time. As the lawyer explains, "*... there could be no transmission of rights because in the first place, the Christians are not the owner of the property.*"[25]

With the promotion of the southern part of the Matigsalug territory as "little Baguio" in the early 1990s—favorable for its climatic conditions and interesting for developing tourism and recreational sites[26]—land speculation developed rapidly. The areas most affected are all *barangays* within Davao City such as Marilog District, Baganihan, Datu Salumay, Buda, Tawas, and Gumitan. The parties engaged in land speculation are again *barangay* officials (mostly *Bisaya* but also Matigsalug) and on the buyers' side what the Matigsalug call *rich Bisaya*, i.e. politicians and/or influential businessmen who have the means to acquire large areas by circumventing existing legislation and simply ignoring the government-recognized ownership rights of indigenous peoples. Unlike many of the poor settler families who prefer settling along the highway, the *rich Bisaya* claim good and fertile lands, some of which the Matigsalug consider sacred grounds. Properties were bought for approximately PHP 100,000 per hectare from earlier settlers who, if they were second generation settlers, paid from PHP 10,000 to 20,000 to first Christians in the 1980s. Among those claiming ownership over such contentious lots are a Christian sect, the ex-wife of present Mayor of Davao City and businessmen close to the government of Davao City, the University of Mindanao, and the Presidential Assistant for Mindanao in the peace process with the Moro Islamic Liberation Front. Most properties were acquired during the time the DENR processed the Matigsalug CADC and shortly afterwards, i.e. between 1993 and 1995/96.

Addressing Tenure (In)Security Under Changing Legal Conditions

Datu Gawilan rose to unexpected political influence following his rebellion. He and the Matigsalug residing in Sinuda and surrounding areas enjoyed the great and unparalleled attention extended to them by the Marcos administration and figures like Elizalde, unaware of its

[25] Interview on May 29, 2004, Davao City

[26] Baguio City, located in the northern Philippine Cordillera, used to be the summer capital of the Philippines and a favorite spot for the wealthy during the American colonial administration, due to its cool climate and pine forests.

patronizing and short-lived nature (Rocamora 1979:20; Acosta 1994:228). Today, some Matigsalug proudly recall the glory days of PANAMIN. Soon after the change of the political landscape in the Philippines, in 1988, Datu Lorenzo Gawilan ran for Mayor of Kitaotao and won the elections with the support of Cong. Zubiri of the 3rd district of Bukidnon, of whom he had become a loyal follower. With Zubiri's support, he tried to achieve what Marcos promised but failed to fulfill: the establishment of a Matigsalug Municipality. This attempt was much to Zubiri's own interest, as he planned to partition the province of Bukidnon to better control the southern half. Still, the Matigsalug Municipality did not materialize (Acosta 1994:227ff.).

With the promulgation of DAO 2, Series of 1993, the Matigsalug led by Datu Lorenzo Gawilan applied for a Certificate of Ancestral Domain Claim (CADC) to secure themselves tenure rights over their territory. Through this legal instrument, they once again hoped to achieve what they had longed for since 1975: the establishment of a government-recognized Matigsalug territory. However, like most other 181 indigenous groups awarded a CADC between 1993 and 1998,[27] their expectations were much too high. A CADC merely certifies a particular indigenous group's claim to what it considers its ancestral territory. The DENR, the government agency issuing these certificates, makes no commitment as to whether such a claim is valid (Gatmaytan 1992:33; Gatmaytan 1996:26; Eder/ McKenna 2004:65).

But how did the Matigsalug actually secure a CADC, and later, a CADT over their territory? KAPWA, an NGO active in development work, had previously assisted the Matigsalug in finding records

[27] After June 6, 1998, no more CADCs were issued because of a moratorium on CADC approvals declared by the incoming Estrada administration (Bryant 2000:693). By then, the DENR had issued a total of 181 CADCs, totaling 2,546,036 hectares. In Mindanao, a total of 85 CADCs was issued (Rodil 2003:125).

on the status of their territory after the dissolution of PANAMIN in 1983. But no documents were found and the Matigsalug's legal rights to land remained unclear. KAPWA then advised to apply for a CADC and put them in touch with support groups, lawyers involved in indigenous rights issues, and supportive politicians. The NGO directly involved in delineation was PAFID. Congressman Zubiri, then Governor of Bukidnon, and local government units opposed the claim, arguing it would cause confrontations between the stakeholders within the claimed territory. Datu Gawilan, however, was determined to unite the Matigsalug on this matter. The support they solicited from high ranking politicians and national NGOs enabled the claimants to circumvent opposition of local governments and make their request heard in Manila. An unexpected detail of the Matigsalug CADC application process is that it was an adopted settler living in Tawas since 1972 who solicited the initial PHP 30,000 needed. After having unsuccessfully sought financial support from the *barangay* councils and tribal councils of 19 *barangay*, Datu Lorenzo Gawilan had turned to that settler requesting for help by apparently saying, "I am not forcing you but you cannot refuse this, either!". The settler hereafter managed to have three people donate one *carabao* (water buffalo) each and donated one himself, so that within two days, four *carabao* worth an amount well beyond PHP 30'000 were brough to Sinuda.[28] On May 15, 1995 the Matigsalug were awarded the fifth CADC in the country, certifying a claim over 77,143 ha (CADC Nr. R10-CADC-005).

The existence of the CADC, however, neither deterred land speculators from selling land to influential outsiders nor did it prevent the DENR from granting concessions within the CADC area to third parties. Facing continuing land loss, the Matigsalug decided to apply for the conversion of their CADC into a CADT under the IPRA at the beginning of the new millennium. Through this new legal instru-

[28] Interview with that particular Bisaya on June 3, 2004 in Barangay Tawas, Bukidnon.

ment they were able to convert their claim to territory into a certified communal ownership title. Datu Lorenzo Gawilan had died shortly after the CADC was issued in 1995 and it was now his youngest son, Roelito "Lito" Gawilan, to carry on the legal struggle for tenurial security and recognition as the supreme tribal chieftain of the Matigsalug.

In their effort to obtain a certificate of title the Matigsalug were supported by Philippine advocacy and legal services NGOs and indigenous peoples' organizations (AnthroWatch, PAFID, PANLIPI, IPEx), students of University of the Philippines Mindanao, the Mayor of Kitaotao, a few Congressmen, as well as international support and funding agencies (IWGIA, UNDP) (IWGIA 2003; Wenk 2004).[29]

On the opposing side were local government units mainly from the Davao area, the Davao City Mayor, and the Governor of Cotabato. Surprisingly however, none of these openly opposed or impeded the process.[30] The one group openly opposing was the clan and direct descendants of deceased tribal leader Datu Salumay of the homonymous *barangay* in Davao del Sur.[31] Due to political rivalries between influential leaders in *Barangay* Datu Salumay and the Gawilan family as well as a strong settler presence in Salumay, the opponents refused to be made part of "Gawilan's CADT" and posed a counter-claim. The matter was resolved through several consultation meetings and finally, Barangay Salumay was included. Its leaders, however, have remained reluctant until this day and prefer to manage their side of the CADT area themselves.[32]

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[29] The Mayor of Kitaotao, "Tata" Gawilan is the second son of Datu Lorenzo Gawilan. He was supportive to the thrust by assisting with transport facilities and the setting up of boundary monuments.

[30] Interview with the lawyer of the Matigsalug, now deceased, on May 29, 2004, Davao City.

[31] Documentation of the case is found in the compilation of original documents of application, Ancestral Domains Office, NCIP, Manila.

[32] Interview with one of the Salumay descendants, 17.7.2004, *Barangay* Datu Salumay.

