

A Journey of Hope

IMPLEMENTING THE INDIGENOUS PEOPLES' RIGHTS ACT OF THE PHILIPPINES

Volume 1

The Quest to Reclaim Ancestral Domains

Published by the International Labour Organization (ILO) in cooperation with the United Nations Development Programme (UNDP), the National Commission on Indigenous Peoples (NCIP) and the New Zealand Agency for International Development (NZAID)

2005

FOREWORD

"A Journey of Hope" – a three-volume publication – contains several case studies based on the grassroots realities of women and men in indigenous peoples' communities. This publication encompasses issues that have implications on the implementation of the Indigenous Peoples' Rights Act (IPRA) or R.A. 8371. It is therefore very relevant to indigenous peoples in the Philippines, as well as other stakeholders such as local government units (LGUs), national government agencies (NGAs), non-governmental organizations (NGOs), people's organizations (POs), workers and the private sector.

This publication is the product of a collaborative project of the International Labour Organization (ILO) and the United Nations Development Programme (UNDP), which aims at improving policy and decision-making of key governance institutions, both public and private, by developing empirical evidence of key issues relevant to the indigenous peoples of the Philippines. In general, these case studies are expected to serve as a basis for a review and improvement of the implementing rules and regulations (IRR) of the IPRA, the national law on indigenous peoples, which reflects the spirit and intent of ILO Convention No.169, the Indigenous and Tribal Peoples Convention, 1989.

ILO Convention No. 169 is the foremost international legal instrument that deals entirely with the rights of indigenous and tribal peoples, and its influence extends beyond the number of countries that have ratified it. Support for better application of IPRA is also consistent with better application of ILO Convention No. 169.

The publication of these case studies would not have been made possible without the involvement and participation of the women and men and boys and girls from selected indigenous peoples' communities in the country who accommodated the case study writers involved in this project. We are also grateful for the support and cooperation provided by UNDP and the New Zealand Aid. Special thanks also goes to NCIP and other partners for their valuable contribution to the realization of the case studies.

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International Labour Organization
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A Journey of Hope

is a three-volume series of books that summarizes the scoping reports and case studies written under a support to policy and programme development (SPPD) project collaboratively undertaken by the International Labour Organization (ILO) through its Interregional Programme to Support Self-reliance of Indigenous and Tribal Peoples through Cooperatives and Other Self-Help Organizations (INDISCO), the National Commission on Indigenous Peoples (NCIP) and the United Nations Development Programme (UNDP)

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A Journey of Hope: Implementing the Indigenous Peoples Rights Act of the Philippines

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The contents of this volume are based on case studies and a scoping report focusing on the recognition of ancestral domains in the Philippines. These studies are meant to generate information that would facilitate the full implementation of the Indigenous Peoples Rights Act. The project was implemented under the guidance of a steering committee headed by the Chair of the National Commission on Indigenous Peoples. Representatives from the International Labour Organization, United Nations Development Programme, concerned government agencies and non-government organizations were part of the committee. Domingo I. Naryahangan, ILO-INDISCO National Coordinator, provided facilitative technical services for the project.



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LIST OF ACRONYMS

ADMP	Ancestral Domain Management Plan
ADO	Ancestral Domains Office
ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
ATSMT	Asosasyon ng Tribung Sibuyan Mangyan Tagabukid
BITO	Bakun Indigenous Tribes Organization
CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CALC	Certificate of Ancestral Land Claim
CALT	Certificate of Ancestral Land Title
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CBFM	Community-Based Forest Management
CENRO	Community Environment and Natural Resource Office
CSTFAL	Community Special Task Force on Ancestral Lands
DA	Department of Agriculture
DAO	Department Administrative Order
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
EBJF	Evelio B. Javier Foundation
EU	European Union
IEC	Information, Education, and Communication
ICC	Indigenous Cultural Communities
IKSP	indigenous knowledge systems and practices
IP	Indigenous Peoples
IPO	Indigenous Peoples Organization
IPRA	Indigenous Peoples' Rights Act
IRR	Implementing Rules and Regulations
ISF	Integrated Social Forestry
KKP	Kabang Kalikasan ng Pilipinas
LGU	Local Government Unit
NCIP	National Commission on Indigenous Peoples
NGA	National Government Agency
NGO	Non-Government Organization
NIPAS	National Integrated Protected Areas System
NIPAP	National Integrated Protected Areas Programme
MAGCAISA	Magdiwang, Cajidiocan, San Fernando
PAMB	Protected Area Management Board
PANLIPI	Tanggapang Panligal ng Katutubong Pilipino (Legal Assistance Center for Indigenous Filipinos)
PENRO	Provincial Environment and Natural Resources Officer
PO	Peoples' Organization
PRRM	Philippine Rural Reconstruction Movement
PSTFAD	Provincial Special Task Force on Ancestral Domains
WWF	World Wildlife Fund

INTRODUCTION

In 1987, the very first Philippine Constitution that guarantees the right of indigenous Filipinos to their ancestral domains became the basic law of the land after it was ratified by the Filipino people. It carries a number of provisions that allows indigenous communities in the country to preserve and develop their way of life (*see Chapter 3*).

With this constitutional mandate, the Department of Environment and Natural Resources began the preparatory process of issuing Certificates of Ancestral Domain Claims to indigenous cultural communities in 1992. Non-government organizations working for the recognition of indigenous peoples rights also lobbied for the passage of a law that would fulfill the intent of the constitution.

On 29 October 1997, then President Fidel Ramos signed Republic Act No. 8371, "An Act To Recognize, Protect And Promote The Rights Of Indigenous Cultural Communities, Creating A National Commission On Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefore, and For Other Purposes." Better known as IPRA, it is designed to implement constitutional provisions for the protection of the rights of indigenous Filipinos.

The IPRA law seeks to stop prejudices against indigenous peoples through the recognition of their communal and individual rights to ancestral domains and ancestral lands, as well as the right to live their lives in accordance with their traditions, religions and customs. It also aligns the Philippine category of indigenous cultural communities with the international category of indigenous peoples, and was heavily influenced by both the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) and the UN Draft Declaration on the Rights of Indigenous Peoples.

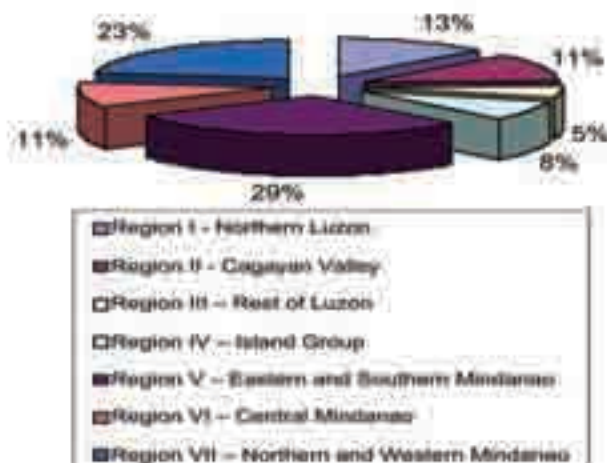
In this volume, four reports focusing on the efforts of indigenous peoples to reclaim their ancestral domains are presented. Chapter 1 provides an overview of the process undertaken by indigenous communities to obtain their ancestral domain certificates and titles. The other chapters illustrate some of the conflicts that indigenous peoples are experiencing in relation to ancestral domain concerns, and how various groups have assisted them in achieving their goals.

This is the first in a three-volume series that looks at various aspects of indigenous culture where the IPRA law has a significant impact. Volume 2 dwells on the theme of development and environment, while Volume 3 describes governance and indigenous justice systems.

Throughout this volume, numerous references are made regarding the concept of ancestral domains. For the purpose of clarity, the legal definition of 'Ancestral Domain' in the IPRA law is presented here, as follows:

"all areas generally belonging to Indigenous Cultural Communities (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

Percentage of IP Population by Ethnographic Region



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 inalienable 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.”

The phrase ‘time immemorial’ refers to a period of time when as far back as memory can go, indigenous communities 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.

One of the significant aspects of the law is the creation of the National Commission on Indigenous Peoples (NCIP) which is mandated “to formulate and implement policies, plans, and programs for the development of indigenous cultural communities and indigenous peoples and to review the applications for ancestral land titling, the issuance of certificates of these titles, and the adjudication of disagreements regarding land ownership.”

The NCIP has around 1,500 personnel. It is a government agency that is responsible for protecting and promoting the rights and welfare of indigenous peoples, with due regard to their customs and traditions, beliefs and institutions.

Representation to the Commission is by ethnographic region. Seven such regions have been established; hence, there are seven Commissioners, one of whom serves as Chairperson. One of its most important components is the Ancestral Domains Office, which facilitates the delineation, titling, development, and protection of ancestral domains and lands.

Data from the Office of Policy, Planning and Research of the NCIP indicate that the estimated population of indigenous peoples is 13.5 million or about 17 per cent of the current Philippine population, as of the year 2000 census.

The phrase 'Indigenous Cultural Communities/Indigenous Peoples' is defined in the IPRA law

as:

"a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized communities on communally bounded and defined territory, and who have, under claim of ownership, since time immemorial, occupied, possessed, utilized said territories; sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural incursions of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of the 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 incursions on 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 resided outside their ancestral domains."