The New People's Army was and is not in favor of it, albeit for different reasons. Apart from the radical Left's ideological opposition to the IPRA as state law, the local NPA do not respect the leading *datu* and, ever since the Matigsalug leadership's switch from rebellion to counter-insurgency in 1975, have been in open confrontation with them. While the issue of land conflicts with the *Bisaya* may have a chance of being settled on through the IPRA, the violent contention between the Matigsalug and the NPA is more deeply rooted and emotionally charged, and forms part of a larger conflict that remains unresolved.

Finding Solutions for Conflictive Claims within the Titled Domain

Prior to the awarding of the CADT, all land now included in the Matigsalug titled domain was classified as "forest land". Forestland, meaning all land with 18 % slope or more, forms part of the public domain, i.e. it belongs to the state. By definition, it is not alienable and disposable and it was therefore legally impossible to acquire documents of title over these lands.[33] The fact that the Matigsalug domain was classified as forest land prior to its titling prompted the NCIP to write the following in the "Application for the Issuance of a Certificate of Ancestral Domain Title of the Matigsalug-Manobo"[34] "... the purpose of the requirement of publication is not necessary in as much as *there is no alienable and disposable portions of which we can reasonably expect existing property rights.*" (emphasis added). This statement concerns the requirement of publication of the application during which opposing parties may utter concerns and file petitions against a CADT. From this, it seems that the claim was not made public as required, which might explain why their opponents

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[33] For a detailed background, cf. among others Lynch (1982); Gatmaytan (1992), (1993), Gatmaytan D. (1992).

[34] NCIP Application promulgated on July 25, 2003, p.5f.

failed to act against it. What is more striking however, is the sheer falsity of this statement, given the significant number of settlers claiming ownership of the lots they occupy, as well as the areas claimed by the *rich Bisaya.* The case of the Matigsalug highlights a serious legal issue that needs to be resolved in many indigenous areas: indigenous peoples happen to inhabit lands classified as "forest", of which portions have continuously and illegally been appropriated and exploited by incoming settlers and corporate entities.

The tribal federation FEMMATRICs, together with its lawyer, seeks legal solutions to the problem of settler claims on the basis of the IPRA. The cases they face include early land transactions from Matigsalug to settlers, transactions from adopted settlers to recent settlers, and claims of rich *Bisaya.* According to the IPRA, non-indigenous persons or parties are not allowed to own land within titled domains, and alienation of any portion of land is illegal.[35] During information drives, the *Bisaya* are informed about the illegality of such land transactions, and consequently, of their stay in the area. In letters, the Matigsalug Council of Elders request them to either voluntarily vacate the occupied areas or negotiate with the FEMMATRICs on possible lease agreements to legalize their stay. If the settlers refuse to cooperate, they go to court. Filing cases in court, however, costs enormous sums of money, which the Matigsalug do not have. It is mostly the rich *Bisaya's* land they want to redeem and fertile portions on the Davao side of the territory; as in earlier times, there is no intention to make all settlers leave (which would be very difficult to accomplish in the first place). A statement of the Matigsalug's lawyer highlights this: *"In the spirit of Christianity, we* [the Matigsalg] *just tolerate them to do that* [to live there and sell their products, addition i.w.], *after all, they are not occupying a very good area like others. They are only occupying some space ... They are not actually claiming the land itself. ... It is the rich that*

[35] Information in this section is based on an interview with the lawyer and the supreme leader of the Matigsalug on May 29, 2004 in Davao City.

we are worried about because they are always resisting." Lease arrangements constitute a major source of income for the title-holders, used in managing the area and paying for continued legal services; and are the solution offered for cases of overlapping claims.[36] The payment demanded by the FEMMATRICs per hectare is not fixed but depends on the financial capabilities of the *Bisaya.* From poorer settlers, they might only request a symbolic yearly payment of one peso. For commercial uses however, a fixed rate is determined. As of August 2004, some *Bisaya* responded to the federation's letters, inquiring about the conditions of the agreement, though no agreements have been finalized.

In cases of existing *prenda*-arrangements, FEMMATRICs likewise pushes for their transformation into formal lease agreements or *arrendo.*[37] In such cases, the settler who occupies/farms the land pays no lease during the initial years and remains on the land until his due lease payment is even with the mortgage owed to him by the Matigsalug. If the settler does not agree to convert the *prenda-* into an *arrendo*-arrangement, legal measures might be taken. *Arrendo* has been introduced as the FEMMATRICs' land policy after the awarding of the CADT in 2003 in response to the abusive and unequal *prenda*-system and in order to generate income for the management of the domain. It corresponds with the IPRA, under which the transfer of property rights to non-indigenous persons is illegal. It is on this basis that the FEMMATRICs prohibits its people from selling, or giving away land through *prenda,* to outsiders. However, sales or mortgages of land continue, as the need for cash for medical care or educational

[36] Likewise, the tribal federation hopes to enter into contractual agreements with outside investors. Despite ongoing negotiations with potential investors however, no such agreement was finalized as of August 2004.

[37] *Arrendo* is an antiquated Spanish word for lease, which at least in Spain is not commonly used anymore (according to a resident of Sevilla, Spain, Sept. 2005).

expenses outweigh long-term considerations regarding control over lands and resources.

Many settlers have in recent years become increasingly aware of their rather insecure status; i.e. that they might be made to leave the titled area if the Matigsalug decide to reclaim the lots they occupy. Especially among poorer ones, insecurity and even fear of being "kicked out" is evident. Most of them have taken a wait-and-see position, waiting for further information from FEMMATRICs while continuing their daily lives. There are also those who bemoan the Matigsalug's asserted authority over all land issues because this makes it more difficult for them to engage in land transactions of all sorts. Many *barangay* officials find it problematic that the *Bisaya* are only allowed to till the land but not own it, and that the (illegal) land transactions they continuously engage in brings them into conflict with the tribal authorities.

Most settlers neither understand nor appreciate the indigenous concept of communal territorial ownership. And they take advantage of the fact that it is difficult to impossible to determine an individual Matigsalug who claims ownership/usufruct rights to the properties in question. In *Barangay* Tawas for example, one of the two Christian settlements set up in 1975, many *Bisaya* are not in favor of the CADT because questions of land ownership remain unclear to them. *"Tawas is for the Bisaya, not for the Matigsalug"*, seems to be the general, albeit rarely openly uttered, opinion.[38] Among first Christians still residing in the area, the CADT is perceived as a sort of transitional stage on the way to individual land titles, which they hope to receive one day from the supreme *datu*. The adopted settlers and their descendants in particular see themselves as falling *"... under the category of the Lumad"* and expect to benefit from the title just like the Matigsalug. As one of them explained to me: *"We can also be called* [treated as] *Lumad because we were already here way before it* [the CADT] *was proclaimed. The benefits that would be given to the Lumad would also be given*

[38] Interview with a Tawas *barangay* official on June 17, 2004.

to us because we also live here. That is what I really believe in ..., that due to the long time I have lived here, whatever benefits that will be granted to the Lumad, I will be included because I am also a resident here.'[39]

Such new identities invoked by some settlers to make a claim on expected benefits (however diffuse these may be) the Matigsalug might gain in the future are acted out more strategically at the level of *barangay* politics. Settlers become members of the "tribal councils", which have been newly organized since the awarding of the CADT in October 2003. They therefore refer to themselves *datu* or *bae*—the female equivalent of *datu*—the tribal designations of leadership. The first settler-dominated tribal council is in Tawas, which was recognized by Datu Lito Gawilan in 2004. It has 19 members, 14 of which are *Bisaya*. According to a recent settler who holds position in both the tribal council and the *barangay* council, he and his colleagues' motivation was to use the tribal institution for the advancement of their own interest, since they have concluded that they cannot oppose recent developments. By holding positions in both councils, settlers try to make sure that their authority remains in place.

Conclusion

The foregoing view into recent Matigsalug history and the strategies they employed to address tenure insecurity and encroachment reveals that the local setting does not provide the critical observer with clear inter-ethnic distinctions. Rather, ethnic boundaries are permeable and coexistence common. What Dresser/McDermott (2005:3f.) observed in regards to inter-ethnic relations in Palawan in the late 1990s also holds true for the Matigsalug: the indigenous-settler distinction is a matter of degree, rather than kind; i.e., degree of length of residence, of familiarity with their indigenous neighbors and local customs, of environmental impact of livelihood practices, of political

[39] Interview with a settler, 11 May, 2004, Sitio Kabalansihan, Barangay Sinuda

influence, power, and linkages to local, regional and national government units, of socioeconomic status, and of willingness to support or at least tacitly accept indigenous aspirations. In ancestral domains like that of the Matigsalug, where settlers form a majority population, indigenous claimants and title-holders hardly constitute the homogenous and strongly integrated indigenous communities imagined in the IPRA. Rather, they form demographically heterogeneous spaces. In these contexts, there is no choice but to negotiate a mode of co-existence, since the exclusion of (all) settlers is hardly feasible for reasons of both principle and practice. All the more, access to land, tenure rights, entry of outsiders, structures of self-governance and with these, indigenous-state and indigenous-settler relations need to be transparently regulated in order to accommodate indigenous peoples' needs and historical rights. Although the IPRA empowers indigenous peoples in that respect, boundary-based instruments such as the CADT do not suffice to lastingly transform the frequently asymmetric relations between indigenous peoples and those who have come to live within the territories they claim.

The encroachment of settlers, logging and agri-business corporations into the Matigsalug domain over a period of 40 years has resulted in significant land loss, tenure insecurity and lack of self-sufficiency, as well as serious degradation of resources. The prominent role settlers have come to play in local government and as middlemen in trade places them high on the societal hierarchy. Patron-client relations, debt bondage, and economic inequalities are directly linked to the described modes of land acquisition by incoming settlers. As many indigenous families no longer control any land or are incapable of providing for their subsistence, they become dependent on seasonal labor that renders them economically and socially vulnerable. The condition of local resources, with nearly 60 % grassland unsuitable for agriculture, aggravate the economic situation of many indigenous inhabitants and make traditional forms of land use impossible.

Settlers and other outsiders such as loggers and ranchers were received differently, depending on their behavior, the threat they posed to political authority and economic survival, and their perceived usefulness for the developmental advancement of the Matigsalug. In 1975, the Matigsalug responded to continuous land grabbing, displacement and harassment with a violent uprising lasting three months. After their surrender, "bad" outsiders were expelled from the area with government help, while the "good" were resettled in two *barangays* near Sinuda. For a period of nearly ten years, the reservation-like status of the Matigsalug area under the direct administration of PANAMIN temporarily discouraged further encroachment.

Transfers of usufruct and ownership rights to land usually were undocumented in the early decades of settler encroachment. Incoming settlers were given land by the leading *datu*; appropriated it as debt payments or in exchange for commodities; or simply occupied it. Later, the *first Christians* reserved land for relatives and sold portions to newcomers. In the 1990s, land transfers increasingly took place under the auspices of the settler-dominated *barangay* councils in the context of a growing land speculation market. Proper deeds of sale are now issued, but without the indigenous landowners' knowledge or consent.

Hope that indigneous peoples' tenure insecurity could be lessened came through the CADCs under DAO 2. A CADC grants claimants the right to occupy and utilize their ancestral domains and all natural resources therein, including the right to negotiate the terms of any future exploitation of resources by outsiders (Eder/McKenna 2004:66; Gatmaytan 1996:25). One essential failure and misleading content of DAO 2, however, was that it provided no mechanism for determining the validity of indigenous peoples' claims via-à-vis the rights previously granted to ranchers and logging, mining or tree plantation operators, or settlers. A CADC therefore, does not address existing conflicts and overlapping claims of different resource-use competitors (Gatmaytan 1992:35f.). Companies already operating in the area are allowed to do so until their contracts expire (Gatmaytan 1996:26). At the same time, claim-holding indigenous groups are required to manage and protect natural resources within the ancestral domains according through an *Ancestral Domain Management Plan* formulated by the claimants (Eder/McKenna 2004:66; Gatmaytan 1996:25). A second point of criticism is that the CADC

program was not based on national law but on a DENR administrative order, which means that all its provisions are subject to existing laws (Eder/McKenna 2004:65). These facts led McDermott (2001:35) to state that the DENR issued CADCs only in areas already denuded of trees, thus gaining free labor for upland forest protection and reforestation, while quieting potential dissent.

The case of the Matigsalug illustrates how a CADC is ineffective in halting settler encroachment and land loss, and, therefore, in guaranteeing tenure security for indigenous peoples. This is even more so, since the the DENR gave out concessions for the exploitation of natural resources and land use permits in areas covered by the CADC. In many respects, the IPRA takes a step beyond DAO 2, as it provides means for addressing conflictive claims to land, possibilities for redeeming alienated lands; and empowers indigenous title-holders to regulate further entry of outsiders. The process of ancestral domain delineation has a crucial awareness-raising effect in connection to the demographic setting. Through the census taking which is part of this process, applicant groups become aware of the number of settlers within the territory and—as in the case of the Matigsalug—are surprised to learn the extent of encroachment. This awareness can strengthen a group's determination to formulate and implement a policy on migrants (residents and newcomers) and other outsiders such as companies, and to enforce their ancestral domain boundaries in accordance with the IPRA.

Boundary enforcement and legal solutions with resident and newcoming outsiders are a precondition for guaranteeing indigenous groups' future access to land, natural resources, and tenure security, and thus for upholding their material and cultural existence. Acted out in a more radical sense however, the sensitized realization of the extent of outsiders' encroachment and unwanted activities—for example, the presence of the NPA—may also lead to increased efforts in excluding particular groups of outsiders from the territory, through violence. Without getting into further details, it is worth contemplating that in this respect, the interests of some indigenous CADT-holders run in significant but hardly coincidental ways parallel to those of the government. Both desire to rid themselves of leftist insurgents operating in the hinterlands. While many indigenous people in Mindanao hold grudges against the insurgents because of the latter's killings of indigenous leaders and general disrespect for indigenous culture, the state is irked by the challenge the NPA continuously presents to its authority. Encouraged through IPRA's provisions to "regulate the entry of outsiders" according to "customary law" (the statute remains ambiguous with regard to resort to violence) and backed up with arms and ammunition, indigenous title-holders may violently engage against the NPA as part of their territorial defense.

At the same time, the Matigsalug leadership undertakes efforts to negotiate and find solutions to conflictive land claims with different groups of resident settlers. Those outsiders claiming large portions of fertile land, namely businessmen and politicians from nearby urban centers, are of primary concern to the tribal federation, as these occupy valuable land and are least willing to respect the title-holders authority and aspirations. Poorer settlers occupying land along the highway are seen as a minor threat and their presence is more readily accepted. While sales of land to outsiders used to be unregulated, there is now a tendency for negotiated settlements in the form of lease agreements initiated by the title-holding group. Such agreements may benefit both sides in that they guarantee a regular source of income for the tribal federation, and emphasize their authority over the land, on one hand; while guaranteeing undisputed occupation and admissible activities to until now "unwelcome" outsiders, on the other. Because of the high costs of litigation, the Matigsalug leadership has initiated a bilateral process of negotiation through which they hope to find solutions outside the costly court system.