Location and Estimated Population of Indigenous Cultural Communities in the Philippines

Ethnographic Region	Indigenous Cultural Communities	Estimated Population
I – Northern Luzon	Bontoc, Balangao, Isneg, Tinggian, Kankanaey, Kalanguya, Karao, Ibaloi, Ayangan, Ifugao, Tuwali, Kalinga, Apayao	1,700,000
II – Cagayan Valley	Agta, Kalanguya, Bugkalot, Isinai, Gaddang, Agtay, Dumagat, Ibanag, Itawis, Ivatan	1,500,000
III – Rest of Luzon	Aeta, Negrito, Baluga, Pugot, Abeling, Agta, Dumagat, Remontado, Bugkalot, Cimarón, Kabihug, Tabangnon, Abiyon (Aeta), Isarog, Itom, Pullon	800,000
IV – Island Groups	Agutaynon, Tagbanua, Dagayanen, Tao't Bato, Batak, Palawanon, Molbog, Iraya Mangyan, Hanunuo Mangyan, Alangan Mangyan, Buhid Mangyan, Tadyawan Mangyan, Batangan Mangyan, Gubatnon Mangyan, Ratagnon Mangyan, Ati, Cuyunon, Sulod/Bukidnon, Magahat, Korolanos, Ata, Bukidnon, Escaya, Badjao, Kongking	1,200,000
V – Eastern and Southern Mindanao	Manobo, Mandaya, Mansaka, Dibabawon, Banwaon, Bagobo, Ubo Manobo, Tagakaolo, Talaingod, Langilan, Mamanwa, Higaonon, B'laan, T'boli, Kalagan, Tagabawa, Manobo B'til, Matigsalog, Tigahawanon, Sangil	3,900,000
VI – Central Mindanao	Aromanon, Tinuray, Bagobo, Ubo Manobo, Higaonon, Subanen, Maguindanso, Maranao, Iranon, Kamink, B'laan, Lambangian, Dulangan	1,400,000
VII – Northern and Western Mindanao	Subanen, Talaandig, Higaonon, Matigsalog, Umayamnon, Manobo, Kamigin, Yakan, Sama, Badjao/Sama Laut, Kalibugan, Jama Mapon	3,000,000
Total		13,500,000

REFERENCE: NCIP & National Statistics Office



Relief map of Pala'wan ancestral domain claim in the village of Berong, Palawan

CHAPTER 1

NATIVE TITLES: THE REALIZATION OF A DREAM

For many centuries, the ancestral domains of indigenous peoples were not expressly recognized under the legal and policy framework of the Philippines. The so-called Regalian Doctrine, which was introduced into the country's legal system during the colonial period, effectively established State ownership of land and natural resources in the public domain. As a consequence, no land could be owned by a person, natural or juridical, unless expressly granted by the State through a title or similar land tenure instrument. Generally illiterate and marginalized, the indigenous peoples never had a chance to avail themselves of this State grant, thereby leaving their ancestral domains under the classification of public lands. Over time, wholesale encroachment into their traditional territories by migrant settlers, big business interests and other entities caused their displacement and forced exodus to the hinterlands.

It was only under the new Philippine Constitution of 1987, which was crafted after the fall of former president Ferdinand Marcos in 1986, that the right of indigenous peoples to their ancestral domains was fully recognized. The relevant provisions in the country's fundamental law that refer to this right are as follows:

Art. XII, Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being. The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain.

Art. XIII, Sec. 6. The State shall apply the principles of Agrarian Reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

According to the former Office for Northern Cultural Communities and Office for Southern Cultural Communities (now the National Commission on Indigenous Peoples), an estimated five million hectares or about one-sixth of the total land area of the Philippines may be classified as ancestral domains that indigenous peoples have occupied or possessed for a long time. Due to neglect and various government interventions however, most indigenous communities have gradually lost control of their ancestral territories to outsiders.

Pending the passage of an enabling legislation, the Department of Environment and Natural Resources (DENR) took initial steps to turn the provisions of the Constitution on ancestral domains into reality through Executive Order No. 192 which was issued in 1987 by then President Corason C. Aquino. Executive Order No. 192 empowered the DENR to exercise exclusive jurisdiction over the management and disposition of all lands of the public domain. The agency's mandate was further strengthened when the Philippine Congress passed Republic Act No. 7586, the National Integrated Protected Area System Act of 1992 (NIPAS), which authorized the DENR to provide for the recognition of ancestral domains and other customary rights in protected areas.

CALCs & CALCs

Cloaked with a Constitutional mandate, the government initiated policy reforms in favor of the indigenous peoples. Former President Corason Aquino, who governed the country from 1986 to 1992, established the "Social Pact for Empowered Economic Development." Under this program, the DENR tested the concept of recognition of recognition of ancestral land claims by issuing Special Order No. 31 and No. 31-A series of 1990 that recognized ancestral land claims in Baguio City and parts of the Cordillera Administrative Region, respectively. The same concept was also tested in Palawan through Administrative Order No. 61 series of 1991 that gave the same benefits to indigenous peoples in the province. Under these administrative issuances, Certificates of Ancestral Land Claim (CALCs) were issued to duly recognized claimants of ancestral lands, as shown in the table below.

When President Fidel V. Ramos was elected in 1992, he continued the initiatives of the Aquino government through a program called the "Social Reform Agenda." Following his lead, the DENR issued Department Administrative Order No. 2 in 1993 that prescribed rules and regulations for the identification, delineation and recognition of ancestral land and domain claims. Popularly

Table 1.1 CALCs Issued in the Cordillera and Palawan

Province	No. of CALCs Issued	Estimated No. Of Beneficiaries	Estimated Area Covered (in hectares)
Iligao	52	2,088	3,159
Benguet	4	303	473
Baguio City	61	405	209
Kalinga	1	45	30
Mountain Province	1	176	63
Palawan	8	816	8,137
TOTAL	147	3,833	10,131

known as DAO 2, the issuance came up with two legal instruments that provided security of tenure to indigenous peoples. These are the Certificate of Ancestral Land Claim (CALC), a carry-over from the previous SO Nos. 31 and 31-A and AO No. 61, which is awarded to the duly recognized claimant of a specific parcel of ancestral land who may be an individual, family or clan; and, the Certificate of Ancestral Domain Claim (CADC) that is awarded to the recognized community claimant of a specific ancestral territory.

The implementation of DAO 2 started with the creation of a Provincial Special Task Force on Ancestral Domains (PSTFAD) in each province where there are indigenous peoples. A Community Special Task Force on Ancestral Lands (CSTFAL) was also created in each designated area to implement the procedural requirements of DAO 2.

Members of the task forces came from various sectors. The Provincial Environment and Natural Resources Officer (PENRO) chaired the PSTFAD, which consisted of 12 members:

- Seven from the provincial DENR distributed among its Lands, Forestry, Environment & Survey Units;
- One from the Department of Agrarian Reform (DAR);
- One from the concerned Provincial Government;
- One from the claimant indigenous cultural community;
- One from a non-government organization (NGO) working in the area;
- One from the local Cultural Community Office (Office for Northern Cultural Communities, Office for Southern Cultural Communities and/or Office on Muslim Affairs).

The Community Environment and Natural Resources Officer (CENRO) chaired the CSTFAL, which had approximately the same number and representation as the PSTFAD. Applications for a CALC were processed according to a DENR-prescribed procedure, as shown below:

1. Filing of application by the individual, family or clan claimant to the CSTFAL
2. Submission of proofs of ancestral land claim
3. Publication of CALC application in a newspaper of provincial circulation and posting of the announcement in public places
4. Investigation and resolution of application by the CSTFAL
5. Parcelary survey (for land that is sub-divided into individual parcels) of the ancestral land claim by the CSTFAL or an accredited private surveyor
6. Endorsement of application through proper channels to the Office of the Secretary
7. Issuance of CALC by the Office of the Secretary

The following is the prescribed procedure for the identification, delineation and eventual issuance of a CADC:

1. PSTFAD conducts Information and Education Campaign
2. Identification or census of Indigenous Cultural Communities / Indigenous Peoples
3. IP community identifies and prepares indicative map of ancestral domain boundaries through self-delineation

4. PSTAD announces ancestral domain claims through publication in a local paper for two consecutive weeks
5. IP community submits proofs of ancestral domain claims to the PSTAD
6. PSTAD conducts ocular inspection of area and verifies the proofs of the claim
7. PSTAD prepares perimeter survey of the ancestral domain claim
8. PSTAD submits approved perimeter survey to the Office of the Regional Executive Director (ORED) in preparation for a regional survey by the same office
9. PSTAD submits favorable recommendation to DENR Secretary
10. Office of the DENR Secretary issues the CADC

Many people regarded the implementation of DAO 2 as a pioneering action that significantly increased the level of security of tenure of the indigenous peoples over the territories and natural resources found in the areas they have occupied since time immemorial.

The identification, delineation and recognition of ancestral lands and domains were conducted under various circumstances. These included significant differences in size, terrain, accessibility, integrity of boundaries, cultural integrity of claimants, level of support from local government units, and availability of support services.

Indicative maps produced in the process of delineation were commonly known as "forestry surveys" that made use of a "Forester's Compass." Although they reflect self-delineated boundaries as identified by the community, forestry surveys lack technical accuracy. In some cases however, well-trained support groups from the DENR and NGOs made use of Global Positioning System (GPS) equipment that were more technically accurate.

Assisting organizations such as NGOs, indigenous peoples organizations (IPOs), local government units (LGUs) or national government agencies (NGAs) guided IP communities through a number of activities that led to the issuance of CADCs or CALCs. These activities, which may be classified into two components, include the following:

1. Community Social Preparation

- a. *Community assemblies, meetings and dialogues* – These served as venues for communities to get an orientation on DAO 2 and related issuances. Through discussions, members of the community gained the opportunity to make a commitment and accept the responsibilities of involvement in the process. Local government units were encouraged to support the national government's initiative. Indigenous communities sought the active participation of other sectors such as peoples' organizations, socio-civic organizations, and religious groups. Participants in these meetings identified specific community groups that would spearhead the process.
- b. *Information and education campaign* – PTSEAD members provided thorough information to claimant communities and other stakeholders on the processes, responsibilities, and impact of DAO 2. The seminars also touched on related laws and issuances affecting ancestral lands and domains, and the natural

resources found in these territories. These include the Mining Act, the NIPAS Law, the Comprehensive Agrarian Reform Law (CARL) and its corresponding Comprehensive Agrarian Reform Program (CARP), and the Public Land Act. At this stage, concerned communities were given the opportunity to decide whether or not to apply for CADCs or CALCs. Decisions reached were commonly expressed in the form of Community Resolutions.

- c. *Conflict management and resolution* – This involved the management and possible resolution of disputes related to ancestral domain and land claims, especially conflicting boundaries or overlapping claims. For this purpose, traditional and customary conflict-resolution methods were usually employed. Indigenous peoples rarely went to court to seek settlement of disputes concerning ancestral domains and lands, but when this happens, both parties have to agree to resort to the national legal system.

There were certain cases when disputes over ancestral domain/land rights involved large government projects, such as the San Roque Multi-Purpose Hydroelectric Dam in Pangasinan. The project had adversely affected the ancestral land claims of some Ibaloi families upstream, particularly in the municipality of Itogon, Benguet. Related negotiations led to the resettlement of the affected families.

Indigenous peoples in Zamboanga del Norte, Bukidnon and Misamis Oriental faced similar situations. In these cases, the affected indigenous communities resorted to protest activities to seek redress for their complaints.

2. Identification and Delineation of Ancestral Domains and Lands

- a. *Community Indicative Mapping* – Elders and leaders, generally regarded as the repositories of traditional knowledge, were requested to identify the boundaries of their ancestral domains by tracing on topographic maps or sketching on paper. In some areas, boundaries were checked out on site to make sure that corresponding natural or man-made landmarks such as old trees, rock or stone formations, creeks, ridges, and rivers still existed.
- b. *Publication of Claims* – With the assistance of PSTADs and CSTADs, ancestral domain or land claimants published their claims to give due notice to the general public, especially to adverse claimants, if any. This was done through publication in a local newspaper for two consecutive weeks and/or posting of notices in conspicuous places such as barangay and municipal halls and local cultural community and DENR offices. In some instances, the claims were announced regularly over a designated period of time in local radio stations.
- c. *Data Gathering* - To prove their claim, members of the indigenous community have to provide evidence attesting to their long-term possession or occupation of the land and resources in question. The most useful materials were old photographs of existing traditional houses, burial grounds, rice fields and/or communal or family forests.

Older people and members of the "Council of Elders" were able to trace and provide their family trees or genealogy from the 10th to 18th generation. A good number of

Table 1.2 CADC Application Process in Selected Communities

Location and Details of Selected CADCs	Activities Undertaken
<u>Mariboon, Abra Province</u> Banao-Mabaka-Gubang Communities CADC No. CAR-036 Land Area: 30,579 hectares Time Frame: Nine months	• Peace conference • Land congress, information campaign, resolution to apply for CADC • Preliminary identification of boundaries and sketch mapping by elders • Organization and training of research team to gather proofs of the claim • Publication of claim by PSTFAD • Community mapping at barangay and district levels • Ocular inspection of proofs and ancestral domain boundaries • Perimeter survey by PSTFAD • Consolidation of indicative maps • Validation of indicative maps • Submission of ancestral domain claim documents to the PSTFAD • Validation of documents by the PSTFAD • Endorsement of the application for CADC to the DENR Secretary
<u>Gabaldon, Nueva Ecija</u> Dumagal Community CADC No. RO3-067 Land Area: 14,797 Has. CADC No. RO3-080 Land Area: 3,419 Has. Time Frame: 14 months	• Information dissemination on DAO 02 • Establishment of community tribal council, approval of community resolution to apply for CADC • Identification of boundaries and preparation of sketch map of the ancestral domain by the community leaders • Conduct of related training and consultation activities • Publication of claim by PSTFAD • Data gathering and documentation of proofs of the ancestral domain claim • Perimeter survey by the PSTFAD • Submission of CADC application documents to the PSTFAD • Validation of CADC application documents • Endorsement of application by PSTFAD for the issuance of CADCs
<u>Botolan and San Felipe, Zambales</u> Aeta Community CADC No. RO3-088 Land Area: 22,400 hectares and CADC No. RO3-043 Time Frame: Five Months	• Information dissemination on DAO 2 and related laws • Establishment of tribal councils, community decision-making on application for CADC • Community identification of boundaries and preparation of sketch maps • Training on securing of proofs of ancestral domain claim • Resolution of boundary conflicts • Identification and gathering of proofs of ancestral domain claim • Publication of claim by PSTFAD • Ocular inspection of proofs and boundaries • Participatory perimeter survey using GPS equipment • Consolidation and submission of CADC application to PSTFAD • Validation of documents and endorsement of application by PSTFAD
<u>Coron, Palawan</u> Calamian-Tagbanua Community CADC NO. RO4-134 Land/Waters Area: 22,284 hectares Time Frame: Three Years (This is exceptional in terms of time frame because of the inclusion of ancestral waters for the first time)	• Information dissemination on DAO 2 • Community meetings and exchange of information on traditional home ranges and their history • Community identification of boundaries and preparation of sketch maps, including ancestral waters • Gathering and submission of proofs of ancestral domain/waters claim • Survey and mapping of ancestral domain and waters using GPS equipment by PSTFAD with NGO assistance • Community validation of maps • Conflict resolution with LGUs, DENR-CENRO and the Palawan Council for Sustainable Development focused on the protest against the CADC application filed by the Coron Municipal Council • Endorsement of CADC application to the DENR Secretary • Issuance of CADC (June 12, 1998)

ancestral domain and land claimants in the Cordillera Region wrote related myths and legends revolving on their god “Kabunyan,” rites and rituals and age-old sustainable swidden and terraces farming methods.

- d. *Ocular Inspection and Verification of Claims* – Upon receipt of the evidence from community claimants, the PSTADs and CSTALs went to the site to inspect and verify the proof presented. Reports of the findings were prepared and submitted to the DENR as part of the supporting documents for the claim.
- e. *Perimeter Survey and Preparation of Maps* – The PSTADs and CSTALs carried out survey and mapping of the ancestral domain and land claims using GPS or other available equipment. These generally resulted in indicative maps that were appropriately marked “Subject to ground survey.” For the purpose of issuing CADCs and CALCs however, these maps were deemed sufficient.

Recipients of CADCs and CALCs who went through these activities found them generally acceptable and satisfactory. Communities that had gone through the same process but were not able to obtain their CADCs and CALCs due to the passage of IPRA in 1997 shared the opinion:

To further illustrate the process of obtaining a CADC, Table 1.2 (*opposite page*) shows the actual experience of selected communities. The Acta and Dumagat communities in this table have two CADCs each, as there were two groups that wanted separate titles but opted to undergo the process together.

Following the submission of their completed applications, these communities were issued their CADCs in varying time frames, depending on local circumstances. The costs mentioned do not include salaries and fees of assisting government or NGO personnel. In some cases, however, activities and costs included the formulation of ancestral domain management plans.

Their experiences reflect what many other communities, including those found in Island Groups and in Mindanao, also went through in pursuing the CADC process. A comparative analysis indicates that on the average, the process approximates a reasonable time frame and cost.

The result is different however, where the phasing of activities is staggered. This was the experience of seven communities whose representatives revealed, during a focus group discussion held in Mindoro Oriental, that it took all of them a number of years to acquire their CADCs. Had the activities been continuous, the estimated time frame and costs shown in Table 3 below would have been fair and reasonable.

From 1993 until 1997, the implementation of DAO 2 resulted in the issuance of 181 CADCs covering more than 2.5 million hectares of ancestral domains. The chart below shows the distribution of CADCs all over the country.

There were some issues and concerns that stakeholders identified in the process of identifying, delineating, and recognizing ancestral domain and land claims. These include the following:

- * Issuance of a number of CADCs and CALCs on the basis of indicative maps of the ancestral domain and land claims produced through means other than actual ground surveys e.g. “table surveys”;

- Defective implementation of DAO No. 2, as illustrated by cases where areas covered by land uses based on leases, licenses or permits were excluded from the maps of ancestral domain and land claims contrary to the letter, spirit and intent of the policy;
- Many communities and assisting entities did not prioritize the use of traditional survey



- equipment as a tool despite its accuracy as they proved to be too tedious, time-consuming, and costly;
- Issuance of CADCs on the basis of processes carried out with only a few community leaders, without validation by community members in general;
- Control of much of the process by assisting organizations and agencies with only token participation by the community members. This is exemplified by certain cases where technical personnel made unilateral decisions on the boundaries of ancestral domain claims thereby disregarding the principle of self-delineation by concerned communities; and
- Inability of assisting organizations and agencies, in a number of cases, to maintain sensitivity to the cultural aspects of the process.

ANCESTRAL DOMAIN MANAGEMENT PLAN

To ensure the protection of natural resources found in newly recognized indigenous territories, DAO 2 called for the preparation and implementation of Ancestral Domain Management Plans (ADMP). Some communities and assisting NGOs also refer to them as Ancestral Domain Resource Management Plans. However, three years have passed since the issuance of DAO 2 before the DENR came up with the *Guidelines on the Management of Certified Ancestral Domain Claims* as embodied in DAO No. 34, series of 1996.