The case of the Matigsalug titled domain corroborates relevant observations of Dressler/McDermott (2005:4) in their study of the relationship between indigenous peoples and migrants in the context of protected areas and claim-making in Palawan: with the promulgation of the IPRA and the issuance of titles, indigenous peoples are granted specified rights to land and natural resources within a delineated territory. On one hand, this improves their relative position and strengthens their negotiation power, entitles them to support from certain state agencies such as the NCIP, and legally furnishes them

settler-dominated tribal councils within Matigsalug territory. In order not to miss out on the expected advantages that might come from the "title", and in line with the required process of community organizing and political restructuring towards self-governance, settlers have begun entering tribal institutions. With the enactment of the IPRA in 1997, and the issuance of the CADT, membership in the "community" has become a question of inclusion in or exclusion from the titled territory. It is being renegotiated and acted out, both on part of the indigenous peoples as well as resident settlers. By entering indigenous institutions of governance such as the tribal councils, settlers attempt to retain their dominant position. As of August 2004, the settler-dominated "tribal council" in Tawas has been recognized by FEMMATRICs, and others were in the process of being established. Tawas has a settler majority of 95.7 percent. While such a development clearly undermines the authority of the Matigsalug within the titled territory—which was one of the reasons for titling in the first place—it does correspond with demographic realities. The capacity of settlers to dominate "tribal councils", however, is compromising indigenous self-governance. But how to deal with the fact that, in the Matigsalug titled domain, settlers form a substantive majority in 18 out of 27 *barangay*, in seven of which they even exceed 90 percent?

These are among the challenges faced by the members of this title-holding indigenous group as they begin to actively participate in the future management of their ancestral domain with all its related aspects and challenges.

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PONCIANO L. BENNAGEN

"Amending" IPRA, Negotiating Autonomy, Upholding the Right to Self-Determination

Great Expectations

"THROUGH RA 8371, we accelerate the emancipation of our Indigenous Peoples from the bondage of inequity. This social injustice bred poverty, ignorance and deprivation among our indigenous cultural communities and further alienated them from people from the mainstream" (CIPRAD 1999:56). Thus said Pres. Fidel V. Ramos when he signed into law the Indigenous Peoples Rights Act (IPRA) of 1997 on 29 October 1997. This statement was preceded by the following: "the social, cultural, political and economic impacts [of IPRA] will be felt not merely in our time nor in just the next century but also well through the third millennium" (Ramos 1999, 56).

Before that, on 16 Oct. 1997, in his Sponsorship Speech before the Philippine Senate, Senator Juan M. Flavier said, "As I stand before this body to sponsor the long-awaited and long overdue ancestral domain bill, about 10 Million Indigenous Peoples from 110 tribes (*sic*)—are now ready to perform 110 variations of their *ritual thanksgiving dance*." (Ramos 1999, 51; *underscoring supplied*).

This was the kind of rhetoric generated by the IPRA, which was seen as "a triumph of the Executive's and the Legislative's political

will" (CIPRAD 1999: 58). For indeed, upon its enactment, the IPRA raised great expectations among indigenous cultural communities/ indigenous peoples (ICCs/IPs), even as some groups declared that "with or without IPRA, we will defend our ancestral lands".

Today, ten years after these speeches acknowledging the significance of the IPRA and anticipating its beneficial impacts on ICCs/ IPs were made, there appears little to dance for and celebrate.

To be sure, there must have been some indigenous individuals, organizations and communities that have benefited from the IPRA in one way or another, as in the case of the Kankanaey and Bago (Boquiren, *this volume*) and the Matigsalug-Manobo (Wenk, *this volume*). But as pointed out by Pres. Ramos himself during the signing of the IPRA, the law affects all sectors of society, to wit: (1) Agriculturally-dependent landowners who exploit ancestral lands; (2) the urban poor, among whom are members of indigenous peoples (IPs) who would now be able to return to their roots; (3) the natural resources investors out for profit; (4) agricultural workers unwittingly squatting on ancestral land; (5) environmentalists in alliance with IPs in environmental protection and conservation; and (6) IP warriors who may now continue defending their ancestral domains in peace (CIPRAD 1999:56).

To these should be added other stakeholders with their respective interests in IPs/ICCs and their ancestral domains: (1) non-government organizations, whether local, national or international; (2) religious organizations and social movements, including revolutionary movements; (3) transnational corporations on the lookout for natural resources in the ancestral domains and for expanding markets; (4) bilateral and multi-lateral banks with loans available for so-called development projects involving ancestral domains, such as the Asian Development Bank and the World bank; (5) foreign governments such as Canada, Denmark, Australia, New Zealand, and the United States; and (6) the Philippine State, its bureaucracy and bureaucrats.

Indeed, precisely because the IPRA is about land and people that could be viewed as no more than resources (natural and human), it is open to contradictory meanings and interpretations. And this susceptibility to contradictory interpretations lends the IPRA easily to the constant power plays between and amongst stakeholders; which could be destructive of the ancestral domain and, at its worst, fatal to the IPs/ICCs themselves. An indication of these possibilities may be discernible in the case of the Subanon (Sanz, *this volume*), the Buhid Mangyan (Martinez, et al., *this volume*) and arguably to a lesser extent, in the case of the Matigsalug Manobo (Wenk, *this volume*), as well as in other undocumented cases in various places.

To some degree, the National Commission on Indigenous Peoples (NCIP), the government agency with the duty to implement the IPRA, is aware of this when, for example, it says in its 2005 Annual Report (NCIP 2005, 10): "The generally backward state of development among the cultural communities has the effect of making indigenous peoples unable to fully avail of the human and civil rights (*sic*). This makes it necessary for them to be extended sufficient legal assistance not only to afford them full enjoyment of their rights but also to help them protect these rights from abuses."

Unfortunately, such support has not been extended to the Subanen of Siocon, where NCIP chose to serve Toronto Ventures, Inc. (TVI), a transnational mining corporation, rather than protect the rights of the Subanon (Sanz, *this volume*). In the case of the Buhid Mangyan, NCIP simply yielded to the other government agencies, forgetting its mandate as the principal agency of government to serve the IPs (Martinez et al., *this volume*).

"Amending" the IPRA

The original title of the IPRA reads: An Act to *Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities/ Peoples*, Establishing Implementing Mechanisms, Appropriate Funds Therefor, And For Other Purposes (*underscoring supplied*). The heart of the law is a bundle of rights: the rights to ancestral domain (Chapter III), rights to self-governance (Chapter IV), rights to cultural integrity (Chapter V), and to social justice and human rights (Chapter VI).

But because of such cases as those described in this volume, as well as other such cases, it is tempting to conclude that the IPRA has already been "amended" and now only reads: "An Act Creating A

Mindanao; and (4) the principalities, societies that had already been Islamized and already have a recognized aristocracy supported by a "social continuum of patron-client relationships", such as those found in Mindanao.

Societies in all the first three types have ritually-sanctioned relationships with the land and its resources. Rites are performed during certain phases of the economic cycle. Land and its resources are considered owned by supernatural beings whose permission is requested during rites to ensure safety and productive use.

The four case studies represent still evolving, distinct societal forms from the initial conditions of pre-Islamic, pre-Hispanic indigenous societies. Their present situations, therefore, are highly instructive in helping us understand the present variety and complexity of the social dynamics taking place between indigenous communities and the state and other non-IP actors.

More specifically, a clear understanding of the initial indigenous conditions of the four communities and their subsequent historical transformations are crucial in helping us explain the different trajectories of their respective struggles in pursuit of their rights already inscribed in the IPRA. In addition, such an understanding could help the NCIP and support groups customize their programs to make them more appropriate and responsive to the needs and aspirations of the different communities. It takes more than a brief essay to elaborate all of these in great detail and so only the key points, main lines of analysis, and general recommendations shall be made. We do this in the spirit of "project monitoring", so to speak, in this tenth year of the IPRA; and in the hope of making the IPRA truly an effective legal tool for the full recognition, protection and promotion of IP rights. That is the spirit behind this essay.