In its statement of policy, DAO 34 advances the right of indigenous peoples to formulate their ADMPs in accordance with their needs, aspirations, and indigenous knowledge systems and practices (IKSPs). It also upheld the primacy of customary laws, the recognition of indigenous peoples' right to the natural resources within their ancestral domains, the promotion of their cultural integrity, the enhancement of their self-reliance and empowerment, the protection of their environment, and the

recognition of their right to free and prior informed consent on matters affecting their ancestral domains.

The main thrust of the ADMP is the protection and rehabilitation of the remaining forests and other natural resources found within ancestral domains, through the use of sustainable indigenous resource management practices.

Under DAO 34, the DENR prescribed the following procedure for the formulation of Ancestral Domain Management Plans:

1. *Community social preparation*
 - Dissemination of information on DAO 34 in relation to DAO 2 such as the rights and responsibilities of CADC holders, traditional resource use and management practices, and access to external support;
 - Establishment of community organization with clear management structures: vision, objectives and strategies.
2. *Community assessment and resource mapping*
 - Participatory appraisal of existing socio-economic conditions and development needs;
 - Assessment of existing natural resources;
 - Identification of existing land uses and major development opportunities;
3. *Identification of indicative development programs*
 - Establishment of community ancestral domain management units including areas for agricultural development, agro-forestry, timber production, community forests, special land use, mineral reserves, hunting and fishing grounds, cultural land marks, sacred places, and scenic spots;
 - Identification of peripheral and boundary areas;
4. *Formulation of draft ADMPs*
 - Consolidation of management plans including resource protection, rehabilitation, utilization and allocation of benefits;
 - Writing of the draft ADMP in the IP Community's own language of preference and translation of the same into other languages e.g. English;
5. *Validation and adoption of ADMP*
 - Presentation of the draft ADMP to the community members in assembly;
6. *Transmittal to DENR Secretary for affirmation*
7. *Community implementation of the ADMP*
 - This may be done in coordination with concerned agencies or NGOs

Indigenous communities that obtained their CADCs immediately formulated and implemented their ADMPs according to the guidelines. Based on interviews, the following pattern emerged in the ADMP formulation process:

1. *Information and Education Campaign* – Through a series of public assemblies and meetings, often organized with the help of PSTADs, various stakeholders and

community members were informed about the need and importance of ADMPs. One of the issues stressed was the role of CADC recipients and other stakeholders in the preparation and implementation of the ADMPs. Participants in these meetings generally include community members (men, women and youth), government representatives, NGOs, civic and church-based organizations and the business sector.

2. *Formation of Technical Working Groups* – These are composed of representatives of the community, concerned government agencies, and NGOs. These groups served as facilitators of the ADMP formulation process.
3. *Planning Seminars and Workshops* – Through these activities, the ADMP formulation process was placed in a proper perspective, the work to be done was determined, roles were defined and procedures were set. They also served as venues for leveling-off on contents, time frame and resource allocation for the plan. Information on major development opportunities open to the communities and problems that they may encounter were presented in these meetings. A significant part of these activities was devoted to the crafting of the community's vision, goals, and objectives for their ancestral domains. In several communities, workshops were helpful in acquiring knowledge about leadership, management of change, financial management, enterprise development and related concerns.
4. *Participatory Rural Appraisal* – To generate the information needed for the preparation of ADMPs, CADC holders carried out community mapping and profiling activities. These included the establishment of genealogies and the production of baseline social, institutional, demographic, and economic information.
5. *Community Resource and Land Use Mapping* – This activity was based on the principle of self-determination. It included community inventory of existing resources and mapping of actual land uses in the ancestral domain. In undertaking this activity, community members participated authoritatively through the use of their indigenous knowledge and skills, which was usually punctuated by corresponding rites and rituals.
6. *Identification of Indicative Management Activities* – To facilitate the planning process, several communities chose to establish management units in their ancestral domains such as agricultural areas, agro-forestry areas, forestlands, bodies of water and waterways, hunting grounds, sacred places, and residential areas. This became the basis for various management activities, including the allocation of benefits.
7. *Formulation of the Indicative Ancestral Domain Management Plans* – After all the relevant data was consolidated, including the indicative activities for each management unit, the TWGs formulated the community ADMPs with the help of assisting NGOs or professionals. The ADMPs were generally written in English, although in some cases, translations were made in the local language.
8. *Validation and Final Adoption of ADMPs* – The draft ADMPs were presented to community members for their validation. Important comments were noted and

suggestions were incorporated in the final ADMPs. Community members affixed their signatures or thumb mark on the final copies of the ADMPs.

9. *Presentation of ADMPs to the DENR Secretary* – The signed copies of the ADMPs were transmitted to the DENR Secretary for confirmation.

10. *Community Implementation of ADMPs* – Community members started implementing the doable provisions of their ADMPs even before the confirmation by the DENR Secretary. However, a number of communities chose to wait for official action from the DENR Secretary.

Although all IP communities who were issued CADCs were able to formulate their ADMPs, some felt that they could not implement their plans unless funds were made available.

The experience of 10 CADC Holders belonging to the Cordillera Ancestral Domain Partners for Peace and Development indicate that they spent an average of three months, with expenses amounting to P200,000 each, to come up with their ADMPs. The following key activities were done in the planning process:

1. Formation of Technical Working Groups to facilitate the ADMP process;
2. Planning Proper:
 - Review of the Cordillera Peace and Development Framework
 - Setting of the community vision, mission, objectives and strategies
 - Gathering of relevant data by community members
 - Conduct of community planning workshops
 - Drafting (packaging) of the ADMP
 - Validation of the ADMP at the barangay and municipal levels;
3. Adoption of the ADMP as part of the Municipal Development Plan by the concerned *Sangguniang Bayans* (Local legislative bodies); and
4. Resource mobilization activities, including lobby work with concerned agencies and institutions for support in the implementation of the ADMPs.

One of the unique features of the Cordillera CADC holders' planning process was the use of the Cordillera Peace and Development Framework as the backdrop of the activity. This framework highlights the recognition of rights to ancestral domains, the promotion of cultural integrity and local autonomy, and the advancement of healing and reconciliation processes. Another helpful factor is that their TWGs were generally led by personnel of Municipal Governments, who were themselves members of the concerned communities. The services of TWGs included gathering and consolidation of data, facilitating workshops, and process documentation.

The ADMP objectives of the Cordillera CADC holders invariably focused on the exercise of their rights to gain security of tenure and access to the land and natural resources within their ancestral domain claims, the recognition of their principal role as protectors of the environment and resource managers, and support for their socio-economic development initiatives.

Another example of a trailblazing effort in crafting an ADMP is the experience of the T'boli and Ubo tribes in Mindanao, specifically in Lake Sebu, South Cotabato. The two communities

relied on indigenous and traditional land uses as the framework for the preparation of their joint ADMP. They also effectively demonstrated the value of IRSP as the primary driving force in ancestral domain management, and were the first to have their ADMP attested by the DENR.

The key steps taken by the T'boli and Lbo communities in the process of formulating their ADMP were the following:

1. Orientation of the community Council of Leaders on the planning process;
2. Formation of *ad hoc* Planning Committees;
3. Gathering of social, institutional, demographic and economic (SIDE) data;
4. Collection of indicative biophysical data;
5. IRSP survey and analysis;
6. Integration of biophysical and SIDE data in manual overlay thematic maps;
7. Preparation of ADMP outline;
8. Formulation of ADMP;
9. Community Validation of ADMP;
10. Submission of the ADMP to the DENR Secretary;
11. ADMP implementation; and
12. ADMP implementation impact evaluation.

Based on consultations and interviews with various stakeholders involved in the process, it is estimated that an ADMP can be formulated within an average time frame of three months, and average cost of PHP300,000 under normal conditions. This includes the availability of competent facilitators among the community members.

It was difficult to obtain accurate data on the extent and status of the management of ancestral domain claims in all parts of the country in order to come up with a comprehensive picture. However, the information presented in Table 1.5 (*opposite page*) is deemed indicative of the prevailing condition.

Through the ADMP process, the indigenous peoples increasingly felt they had regained their right to manage the land and natural resources in their ancestral domain claims. A general enthusiasm to take the initiative in the protection and rehabilitation of the natural resources, especially the forestlands, was evident among the indigenous communities whether or not they have been issued a CADC.

However, they also reported several problems in preparing and implementing their management plans. These include the following:

- > Government agencies tend to be hesitant in recognizing the ability of indigenous communities to manage natural resources in a sustainable manner due to the dearth of documentation of indigenous ancestral domain management systems;
- > Inadequacy of the CADC as a legal instrument that could shield the natural resources within ancestral domain claims from exploitation by outsiders;
- > The insistence of assisting professionals to follow formal and technical requirements has distorted the formulation of ADMPs in many communities

Table 1.3 Key Management Features of ADMPs in Selected Communities

IP Community	Key Management Features
Kalinga people in Balabalan, Kalinga	- Incorporation of the ADMP into the Municipal Development Plan - Reversion of the management of the Balabalan National Park under the NIPAS to the concerned ancestral domain claimants - Application of ancestral domain management principles under the "Bodong" system
Abelling and Aytia people in Bamban, Tarlac	- Implementation of community ancestral domain protection policies, such as the policy against quarrying - Reforestation of the forestlands - Strengthening of the Council of Elders
Mangyan people in Oriental and Occidental Mindoro	- Conduct of organizational networking activities through the setting up of a federation of community organizations - Restoration of the community forests - Community regulation of the use of forest products - Strengthening of the Provincial Indigenous Peoples' Development Council (PIPDC)
Tagbanua and Palawan people in Palawan	- Continuing IEC on IP development concerns and issues - Strengthening of community organizations and federations - Restoration and reforestation of eroded lands - Community regulation of access to and use of non-timber forest products - Implementation of continuing paralegal training focused on IP rights - Recovery of mortgaged ancestral lands
Tiruray people in Esperanza, Sultan Kudarat	- Reforestation of community forestlands - Implementation of continuing IEC activities on IP rights under the IPRA - Strengthening of the community organization
Maligato-Manobo people in Kitaotao, Bukidnon	- Implementation of community policies on the protection of natural resources - Implementation of community livelihood development activities - Restoration community forestlands - Strengthening of the community organization - Promotion of the role of the indigenous women in managing the ancestral domain
Higaonon people in Gingoog City	- Community regulation of entry of settlers into the ancestral domain claim - Community reforestation forestlands - Strengthening of the community organization

- > The notion that no ADMP could be implemented without funds from the government or other sources has stymied the proper implementation of ADMPs, and
- > Indigenous institutions, such as the traditional leadership and self-governance structures, that were expected to lead in the management of ancestral domain claims by indigenous peoples have been generally weakened by outside influences. In some indigenous communities, leaders appointed and installed by intervening agencies are challenging the authority of traditional leaders.

INDIGENOUS PEOPLES RIGHTS ACT

On October 29, 1997, President Fidel Ramos signed Republic Act 8371, popularly known as the Indigenous Peoples' Rights Act or IPRA. The law provided a strong and clear foundation for the delineation, titling, development and protection of ancestral domains and lands.

Under the new law, the right of the indigenous peoples to their ancestral lands and domains is anchored on the legal concept of "Native Title." It recognizes that areas possessed and occupied



Wide-ranging consultations are essential for the success of the CADC process

by indigenous peoples since time immemorial are private properties and have never been part of the public domain.

From the DENR, the responsibility for processing native titles was transferred to the National Commission on Indigenous Peoples (NCIP), an agency created under IPRA. Hence, the DENR had to turn over all the ancestral land and domain claims that it had processed under DAO 2 to the NCIP for conversion into the necessary titles under the new law.

While under DAO 2, only claims to ancestral domains and lands were recognized through the issuance of CADCs and CALCs, as the case may be, no less than ownership of ancestral domains and lands are recognized under the IPRA through the issuance of Certificates of Ancestral Domain Titles (CADTs) and Certificates of Ancestral Land Titles (CALTs), respectively. The CADT recognizes ownership of a specific domain by a community while the CALT recognizes ownership of a specific parcel of land by an individual, family or clan.

The procedure for the delineation and titling of ancestral domains and lands is similar to the CADC and CALC process. The main difference is the last step, when the resulting document is formally entered with the Land Registration Authority (LRA) as a title.

As specified in the Implementing Rules and Regulations (IRR) of the IPRA, the indicative procedure and corresponding key activities for the issuance of CADTs are as follows:

1. *Filing of petition for delineation with the local NCIP* - This is done by majority of the community members through their recognized council of elders/leaders;
2. *Community census and self-delineation of ancestral domain* - Information campaign and validation of the petition; census of community members; identification of natural boundaries; and preparation of indicative map;
3. *Submission of proofs* - This may consist of the sworn testimony of the elders and any of the documents listed in Section 52 (d) of IPRA such as written accounts of the ICCs/APS' customs

and traditions; written account of the ICCs/IPs' political structure and institution; pictures showing long-term occupation such as those of old improvements, burial grounds, sacred places and old villages; historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs; survey plans and sketch maps; anthropological data; genealogical surveys; pictures and descriptive histories of traditional communal forests and hunting grounds; pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges hills, terraces, and the like; and write-ups of names and places derived from the native language of the community;

4. *Ocular inspection* – This is done to verify the boundaries and physical proofs of the claim;
5. *Evaluation of proofs* – The local office of the NCIP assesses submitted evidence of the ancestral domain claim; the community can file an appeal or submit additional proofs in case of denial of the petition;
6. *Survey of ancestral domain* – Conduct of perimeter survey and preparation of survey plans indicating technical description and significant landmarks and features of the claim;
7. *Preparation of report* – The investigation report includes the result of ocular inspection, evaluation of proofs, preliminary census, list of community leaders, and description of the community organization;
8. *Community validation of the map of the ancestral domain* – Presentation of the ancestral domain map to the community for validation, correction of errors, if any;
9. *Publication of ancestral domain claim* – This may be done by posting in prominent places, publication in a newspaper of general circulation or radio broadcast;
10. *Endorsement to the NCIP* – The documents are transmitted to the national office of the Commission, which certifies the area as ancestral domain;
11. *Preparation and Issuance of CADT by the NCIP*; and
12. *Registration of CADT with the LRA* – The CADT is registered with the Registrar of Deeds in the Province or City where the ancestral domain or a greater portion thereof is located.

The procedure for the processing of CALT applications is simpler. Unlike ancestral domain titles that are awarded to entire communities, ancestral land titles are awarded to individuals, families or clans. The following procedure is prescribed in processing CALT applications:

1. *Filing of application with the Ancestral Domains Office (ADO)* – This is done in the local office of the NCIP and should include sworn testimonies of elders of the community and any other proof of possession and occupation of the land since time immemorial;
2. *Publication* – Posting of the application in prominent places or publication in a newspaper of general circulation for at least two consecutive weeks;
3. *Parcellary survey of the ancestral land*;
4. *Submission of application and supporting documents to the Commission*;
5. *Issuance of CALT by the Commission*; and
6. *Registration of CALT with the LRA* – The ancestral land title is filed with the Register of Deeds in the province or city where the ancestral land is located.

The NCIP is governed by seven commissioners, each of whom represents an ethnographic region of the country duly established under the IPRA. It is headed by a Chairperson who is appointed by the President from the ranks of the Commissioners based on the recommendation of the Commission *en bloc*. The first batch of commissioners was sworn into office in 1998 by then President Fidel V. Ramos. However, the members of this Commission were unable to perform their functions to the fullest, particularly in terms of the titling of ancestral domains and lands, mainly because of a legal challenge to the constitutionality of the IPRA that was brought before the Supreme Court in 1998. The issue was resolved only in 2000, when the Supreme Court came up with a *per curiam* decision upholding the constitutionality of the IPRA.

THE BAKUN EXPERIENCE

The first valid CADT was issued to the Kankanaey-Bago community in Bakun, Benguet province on July 19, 2002. The title, bearing serial No. CAR-BAR-0702-0001, covers 29,444.34 hectares of ancestral domain which actually constitutes the entire Municipality of Bakun. The town has an estimated population of 13,000.

Located in the northernmost part of Benguet, the Kankanaey-Bago ancestral domain can be reached by land from Baguio City through the Halsema Highway (the old Mountain Trail) in about four hours. It is surrounded by a number of municipalities in the same province that are also populated by Kankanaeys, namely: Mankayan, Buguias and Kibungan. The Bago people are found on the eastern side of the ancestral domain, along the boundaries of the municipalities of Allilem and Cervantes, both in the Province of Ilocos Sur, that are also populated by Bagos.

The experience of the Kankanaey-Bago communities in Bakun is a showcase of how two distinct tribes can become one in vision, mission and strategy. It also highlights the democratic manner in which all the activities and processes were done by various sectors. Women, youth, traditional elders, local government officials, among others, complemented each other.

The conversion of their CADC to CADT was an initial manifestation of the renewed national government commitment to speed up the titling of ancestral lands and domains, as expressed by President Gloria Macapagal Arroyo in her 2001 State of the Nation Address. The NCIP facilitated the ground survey of the ancestral domain, a pre-requisite to the issuance of CADTs, with financial and technical assistance from the Department of Agriculture and the DENR under the Cordillera Highland Agricultural Resources Management Project funded by the European Union.

The process started with an information and education campaign, focusing on the IPRA and related land laws. The census of community members was validated, and the proofs of ancestral domain claim were strengthened with additional information from the "*pagungawan*" or council of elders. The indicative map prepared by the community became the basis for the actual perimeter survey and mapping activities. The regional office of the NCIP facilitated the process in collaboration with community members through the home-grown Bakun Indigenous Tribes Organization (BITO). The municipal government of Bakun provided the needed local policy environment for the process.

Many advocates of indigenous peoples rights believe that the Kankanaey-Bago CADT was the first of its kind, not only in the Philippines, but possibly in the world. To the Kankanaey-Bago people in Bakun, it is the fulfillment of an aspiration that was born and nurtured over time through countless challenges and difficulties.

An analysis of the process that led to the issuance of the Bakun CADT showed that the following key activities were conducted:

1. Information dissemination or IEC in the community on the IPRA and NCIP AO No. 2, Series of 2002, which provides guidelines for the conversion of CADCs/CALCs to CADTs/CALTs, respectively
2. Preparation of an application for conversion of CADC to CADT using the corresponding NCIP application.
3. Submission of the accomplished application form to the NCIP with the following attachments:
 - 3.1 Original copy of the application for conversion signed by majority of the community members through their recognized representatives;
 - 3.2 Original copy of the authorization for selected representatives to file the application;
 - 3.3 Census of the community members;
 - 3.4 Authenticated copies of the CADC; blueprint copy of approved perimeter survey of the ancestral domain; copy of the list of community claimant representatives; copy of the resolution of conflict, if any; copy of the evaluation report and endorsement of the concerned PSITAD; copy of the affidavit of publication; and copies of any or all of the proofs of claim.
4. Receipt and recording of the application by the Ancestral Domain Office (ADO).
5. Review and evaluation of the supporting documents by the ADO.
6. Field validation of supporting documents.
7. Ground-level perimeter survey.
8. Resolution of boundary conflicts, if any.