How the IPRA Came About[2]

While the history of the struggle of the indigenous communities and peoples for autonomy and self-determination remains to be written, the available literature tells us that the indigenous communities in what later became the Philippines were independent, self-determining communities with minimum social interactions with other groups. With increasing contact with other cultures, some through trade and later as a consequence of the expansion of invasive and predatory societies, many of these indigenous societies were de-indigenized, that is, they lost their distinctive beliefs, values and IKSPs. These became Islamized, Hispanized or Westernized as individuals, but more importantly as groups or collectivities. Within the organizational structure called the Philippine State, the indigenous groups were minoritized, an ironic result of a state policy of national integration by assimilation, a legacy from the colonial period, but carried over well into the post-independence period.

Going by the summary-account of W.H. Scott (1982), we see that the indigenous communities fought against de-indigenization, as village communities and clusters of village communities. It is not known whether entire ethno-linguistic groups or "tribes" belonging to a large area or region organized themselves in their struggles. It was not until the 1970's and well into the martial law years that village communities, assisted by other groups in most cases, banded together (the Manobo-Matigsalug uprising in 1971 was an autonomous struggle) in their efforts to protect their rights. Later, and gradually, the indigenous struggle became incorporated in the larger anti-dictatorship struggle, and then into the international human rights struggle. This was a logical development of the efforts of some indigenous communities to oppose huge infrastructure projects funded by international organizations; in particular, the celebrated anti-Chico River

[2] For descriptive accounts of the policy-making process involving the IPRA, see de Guzman 1999, and Rico 2007.

Development Project struggle in the Cordillera, funded by the World Bank (Cariño et al. 1979; and Cariño 1980). The proposed Chico River dam was seen by the indigenous communities of the Bontok and Kalinga as a threat to their land and their way of life. Thus was born what might be called the "Land is Life movement" of indigenous communities and peoples.

The classic statement on this is that of Mac-liing Dulag, a Kalinga leader who was assassinated by government troops for his resistance to the World Bank-funded dam project in the Gran Central Cordillera of Northern Luzon (Parpan-Pagusara 1983, 37):

> "To claim a place is the birthright of every man (*sic*). The lowly animals claim their place, how much more man (*sic*). Man (*sic*) is born to live. Apu Kabunian, 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 it fructify is the eternal exhortation of Apu Kabunian to all his children. Land is sacred. Land is beloved. From its womb springs our Kalinga life"[3]

Individuals and organizations outside the threatened communities, but in one way or another affected by the authoritarian abuses of the Martial Law years, and influenced by the international human rights struggle, latched on to the 'Land is Life movement". People's organizations, the church, church organizations, academic organizations, other non-governmental organizations, and even elements of the New People's Army, the armed wing of the Communist Party of the Philippines, joined in the struggle. Support for the struggle

[3] Oft-quoted, this was also cited by the Resident Representative of the UNDP, Sarah Timpson, during the Consultation Meeting with the Donors on Indigenous Peoples in Tagaytay City on 11 April 1997, a few months before the enactment of IPRA.

took various forms: Mass actions as well as research and conferences on indigenous communities and land rights, including the right to self-determination, were undertaken (Ugnayang Pang-Aghamtao 1983, 1987; Gaspar 2000; Finn, 2005).

Such activities continued even after the ouster of former Pres. Ferdinand Marcos in February 1986, and well into the drafting of the 1987 Philippine Constitution. As a result of the strong lobby by indigenous peoples organizations, particularly the Cordillera People's Alliance and a variety of support groups, the 1987 Philippine Constitution has a number of provisions related to indigenous peoples: Recognition of land rights and customary laws, indigenous learning systems, and indigenous scientific and technological capabilities[4]. And to ensure that the indigenous communities will be heard by the highest officer of the government, the creation of a consultative body to advise the President, with majority of its members coming from the indigenous communities was also proposed (Sec 12, Chapter XVI).

With the restoration of formal democratic institutions in 1987, a group of indigenous leaders and their support groups formulated an Executive Order recognizing the right of indigenous communities to their ancestral domain, to be submitted to the newly-installed Pres. Corazon C. Aquino. This initiative was rejected with the President, who said she did not want to pre-empt the Congress.

During the early years of the Ramos government, which succeeded the Aquino administration, and before the enactment of IPRA, the Department of Environment and Natural Resources (DENR) initiated the issuance of Certificates of Ancestral Lands/ Domains Claims (CALCs and CADCs), following the recommendation by the National Resources Management Program funded by the U.S. Agency for International Development. That it was DENR that undertook this instead of the then existing government agencies for

[4] The international community has taken notice of this: "The constitutions of such countries as Mexico and the Philippines have taken steps to recognize the rights of indigenous people (*sic*) to self-determination, but others avoid it" (UN Development Report 2001, 53).

cultural communities, the Office of Northern Cultural Communities and the Office of Southern Cultural Communities, strongly suggests that the granting of CADC and CALC was not so much for the recognition of land rights as part of the recognition of indigenous peoples' right to self-determination, but as a tenurial instrument to solve the worsening problem of deforestation and land degradation.

It took ten years before a law intended to address the issue of self-determination was passed, in the face of strong resistance from individuals and groups who felt threatened by the law, and conversely, lack of support from groups who wanted an unambiguous law that would leave no room for misinterpretation of indigenous rights. That it was eventually passed may be attributed in part to the strong support of non-government organizations (NGOs), church-based organizations, international organizations, the government of Pres. Fidel Ramos, and of course, indigenous peoples' organizations.

Implementing the IPRA

With the IPRA and the establishment of the NCIP, claims to land and ancestral domain took the form of claims to 'native title'. As of 2005, the NCIP had issued 38 Certificates of Ancestral Domain Title (CADTs) and 50 Certificates of Ancestral Land Title (CALTs), covering 841,148.0841 has. and 3,832.2683 has., respectively (NCIP 2005). In ten years, the NCIP had accomplished a tiny fraction of its target, with the usual explanation for weak performance: lack of funding.

Meanwhile, national and international conditions converged to seriously cripple IPRA: The fiscal crisis in the Philippines and the need for more mineral resources and other resources by the expanding economies of the rich countries, as well as that of the People's Republic of China. These inter-related phenomena intensified policy and inter-agency conflicts, resulting in judicial and executive decisions favoring market forces and trumping social legislation, including the IPRA, a law that lacks effective countervailing force for its defense. But overshadowed by the materiality of the politico-economic forces derailing the socially-oriented IPRA is the clash in worldviews and

values of the primary stakeholders of the IPRA: The indigenous communities see the IPRA as a legal means for their exercise of the right to self-determination, for legally recognizing, protecting and promoting their way of life; but the de-indigenized agents of government and the market see the IPRA as a way of integrating the IPs/ICCs into the development framework of capitalist globalization. Such is the paradox of the IPRA.

Further confirming this is the transfer of the NCIP, along with the Department of Agrarian Reform (DAR), to the Department of Land Reform (DLR), ostensibly to make it easier for the NCIP to tap into the funds allocated for agrarian reform. One may argue that the NCIP is being run as a government agency guided by indigenous values, or at least, with the capacity to understand the meaning of the indigenous way of life. After all, according to its 2005 Annual Report, its mission statement is: "The NCIP is the primary government agency that formulates and implements policies, plans and programs for the recognition, promotion and protection of the rights and well-being of ICCs/IPs with due regard to their ancestral domains and lands, self-governance and empowerment, social justice and human rights, and cultural integrity." Moreover, the leadership of seven commissioners is composed of indigenous persons and many of its rank and file are, or claim to be, indigenous persons.

It does not necessarily follow however, that a person with claims to indigenous identity has indigenous consciousness, values and practices; an indigenous person acting within a complex and contested situation, such as a national bureaucracy caught amidst competing interests, can easily be uprooted and detached from his or her IKSPs. Or, while still attached to one's IKSPs, he or she could easily be compromised and rendered impotent by a de-indigenized bureaucratic culture. Or worse, in an inter-agency relationship with conflicting mandates, the NCIP itself becomes disempowered and marginalized; mimicking in this way the marginalization and disempowerment of the indigenous communities it is mandated to serve. This marginalized NCIP cannot effectively work for the benefit of its clientele. This is what happened to the Buhid Mangyan, as described by Martinez, et al. (*this volume*). Indeed, the IPRA has been caught in

the power struggle of government agents which in some cases, as in the case of the Subanon of Canatuan (Sanz, *this volume*), reduced the NCIP to the role of facilitator for a transnational corporation, and its divide and rule tactics.

Re-indigenization toward Upholding the Right to Self Determination

On inter-bureaucratic conflict, the NCIP, if it were true to its mission, could have mobilized the indigenous communities and support groups in a demonstration of "governance from outside the bureaucracy and inside the ancestral domain". One form of this would have been an independent National Consultative Body. But already de-indigenized, the NCIP has failed to develop and negotiate with other stakeholders a comprehensive strategy that should have included a re-indigenization program for itself, including the leadership and its rank and file. Also necessary would have been a systematic program for mass education on the IPRA. No less than the former chair of the NCIP from Ifugao acknowledged the need to communicate the IPRA to the grassroots (Dunuan 2007).

Taking into account the different and evolving capacities of the indigenous communities for self-governance as well as for sustainable economies, there is also a need to undertake customized programs and projects to strengthen their negotiating capacity, which should include not only changing the structures and processes of social relations, but also the complex of concomitant meanings and values.

Part of practical re-indigenization, and still following relevant policies already in place, self-delineation by indigenous communities should be pursued, rather than the legalistic adherence to a de-indigenizing law such as Republic Act no. 8560, requiring the services of geodetic engineers to legalize delineation. With self-delineation, more CADT would have been awarded, with traditional boundaries respected, while conceding to some historical realities of altered geography that could result in fatal boundary conflicts, a fact recognized and accepted by indigenous communities. And to enhance the negotiating capacity of IPs/ICCs, they should insist on the consensus of

the community members in the FPIC process. This, however, poses a challenge to divided communities. Indigenous peoples and communities are not immune to the divisive and centrifugal forces that human groups are heir to; and there are "tribal dealers" as well as genuine "tribal leaders" (Manzano 1999). Still, the FPIC process could be utilized by communities for greater social cohesion.

But self-delineation and the receipt of a CADT do not quite ensure the successful exercise of self-determination, autonomy or self-governance. The imperatives of a dominant national bureaucracy continue to operate inside the ancestral domain, oblivious to the indigenous peoples' concomitant rights to self-governance and other rights. This is further aggravated by an ancestral domain economy weakened by the highly degraded character of much of ancestral territories, primarily due to commercial logging and mining and unsustainable swidenning. With globalization and open-ended mass consumerism brought about by the intensifying contact between the indigenous world and the non-indigenous world, a revolution of rising expectations is abrewing, with new needs and aspirations being invented by the day.

Encouragingly, this is already being addressed by an increasing number of communities and a new breed of indigenous leaders. Some of these leaders already consider themselves as assimilated or de-indigenized (*nawala ang pagkakatutubo*), but decided to re-indigenize themselves by going back to work in their people's ancestral domain. As part of self-governance, they are trying to establish their own sustainable ancestral domain economies and integrated educational system based on IKSPs. Meanwhile, they are tapping into the existing educational system, modifying content and method to temporarily counteract the harm done by the present national educational system. They are also building on customary laws to address problems of law and order, while making use of relevant national laws in dealing with non-IP actors. All these are assertions of their right to self-governance within the ancestral domain (Bandara 2006)

These and other re-indigenization programs and projects are being initiated by a few indigenous communities, though with great difficulty. These will involve not merely policy reforms as such but a

sustained consolidation by indigenous communities of local processes, structures and resources, including meanings and value systems. Along with this would be some form of re-indigenization even of the state bureaucracy and support groups. This means the active role of the indigenous communities in educating the bureaucracy and support groups, as part of "governance from outside the bureaucracy but inside the ancestral domain". This is a concept emerging out of different communities' negotiation experiences, which will be further refined as different groups continue to seek solutions to their problems. In this re-indigenization process, there is as yet no evidence that NCIP has developed a sustained program for operationalizing the increasing wealth of literature on IKSPs and self-governance (Bennagen 1996, 2004; Arquiza 2005; Cordillera Peoples' Alliance 2004; Center for Orang Asli Concerns, Cordillera Peoples Alliance and PACOS Trust 2004).

On other support groups or stakeholders, and especially international organizations such as the UN system and the World Trade Organization, the World Bank, the Asian Development Bank, the European Union and rich countries like the US, Canada, Western Europe, Australia and Japan, which have official policies meant to support the the rights of indigenous communities and peoples, it is time for them to take a hard look at their policies, programs and projects, some of which have the effect of undermining not only the rights of indigenous peoples but also the rights of all who have claims to being human, including generations yet to be born. If anything else, this planet earth is our "common ground", and the children, our "common future". Illustrative of this are local community projects within the ancestral domains that are being implemented in partnership with international organizations, such as the UNDP-Global Environment Facility-Small Grants Programme, Philippines. Though still few in number, and often undertaken under extremely difficult conditions including armed conflict, these projects contribute to community well-being as well as to the solution of global environmental problems such as biodiversity loss, land degradation and global warming (Bennagen 2004). By recognizing the fact that historically, most, if not all, these invasive entities have been part of the problems besetting indigenous peoples and the environment (which includes ancestral domains), they could become part of the solution. After all, the struggle for the right to self-determination is an international struggle.

In this global and international context, it is crucial for the Philippines, in affirmation of its already internationally acknowledged example of constitutionally and legally recognizing IP rights, to endorse the Draft Declaration of the Rights of Indigenous Peoples and ratify the International Labor Organization Convention 169. These two acts, considered as supportive of IPRA, shall help ensure that indigenous peoples and communities in the Philippines shall continue to exercise their right to self-determination; and that relevant stakeholders shall continue to uphold these rights.

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ANNEX

The Indigenous Peoples Rights Act (IPRA)

S. No. 1728
H. No. 9125

Republic of the Philippines
Congress of the Philippines
Metro Manila

Tenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday the twenty-eighth day of July, nineteen hundred and ninety-seven

REPUBLIC ACT NO. 8371

AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I
GENERAL PROVISIONS

SECTION 1. Short Title. - This Act shall be known as "The Indigenous Peoples Rights Act of 1997".

SEC. 2. Declaration of State Policies. - The State shall recognize and promote all the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall recognize, respect and protect the rights of ICCs/ IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies; d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of Human rights and freedoms without distinction or discrimination;

e) The State shall take measures, with the participation of the ICCs/ IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

CHAPTER II
DEFINITION OF TERMS

SEC. 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:

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;

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; c) Certificate of Ancestral Domain Title - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;

d) Certificate of Ancestral Lands Title - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;

e) Communal Claims - refer to claims on land, resources and rights thereon; belonging to the whole community within a defined territory;

f) Customary Laws - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;

g) Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;

h) Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

i) Indigenous Political Structures - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, or any other tribunal or body of similar nature;

j) Individual Claims - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;

k) National Commission on Indigenous Peoples (NCIP) - refers to the office created under his Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs; l) Native Title - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

m)Nongovernment Organization - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;

n) People's Organization - refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;

o) Sustainable Traditional Resource Rights - refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and

p) Time Immemorial - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

CHAPTER III
RIGHTS TO ANCESTRAL DOMAINS

SEC. 4. Concept of Ancestral Lands/Domains. - Ancestral lands/ domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

SEC. 5. Indigenous Concept of Ownership. - Indigenous concept of ownership sustains the view that ancestral domains and 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. It likewise covers sustainable traditional resource rights.