The municipal council of Bakun overwhelmingly supported the Kankanaey-Bago CADT

9. Preparation and submission of final report to the Commission by the ADO
10. Action by the Commission *en banc*
11. Preparation and issuance of the CADT
12. Registration of the CADT with the Register of Deeds by the ADO

The costs incurred in the process were mostly related to the ground-level perimeter survey of the ancestral domain; using conventional survey equipment; and the validation of survey results. Total expenses for these two major components amounted to PHP 1,681,787 or about P\$7.00 per hectare. Specific activities under these components included: (a) the establishment of survey stations; (b) community consultations and resolution of boundary conflicts; (c) the conduct of actual perimeter survey using theodolite equipment; (d) the making and installation of monuments; and (e) community validation of survey results.

Bakun only represents the beginning of a long process that is hoped to eventually lead to the titling of all ancestral domains in the Philippines. As of December 2004, 13 more CADCs covering a total area of 517,904 hectares were converted to CADTs. This means that 167 CADCs covering 2,041,906 have yet to be converted into CADTs, with a projected cost of about PHP136,807,702.

Ancestral domains not covered by CADCs can be titled through the regular IPRA-prescribed process. As of December 2004, nine CADTs covering a total area of 181,917 hectares have been issued based on direct applications. These figures indicate that there are still 2,288,273 hectares of ancestral domains that need to get titles through direct applications for CADT. This includes groups that went through the DAO 2 process but were unable to obtain their CADCs when the DENR stopped issuing certificates in view of the implementation of the IPRA. The cost of the entire process is estimated at PHP128,721,561.

The estimated cost and time frame of the perimeter survey of ancestral domains and validation of survey results, whether through conversion of CADC or direct application, was based on the Bakun experience. In Bakun, the entire area of 29,444 hectares was surveyed within an aggregate total duration of two months and at an average cost of PHP\$7 per hectare.

The remaining CADC holders are continuing to file applications with the NCIP for the conversion of their CADCs to CADTs. Those who do not have CADCs are likewise continuing to file direct applications for CADT.

Communities who already obtained their CADTs are working with the NCIP for the registration of their CADTs with the Land Registration Authority (LRA).

ANCESTRAL DOMAIN SUSTAINABLE DEVELOPMENT and PROTECTION PLANS (ADSDPPs)

Indigenous peoples invariably equate land and the resources within it with life itself. They nurtured indigenous systems for land and resource management that have endured the test of time. For this reason, the recognition of the natural ability of the indigenous peoples to manage ancestral domains in a sustainable manner was made a matter of policy.

The IPRA law strengthened the DENR's earlier policy on ADMPs by recognizing the management

of ancestral domains by the indigenous peoples as a matter of right. Section 6 (b) of IPRA provides for the right of the indigenous peoples to develop, control and use ancestral lands and domains; to manage and conserve the natural resources within their territories; to negotiate the terms for the exploitation of the natural resources (by external entities); to be informed and to participate intelligently in the formulation and implementation of development projects by government or private entities; and, to have effective measures by the government to prevent any undue interference, alienation and encroachment upon these rights.

In exercising these rights, the indigenous peoples gained the opportunity to formulate their own ancestral domain sustainable development and protection plans (ADSOPP). Under the IRR of the IPRA, the indigenous peoples are expected to indicate the following in their ADSOPPs: (a) how they plan to protect the ancestral domains; (b) what development programs they would undertake in these territories; (c) the community policies that would guide their development activities; and (d) their management systems, including how they will share benefits and responsibilities.

The IRR also provided the following basic steps in the formulation of ADSOPPs to help ensure the authenticity and effectiveness of these plans:

1. *Information Dissemination* - Intensive education campaigns on IPRA by the community council of elders/leaders with the assistance of the NCIP and, if need be, an authorized NGO or indigenous peoples' organization (IPO);
2. *Baseline Survey* - Participatory survey of the ancestral domain focusing on population, natural resources, land use, livelihood, income and employment, education, health, etc. by the community council of elders/leaders with the help of the NCIP and, if need be, an authorized NGO or IPO;
3. *Development Needs Assessment* - Identification by the community members, through workshops facilitated by the council of elders/leaders assisted by the NCIP and, if need be, an authorized NGO or IPO, of the kind of development they desire in terms of livelihood, education, infrastructure, environment, natural resources, self-governance, etc.;
4. *Community formulation of the ADSOPP* - This is done through their IPO and/or council of elders/leaders, with the assistance of the NCIP;
5. *Validation of the ADSOPP* - Community approval through assemblies conducted by their IPO and/or council of elders/leaders with the assistance of the NCIP;
6. *Submission of the ADSOPP to the NCIP*

Indigenous communities who obtained CADCs under DAO 2 were given the option to modify their ADMPs and convert them into ADSOPPs. The spirit and intent of the IPRA in this regard is to give the indigenous peoples complete autonomy in the preparation of their ADSOPPs. Thus, every ADSOPP is submitted to NCIP only for the Commission's information and concurrence.

Recently, the NCIP issued Administrative Order No. 1, Series of 2004 providing guidelines in the formulation of ancestral domain sustainable development and protection plans (ADSOPPs). This has served to further realize the provisions on the same subject of the IRR of the IPRA.

Table 1.4 Cost of ADSOPP Formulation in Bakun

Activities		Cost (in PhP)
1. Preparatory Activities		P469,193
• Information campaign (orientation meetings and consultations)		38,319
2. Participatory Baseline Survey		
• Supplies and materials		45,403
• Transportation		8,948
• Wages (enumerators, technical staff)		300,800
• Group interviews and discussions		38,319
• Enumeration activities		54,775
• Collation and consolidation of data		2,450
• Engineering services (map preparation)		5,000
• Rentals (equipment)		2,500
3. ADSOPP Formulation		P195,035
• Supplies and materials		8,400
• Salaries and wages		70,000
• Community leaders and multi-sectoral workshops and consultations		32,915
• Drafting of the ADSOPP		1,540
• Community validation of draft ADSOPP		34,000
• LGU validation of draft ADSOPP		12,600
• Finalization of draft ADSOPP		1,200
• Community and LGU adoption of the ADSOPP		28,380
TOTAL		P664,228

Table 1.5 Average Time-Frame and Cost of ADSOPP Preparation

Activities	Time Frame	Estimated Cost
1. Preparatory Phase	Average	Average
• Information dissemination on IPRA and related laws through meetings and seminars • Formation and training of Technical Working Groups	1 month	PhP 100,000
2. ADSOPP Preparation	Average	Average
• Baseline data gathering and analysis • Community ancestral domain development planning • Consolidation of plans by sector • Drafting of the community ADSOPP	6 months	PhP 300,000
3. ADSOPP Validation	Average	Average
• Presentation at the Barangay level • Presentation and validation by the LGU	6 months	PhP 70,000
4. Adoption of the ADSOPP	Average	Average
• Adoption by the community • Adoption by the LGU and incorporation into the Municipal Development Plan • Submission to the NCIP for concurrence	2 months	PhP 30,000
5. Implementation of the ADSOPP	Continuing	Variable depending on available resources
• Actual implementation		

Community Experience in ADSDPP Formulation

As the first community to obtain a CADT, the Kankanaey-Bago people of Bakun, Benguet also had the opportunity to be the first to formulate their ADSDPP. Prior to this, they already developed and implemented an ancestral domain sustainable development and protection framework (ADSDPP), an improved version of their ADMP. They have gained this experience under their own community-driven participatory ancestral domain management initiatives, with assistance from the International Labour Organization (ILO) by way of its Inter-regional Programme to Support Self-reliance of Indigenous and Tribal Communities through Cooperatives and other Self-help Organizations (INDISCO). Thus, the process they have undertaken was mainly a substantive modification and conversion of their ADSDPP to ADSDPP. They continue to view the ADSDPP as a framework plan within which they would regularly formulate more detailed annual work plans.

In producing their ADSDPP, the Kankanaey-Bago people in Bakun went through a process consisting of the following key activities:

1. Information campaign on the nature and importance of an ADSDPP, mainly through consultation with community leaders and members;
2. Formation of an ADSDPP facilitation group from among the Kankanaey-Bago professionals in the community;
3. Gathering of baseline social, institutional, demographic and economic information, including data on the land and natural resources and their uses;
4. Conduct of community leaders' workshops and multi-sectoral workshops on the development and protection of the ancestral domain;
5. Drafting of the ADSDPP;
6. Community validation of the draft ADSDPP;
7. Validation of the draft ADSDPP by the local government through the Municipal Development Council;
8. Finalization of the ADSDPP;
9. Adoption of the final version of the ADSDPP by the community;
10. Adoption of the ADSDPP by the Sangguniang Bayan of the Municipality of Bakun.

Table 1.4 shows the cost of the ADSDPP formulation recorded by the Kankanaey-Bago people.

A number of communities decided to formulate their ADSDPPs along with the processing of their CADTs. Among the reasons for this are: (a) to further systematize the development and protection of their ancestral domain, and in the process, strengthen their tenure on the land and the natural resources; (b) to access development assistance from concerned government agencies, non-government organizations and other sources.