SEC. 6. Composition of Ancestral Lands/Domains. - Ancestral lands and domains shall consist of all areas generally belonging to ICCs/ IPs as referred under Sec. 3, items (a) and (b) of this Act.

SEC. 7. Rights to Ancestral Domains. - The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a) Right of Ownership - The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

b)Right to Develop Lands and Natural Resources. - Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

c) Right to Stay in the Territories. - The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain.

Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

d) Right in Case of Displacement. - In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed;

e) Right to Regulate Entry of Migrants. - Right to regulate the entry of migrant settlers and organizations into the domains;

f) Right to Safe and Clean Air and Water. - For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;

g) Right to Claim Parts of Reservations -The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service; and

h) Right to Resolve Conflict. - Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

SEC. 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 nonmember 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.

SEC. 9. Responsibilities of ICCs/IPs to their'4ncestral Domains. -ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a) Maintain Ecological Balance. - To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b) Restore Denuded Areas. - To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and

c) Observe Laws. - To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

SEC. 10. Unauthorized and Unlawful Intrusion. - Unauthorized end unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/ IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/ IPs.

SEC. 11. Recognition of Ancestral Domain Rights. - The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/ IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

SEC. 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.

CHAPTER IV
RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

SEC. 13. Self-Governance. - The State recognizes the inherent right of ICCs/ IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

SEC. 14. Support for Autonomous Regions. - The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordilleras to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.

SEC. 15. Justice System, Conflict Resolution Institutions, and Peace Building Processes. - The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

SEC. 16. Right to Participate in Decision-Making - ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

SEC. 17. Right to Determine and Decide Priorities for Development. - The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

SEC. 18. Tribal Barangays. - The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.

SEC. 19. Role of Peoples Organizations. - The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

SEC. 20. Means for Development/Empowerment of ICCs/IPs. - The Government shall establish the means for the full development/empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

CHAPTER V
SOCIAL JUSTICE AND HUMAN RIGHTS

SEC. 21. Equal Protection and Non-discrimination of ICCs/IPs. -Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

SEC. 22. Rights during Armed Conflict. - ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into the armed forces, and in particular, for use against other ICCs/IPs; nor recruit children of ICCs/ IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

SEC. 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment. - It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to

employment, medical and social assistance, safety as well as other occupationally -related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall, within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by laws applicable to workers in general.

ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' organizations. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

SEC. 24. Unlawful Acts Pertaining to Employment. - It shall be unlawful for any person:

a) To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and

b) To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

SEC. 25. Basic Services. - The ICCs/IPs have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which

shall include, but not limited to, water and electrical facilities, education, health and infrastructure.

SEC. 26. Women. - ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in He decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

SEC. 27. Children and Youth. - The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, intellectual end social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

SEC. 28. Integrated System of Education. - The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/ IPs.

CHAPTER VI
CULTURAL INTEGRITY

SEC. 29. Protection of Indigenous Culture, Traditions and Institutions. - The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

SEC. 30. Educational Systems. - The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or private cultural entities, scholarships, grants and other incentives without

prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

SEC. 31. Recognition of Cultural Diversity. - The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.

SEC. 32. Community Intellectual Rights. - ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall presence, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

SEC. 33. Rights to Religious, Cultural Sites and Ceremonies. -ICCs/IPs shall have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and, the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the ICCs/IPs concerned to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

a) Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and

b) Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.

SEC. 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies. - ICCs/IPs are entitled to the recognition of the full ownership and control end protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and hearth practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

SEC. 35. Access to Biological and Genetic Resources. - Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

SEC. 36. Sustainable Agro-Technical Development. - The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the big-genetic and resource management systems among the ICCs/IPs shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.

SEC. 37. Funds for Archeological and Historical Sites. - The ICCs/ IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.

CHAPTER VII
NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)

SEC. 38. National Commission on Indigenous Cultural Communities/ Indigenous Peoples (NCIP). - To carry out the policies herein set forth, there shall be created the National Commission on ICCs/ IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.

SEC. 39. Mandate. - The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

SEC. 40. Composition. - The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommenders submitted by authentic ICCs/ IPs: Provided, That the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras, Region II, the rest of Luzon, Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That at least two (2) of the seven(7) Commissioners shall be women.

SEC. 41. Qualifications, Tenure, Compensation. - The Chairperson and the six (6) Commissioners must tee natural born Filipino citizens, bonafide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners shall be members of the Philippine Bar: Provided, farther, the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall

only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation m accordance with the Salary Standardization Law.

SEC. 42. Removal from office. - Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

SEC. 43. Appointment of Commissioners. - The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

SEC. 44. Powers and Functions. - To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended;

b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;

c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;

d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;

e) To issue certificate of ancestral land/domain title;

f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to

obtain loans from government lending institutions and other lending institutions to finance its programs;

g)To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;

h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;

i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;

j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;

k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;

1) To prepare and submit the appropriate budget to the Office of the President;

m)To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;

n) To decide all appeals from the decisions and acts of all the various offices within the Commission;

o) To promulgate the necessary rules and regulations for the implementation of this Act;

p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and

q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

SEC. 45. Accessibility and Transparency. - Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.

SEC. 46. Offices within the NCIP. - The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided:

a) Ancestral Domains Office - The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral lands/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with a master plan as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs or their ancestral domains and to assist the ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;

b) Office on Policy, Planning and Research - The Of lice on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs;

c) Office of Education, Culture and Health - The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and rented rights as provided in this Act. It shall assist,

promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of available appropriation, a special program which includes language and vocational training, public health and family assistance program and rented subjects.

It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession. Towards this end, the NCIP shall deploy a representative in each of the said of offices personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and presence historical and archeological artifacts of the ICCs/IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;

d) Office on Socio-Economic Services and Special Concerns. - The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;

e) Office of Empowerment and Human Rights - The Office of Empowerment and Human Rights shall ensure that indigenous sociopolitical, cultural and economic rights are respected and recognized. It shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all levels of decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations, are protected and promoted;

f) Administrative Office - The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services. It shall also administer the Ancestral Domains Fund; and

g) Legal Affairs Office- There shall be a Legal Affairs Office which shall advice the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/UPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

SEC. 47. Other Offices. - The NCIP shall have the power to create additional of offices it may deem necessary subject to existing rules and regulations.

SEC. 48. Regional and Field Offices. - Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field offices shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field of offices, the NCIP shall establish field offices in said provinces.

SEC. 49. (office of the Executive Director. - The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to existing rules and regulations.

SEC. 50. Consultative Body. - A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP from time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.

CHAPTER VIII
DELINEATION AND RECOGNITION OF ANCESTRAL DOMAINS

SEC. 51. Delineation and Recognition of Ancestral Domains. -Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the scope of the territories and agreements/ pacts made with neighboring ICCs/ IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the right of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

SEC. 52. Delineation Process. - The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

a) Ancestral Domains Delineated Prior to this Act.- The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ancestral domain program prior to the enactment of this law. ICCs/IPs whose ancestral lands/domains were officially delineated prior to the enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;

b) Petition for Delineation. - The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;

c) Delineation Proper. - The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned;

d) Proof Required. - Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (I) of the following authentic documents:

1) Written accounts of the ICCs/IPs customs and traditions;
2) Written accounts of the ICCs/IPs political structure and institution;
3) Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
4) Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
5) Survey plans and sketch maps;
6) Anthropological data;
7) Genealogical surveys;
8) Pictures and descriptive histories of traditional communal forests and hunting grounds;
9) Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
10) Write-ups of names and places derived from the native dialect of the community.

e) Preparation of Maps. - On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;

f) Report of Investigation and Other Documents. - A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP;

g) Notice and Publication. - A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP,

and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspaper and radio station are not available;

h)Endorsement to NCIP. - Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below.

i) Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies. - The Chairperson of the NCIP shall certify Blat the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified Thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed;

j) Issuance of CADT. - ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all dose identified in the census; and

k) Registration of CADTs. - The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands tides before She Register of Deeds in the place where the property is situated.

SEC. 53. Identification, Delineation and Certification of Ancestral

a) The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;

b) Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;

c) Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this Act, including tax declarations and proofs of payment of taxes;

d) The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;

e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive

weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;

f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.

SEC. 54. Fraudulent Claims. - The Ancestral Domains Of lice may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.

SEC. 55. Communal Rights. - Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provided, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act. No. 386, otherwise known as the New Civil Code.

SEC. 56. Existing Property Rights Regimes. - Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

SEC. 57. Natural Resources within Ancestral Domains. - The ICCs/ IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

SEC. 58. Environmental Considerations. - Ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full participation of the ICCs/ IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

SEC. 59. Certification Precondition. - All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected

does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/ IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

SEC. 60. Exemption from Taxes. - All lands certified to be ancestral domains shall be exempt from real property taxes, special levies, end other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes or upon titling by private persons: Provided, That all exactions shall be used to facilitate the development and improvement of the ancestral domains.

SEC. 61. Temporary Requisition Powers. - Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three (3) years after its creation, the NCIP is hereby authorized to request the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (I) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.

SEC. 62. Resolution of Conflicts. - In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen(15) days from receipt of a copy thereof

SEC. 63. Applicable Laws. - Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs.

SEC. 64. Remedial Measures. - Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the "common good." The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided further, That the action for cancellation shall be initiated within two (2j years from the effectivity of this Act: Provided, finally, that the action for reconveyance shall be within a period of ten (10) years in accordance with existing laws.

CHAPTER IX
JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS

SEC. 65. Primacy of Customary Laws and Practices. - When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.
SEC. 66. Jurisdiction of the NCIP. - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/ IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/ Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

SEC. 67. Appeals to the Court of Appeals. - Decisions of the NCIP shall be appealable to the Court of Appeals byway of a petition for review.

SEC. 68. Execution of Decisions, Awards Orders. - Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Of ricer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

SEC. 69. Quasi-Judicial Powers of the NCIP. - The NCIP shall have the power and authority: a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

b)To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;

c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

SEC. 70. No Restraining Order or Preliminary Injunction. - No inferior court of the Philippines shall have jurisdiction to issue an restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

CHAPTER X
ANCESTRAL DOMAINS FUND

SEC. 71. Ancestral Domains Fund. - There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of One hundred thirty million pesos (P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten million pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may deem appropriate. Thereafter, such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments and grants in the form of contributions, and such endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof.

CHAPTER XI
PENALTIES

SEC. 72. Punishable Acts and Applicable Penalties.- Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

SEC. 73. Persons Subject to Punishment. - If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office..

CHAPTER XII
MERGER OF THE OFFICE FOR NORTHERN CULTURAL COMMUNITIES (ONCC)
AND THE OFFICE FOR SOUTHERN CULTURAL COMMUNIONS (OSCC)

SEC. 74. Merger of ONCC/OSCC. - The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the positions of Staff Directors, Bureau Directors, Deputy Executive Directors and Executive Directors, except positions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filling up of the newly created positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement or gratuity, they shall have the option to select either such retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally, That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.

SEC. 75. Transition Period. - The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

SEC. 76. Transfer of Assets/Properties. - All real and personal properties which are vested in, or belonging to, the merged offices as aforestated shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents relating to the operations of the merged offices shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force and effect unless otherwise terminated, modified or amended by the NCIP.

SEC. 77. Placement Committee. - Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The Placement Committee shall be composed of seven (7) commissioners and an ICCs'/IPs' representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

CHAPTER XIII
FINAL PROVISIONS

SEC. 78. Special Provision. - The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its town site reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or acquired through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to

any territory which becomes part of the City of Baguio after the effectivity of this Act.

SEC. 79. Appropriations. - The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

SEC. 80. Implementing Rules and Regulations. - Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

SEC. 81. Saving Clause. - This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.

SEC. 82. Separability Clause. - In case any provision of this Act or any portion thereof is declared unconshtubona1 by a competent court, other provisions shall not be affected thereby.

SEC. 83. Repealing Clause. - Presidential Decree No. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 84. Effectivity. - This Act shall take effect fifteen (15) days upon its publication in the (official Gazette or in any two (2) newspapers of general circulation.

Approved,

JOSE DE VENECIA, JR.
Speaker of the House of Representatives

ERNESTO M. MACEDA
President of the Senate

This Act, which is a consolidation of Senate Bill No. 1728 and House Bill No. 9125 was finally passed by the Senate and the House of Representatives on October 22, 1997.

ROBERTO P. NAZARENO
Secretary General
House of Representatives

LORENZO E. LEYNES, JR.
Secretary of the Senate

Approved: Oct 29 1997
FIDEL V. RAMOS

President of the Philippines

CONTRIBUTORS

AUGUSTO B. GATMAYTAN is an anthropologist, lawyer and advocate of indigenous peoples' rights, who has been working with Philippine indigenous peoples' organizations and communities since 1985. In the last ten years, he has been working intensively with indigenous communities in Agusan del Sur province, north-eastern Mindanao.

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ROWENA REYES-BOQUIREN, Ph.D. is a Professor at the University of the Philippines-Baguio City. She has special interest in northern Cordillera history and development issues, and expertise in research methodology, institutional analysis and political economy. With her academic and work background in environmental history and development studies, she has served as member of the Board of Trustees of several national agencies, and is involved in national programs and projects related to environmental issues.

MA. SIMEONA MARTINEZ, a Geography graduate, was an Anthrowatch staff-member in Mindoro and now teaches in the Department of Geography of the University of the Philippines-Diliman. Erika Rey is pursuing a Master's degree in Anthropology at the University of the Philippines-Diliman, while working as a Project Staff of Anthrowatch. Portia Villarante, the Mindoro site-coordinator of Anthrowatch, is another Anthropology graduate, currently pursuing a Master's degree in Community Development at the University of the Philippines-Diliman. Anthropology Watch, Inc. (Anthrowatch) is an NGO established by anthropologists in 1994 to help indigenous communities work for "sustainable, self-managed

Indigenous Peoples' communities with secure ancestral domains", by providing assistance in ancestral domain delineation and community development planning, among other programs.

PENELOPE C. SANZ is a journalist and anthropologist, currently the chief researcher for a research project of the Mindanawon Initiatives for Cultural Dialogue, based in the Ateneo de Davao University, in Davao City. She is also writing her dissertation, on the Subanon of Zamboanga del Norte.

IRINA WENK is based in the Institute of Social Anthropology, University of Zurich, in Switzerland as project collaborator, and where she is currently writing her dissertation. Her fields of specialization are indigenous peoples' rights and territorial claims, frontier development and natural resource conflicts as well as colonial and post-colonial pacification processes with a regional focus on the Philippines.

PONCIANO L. BENNAGEN is involved in community work with various indigenous communities in Luzon, Visayas and Mindanao.