Certain activities are common to Bakun and other communities that have formulated their ADSDPPs. Table 1.5 provides information on the identified commonalities. The estimated average costs do not include contribution in kind by the community and local government.

As of December 2004, no ADSOPP has been officially submitted to the NCIP for incorporation into the medium-term or five-year master plan for ICCs/IPs, as provided for in NCIP AO 1, Series of 2004. This may indicate that in general, the formulation of ADSOPPs by the indigenous peoples, including those who already obtained their CADTs, is still an evolving process.

Enhancing IP Capability

Looking back, it would be reasonable to conclude that the main achievements of DAO 2 and DAO 34 were the validity and credibility of the identification, delineation, recognition and management of the ancestral domain/land claims. In general, the indigenous communities made sure that the procedural requirements were strictly followed. This was done whether they were working by themselves or with assistance from the DENR, other government agencies, and NGOs. One of the factors that made this possible was the sustained capability building of communities through various training activities to enhance indigenous knowledge and skills. Examples of training conducted in CADC areas are found in Tables 1.6 to 1.7 below.

Most of the capability-building efforts focused on hands-on training and actual work in the identification, delineation, recognition and management of ancestral domain claims. Theoretical knowledge was combined with community sharing and practical applications, with the latter constituting about 80% of the activities. Facilitators from NGOs, national government agencies, local government units and community organizations conducted most of the training.

Training content was varied. One example is the series of training that the Gaston Z. Ortigas Peace Institute, Cordillera Peoples Forum and LGUs facilitated for several highland communities, as follows:

1. *Community Organizational Management*—For the indigenous peoples in Malibcong, Abra, namely, the Gubang, Mabaca and Banan communities, who already have indigenous organizations, the training was a means for their organizations to come together as one for a common cause—the recognition of their ancestral domain claims. Having experienced displacement due to the implementation of large government projects in their ancestral domains, they immediately saw the importance of collaboration among themselves.

Table 1.6 Training on Delineation and Tiling of Ancestral Domains

Training Activities	Contents
1. Institution building	Revitalization and strengthening of indigenous organizations
2. Documentation	Gathering and documentation of proofs regarding ancestral domain and lands claims
3. Indicative mapping	Sketch mapping of ancestral domains based on natural boundaries shown in topographic maps
4. Perimeter survey	Use of survey equipment to help community members take the lead in the survey of their ancestral domains based on the principle of self-delineation
5. Conflict resolution and management	Aimed at strengthening indigenous practices e.g. settling boundary conflicts

Table 1.7 Training on Development and Protection of Ancestral Domains

Training Activities	Content
1. Information and education campaign (IEC)	Application of IPRA provisions regarding the development and protection of ancestral domains
2. Follow-up training on institution – building	Strengthening of indigenous institutions, including training on leadership and organizational management
3. Participatory baseline survey and community profiling	Data-gathering on population, social services, land use, natural resources, livelihood, income and employment, etc.
4. Community ancestral domain development planning	Participatory planning on how to develop the resources for the community's benefit
5. Community resource mobilization and financial management	Identification, access, and management of technical and financial support for ADSDP implementation

2. *Community Mapping and Profiling* – Through the sharing of knowledge, especially by the elders, community members managed to produce indicative maps of their ancestral domains with guidance from facilitators. The maps included the identification of natural boundaries, land uses, and natural resources such as forests and water sources. As additional proof of their ancestral domain claims, the communities documented their elders' accounts of genealogies, historical events, legends, landmarks, political structures, systems of governance, customary laws and the like.
3. *Conflict Resolution and Management* – Indigenous systems of conflict resolution and management were strengthened and properly documented with assisting organizations.
4. *Orientation on Technical Survey* – This training enhanced community participation in making technical surveys and mapping the ancestral domain claims, generally with the use of Global Positioning System (GPS) instruments. This resulted in the documentation of landmarks or markers of boundaries. In some cases, three-dimensional mapping (3-D) was included in this training.

In the course of implementation of the IPRA, the need for community training was recognized as a vital component of the process. Depending on the availability of technical and financial assistance, several communities carried out training activities to facilitate the process. These were mostly technical in nature and were meant to reinforce indigenous knowledge systems and practices. They had common activities for specific tasks. The average time frame per training was three days, and the average cost was about PhP 50,000.

From DAO 2 to IPRA, several difficulties have cropped up in the effort to enhance the capability of indigenous peoples in getting their ancestral domains recognized. These issues include:

- * The impact of capability-building activities has generally been diminished by the lack of continuity and consistency in process and substance. Overlapping and conflicting activities caused by lack of transparency and coordination among assisting groups have contributed significantly to this problem.

- Low literacy levels among indigenous peoples made it difficult for facilitators and trainees to understand each other;
- Poor economic conditions deprived many community members of sufficient time to participate in training activities, as they still had to attend to livelihood concerns;
- “Top-down” approaches made capability-building less effective and unsustainable;
- Resources for capability building activities are very limited; and
- Disregard of indigenous knowledge systems and practices made the capability building processes less sustainable.

Most of the issues and problems identified were not insurmountable. Ironically, many of them could be solved through capability building, not only on the part of the indigenous peoples but also on the part of the assisting organizations and agencies.

Table 1.8 Partial List of NGOs Providing Support to Ancestral Domain Titling and Development 1

Name of NGO	Services Provided
Anthropology Watch (ANTHROWATCH)	Anthropological data gathering, resource mapping, capability-building, GIS mapping, 3D mapping and ADMP formulation
Asia Development Foundation, Inc.	Capability-building, support to ancestral domain development
Ateneo Human Rights Center (AHRC)	Research, legal services
Concerned Citizens of Abra for Good Government (CCAGG)	Capability-building, support to ancestral domain/land development and protection
Cordillera People's Forum, Inc. (CPF)	Advocacy, coordination, IEC, process documentation and linkages, capability-building
Episcopal Commission on Indigenous Peoples	Advocacy, delineation, research, institution-building, livelihood development, literacy training, community organizing
Foundation for the Philippine Environment (FPE)	Capability-building, support to development and protection of ancestral domains
Gaston Z. Ortigas Peace Institute (GZO-PI)	Advocacy, linkages, training, gender sensitivity, financial assistance, capability-building
Indigenous Peoples Apostolate (IPA)	Capability-building, support to ancestral domain/land development and protection
Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Agrario	Capability-building, support to ancestral domain/land delineation and development
Legal Research and Resource Center – Kasama sa Kalikasan (LRRC-KSK)	Legal research and assistance, capability-building, policy advocacy
Mandiga Ob-obbo Association	Capability-building
Mangyan Mission, Inc.	GPS surveying & instrumentation, 3-D mapping, parcelary survey, advocacy, IEC, ADMP formulation, capability-building
Nagkakaisang mga Tribu ng Palawan, Inc. (NATRIPAL)	Capability-building, support to ancestral domain/land titling, development and protection
Philippine Association for Intercultural Development (PAFID)	Capability-building, GPS Surveying, 3-D mapping, ADMP formulation, support to ancestral domain development
Tanggapang Paritigal ng Katutubong Pilipino, Inc. (PANLIPi)	Research, capability-building, legal services, para-legal training, policy advocacy, ADMP formulation, documentation
Palawan NGO Network Inc. (PNNI)	Capability-building, support to ancestral domain/land titling, development and protection
Pancord Women's Association	Capability-building, support to ancestral domain/land development and protection
Upland NGO Assistance Committee (UNAC)	Enterprise development, training on use of non-timber products and research

A critical factor in these efforts is the involvement of many sectors including socio-civic organizations, church or religious, agricultural and business groups, as well as cooperatives, academic, and financial institutions to ensure success.

IP Advocacy

Under DAO 2, the DENR was the primary facilitating agency in the delineation, recognition, and management of ancestral domain and land claims. The department provided both the necessary policy framework, and the resources and technical knowledge. Support groups, particularly indigenous peoples organizations and NGOs, provided various forms of financial and technical assistance in collaboration with the PSTADs and/or the CSTALs.

Indigenous peoples have exhibited varying degrees of dependence on outside assistance. Some communities, through their own organizations, took the initiative and sustained it primarily through self-help and the mobilization of their own resources. However, most of the significant ground-level activities toward gaining security of tenure for indigenous peoples and the right to develop their ancestral domains were made possible through the assistance of support agencies.

Among the government agencies that contributed substantially to the ancestral domain recognition process are the DENR, NCIP, DAR and various LGUs. In particular, the DENR deserves credit for coming up with a trailblazing policy on the identification, delineation and recognition of ancestral domain and land claims that paved the way for the passage of the IPRA.

From the start, NGOs have consistently played a major role in the process. It is difficult to come up with a comprehensive list of groups that have been involved in the ancestral domain process. Table 1.8 is an indicative list that shows examples of NGOs that actively supported and continue to be engaged in the process of ancestral domain recognition.

Most of these NGOs obtain funds from donor agencies and institutions based locally and abroad. They work individually and/or in partnership with other groups.

Some agencies under the United Nations also have bilateral or multi-lateral technical cooperation programmes designed to support indigenous peoples' development activities. These agencies include, among others, the United Nations Development Programme (UNDP), International Labour Organizations (ILO), United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA), United Nations Educational, Scientific and Cultural Organization (UNESCO), and the Food and Agriculture Organization (FAO).

Roadblocks in Granting Native Titles

The provisions of IPRA and related policies on ancestral domain recognition are clear in both letter and intent. However, in the process of implementing these provisions, several issues have cropped up that need to be resolved, as follows:

1. **Lack of funds** - The NCIP faces financial constraints in performing its facilitative functions and providing services related to the delineation, titling, development and protection of ancestral domains and lands, as indicated in IPRA.

2. **Tedious and expensive ground survey** – The requirement of ground survey (as differentiated from indicative survey) of ancestral domains for purposes of titling has spawned financial and technical problems. For example, given the prevailing average cost of survey officially estimated at Php1,200.00 per hectare, an amount of Php12,000,000 is needed to survey an ancestral domain of 10,000 hectares. Considering the generally rugged terrain and large size of ancestral domains, a number of technical issues and problems e.g. level of accuracy and time frame, have also been raised.
3. **Overlapping land tenure instruments** – Over time, various land tenure instruments such as concessions and leases, certificates of land ownership awards (CLOA), etc. have covered a number of ancestral domain claims.
4. **Overlapping land uses and development programmes and projects** – Government land uses such as civil and military reservations and development programmes and projects within ancestral domains often lead to conflicts.
5. **Displaced indigenous communities** – Natural calamities, internal armed conflict, and other causes have resulted in the displacement of some indigenous communities from their ancestral domains.
6. **Overlapping laws and policies** – A number of laws and policies have provisions that overlap with the letter and intent of the IPRA. These include the Mining Law, the NIPAS Law and the Forestry Law, among others.
7. **Counterproductive interventions** – The interventions of certain agencies and NGOs in a number of communities have become counterproductive and impositions have been made, directly or indirectly, in the process.
8. **Inadequate NCIP capacity** – Many key informants and community members expressed the view that the NCIP needs more strengthening and capability building, specially in relation to the recognition, development and protection of ancestral domains and lands.

THE ROAD AHEAD

Clearly, there is much more to be done to fulfill the Philippine constitution's mandate on the protection of the indigenous peoples' right to their ancestral lands. In order to move forward, it would be useful to look at the valuable lessons learned in the course of implementing this mandate, as seen in the eyes of its major actors:

1. The provisions of the IPRA, its IRR and related NCIP policies, as well as community-based experiences generated since the implementation of DAO 2 and DAO 34, provide sufficient basis for effectively pursuing the delineation, titling, development and protection of ancestral domains and lands.
2. The existing policy of giving indigenous peoples the opportunity to take the lead role in the delineation (based on the principle of self-delineation), titling, development

and protection of their ancestral domains is a crucial factor in fulfilling the letter, intent and spirit of the IPRA law and it should be given due course in every way.

3. Although the NCIP has very limited funds for facilitating the delineation, titling, development and protection of ancestral domains and lands, there are a number of NGOs and institutions that are willing and able to share their resources for the purpose. However, it is widely expected that the NCIP will provide the specific policies and facilitate the participatory formulation of systems of coordination and convergence.

Based on interviews and consultations with indigenous communities and various sectors, the following recommendations were made as a way of addressing the problems encountered in the ancestral domain recognition process:

Titling of Ancestral Domains and Lands

1. Given the NCIP's financial and technical constraints, concerned NGOs and similar institutions need to contribute their financial and technical resources to facilitate the delineation and titling of ancestral domains and lands;
2. It may be important for NCIP technical personnel involved in delineation and titling of ancestral domains and lands to have a sustained orientation process, not only in relation to the IPRA, but also in relation to the customary laws attendant to the process, as well as the lessons and best practices generated in the implementation of DAO 2;
3. The conversion of CADTs into CAGTs and CALs into CAGTs need to be fast tracked so that the process of ancestral domain and land titling can gain momentum;

Development and Protection of Ancestral Domains and Lands

4. The technical and financial support services of the private sector, particularly accredited NGOs and similar institutions, need to be tapped in facilitating ADSDP formulation and implementation by the indigenous peoples;
5. For purposes of implementation, a convergence mechanism needs to be developed at the ground level to facilitate the involvement of government agencies and various support groups;
6. Appropriate training has to be provided for NCIP personnel in order to develop their skills in facilitating ADSDP formulation and implementation;
7. There is a need to conduct intensive information campaigns on the enforcement of IPRA provisions on the free and prior informed consent of indigenous peoples as a requirement for putting up development projects within ancestral domains by government agencies and private institutions.

Policy Development

8. The NCIP needs to have a continuing policy development programme in order to facilitate the operationalization of all the key provisions of the IPRA and its IRR.

Even as there are still many hurdles to overcome, there is reason to be hopeful. As of December 2004, the NCIP had released 23 CADTs, as shown in the table below. With the concerted efforts of supporters and indigenous communities, native titles are no longer a dream in the Philippines.

Table 1.9 List of CADTs Awarded as of June 2005

LOCATION (City/Municipality & Province)	AREA* (in hectares)	INDIGENOUS COMMUNITY	INDIVIDUAL BENEFICIARIES
Bakun, Benguet	29,444	Bago & Kankana-ey	17,218
Pakuan, Lanao, Surog del Sur	11,812	Manobo	1,065
Ocampo, Camarines Sur	5,099	Agta	5,822
Siocon, Zamboanga del Norte	8,213	Subanen	1,144
Boston, Davao Oriental	19,151	Mandaya	3,259
Monkayo, Compostela Valley	30,468	Mandaya & Manobo	2,189
Pastolan, Hermosa, Bataan	4,356	Aeta	759
Bantangan, Carmen, Cotabato	5,681	Manobo-Aromanen	715
Milatra, Marayon, Talakag, Bukidnon	11,108	Talaandig	4,922
Sinuda, Kitaotao, Bukidnon	102,325	Maligsalog-Manobo	24,405
Nagtipunan, Quirino	139,692	Bugkalot & IP Migrants	15,374
Kabankalan City, Negros Occidental	3,981	Bukidnon-Karolanos	4,140
Sta. Cruz, Occidental Mindoro	5,365	Iraya-Mangyan	639
Pilas, Mahayag, Zamboanga del Sur	4,530	Subanen	3,161
Kibungan, Benguet	22,837	Kankana-ey	15,472
Bgy. Ilomavis, Kidapawan City	3,177	Obo-Manuvu	879
Quezon, Bukidnon	1,595	Manobo	1,398
New Bataan, Compostela Valley	92,414	Mandaya-Mansaka	8,443
Karahume, San Isidro, SJDM, Bulacan	1,817	Dumagat	363
Cajidiocan & San Fernando, Sibuyan	7,719	Mangyan-Tagabukid	1,846
Coron, Palawan	24,521	Tagbanua	1,358
Puerto Galera, Oriental Mindoro	5,701	Iraya-Mangyan	2,888
Support, Ilocos Sur	6,339	Kankana-ey Bago	3,300
TOTAL	547,347		120,359

REFERENCE: National Commission on Indigenous Peoples



Chapter 1 is based on the Ancestral Domain scoping report prepared mainly by Atty. Basilio Bando, a member of the Ibaloi people in Kalinga Province. Primary information came from interviews, focus group discussions, and consultations with indigenous communities, non-government organizations, and official sources conducted between April and November 2002. Multi-sectoral meetings held in Baguio City, Oriental Mindoro, Palawan, Davao City, and Manila were particularly significant in getting a holistic picture of the process that indigenous peoples went through to obtain official recognition of their ancestral lands and waters.

CHAPTER 2

GOVERNMENT RESERVATIONS IN ANCESTRAL DOMAINS: THE SEARCH FOR SOLUTIONS

On paper, the pertinent constitutional mandate appears to provide ample protection for the rights of indigenous Filipinos to their ancestral domain, but in practice, the theory of *jura regalia* (*regalian doctrine*) hampers the ability of the government to fulfill this responsibility.

Spanish colonizers introduced the feudal theory of *jura regalia* in the Philippines through the Laws of the Indies and the Royal Cedula. The *regalian doctrine* is a legal fiction based on the belief that in 1521, when Ferdinand Magellan planted the Spanish flag on Mactan Island, he simultaneously declared the Spanish King's ownership of the entire archipelago. According to this theory, the sovereignty and property rights of the nation's indigenous forebears were usurped during the 16th century when the islands were claimed on behalf of the Spanish Crown.

Under the framework of the *regalian doctrine*, all lands not covered by private titles are public and thereby owned by the State. It assumes that a title is valid only when it could be shown that it originated from a grant or sale from the Crown, or its conceptual heir, the State. The ownership and control of natural resources is likewise reserved to the State.

When the Americans occupied the country during the turn of the 20th century, they adopted this theory through Public Land Acts and the judiciary. The Philippine government followed the footsteps of colonial regimes, as its sovereign predecessors, after independence in 1946. Hence, all lands not covered by official documentary certificates of title are presumed to be owned by the Philippine Republic. Along with the *regalian doctrine* from Spain, successive governments also adopted the American colonizers' laws affecting land and other natural resources.

The operation of the *regalian doctrine* in the national legal system gave the State the authority to classify public lands. It constitutes the core of the Philippine land property system, and has been enshrined in the Philippine Constitutions of 1935, 1973 and 1987. In its latest incarnation, the *regalian doctrine* projects its scope in the following manner: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries,

forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.”

Among the laws passed during the American colonial administration was the Philippine Bill of 1902 that empowered the government of the Philippine Islands to classify, according to its agricultural character and productiveness, public lands other than timber or mineral lands. Under the law, the Philippine Commission and the Supreme Court shared the power to classify lands of the public domain. The statute included a Bill of Rights that guaranteed due process of law before any person may be deprived of life, liberty and property. The power of the executive branch to classify lands is checked by the Judiciary to ensure that the due process clause is not violated and the recognition of existing private property rights is not hampered.

Government Reservations

A reservation refers to any tract of the public domain proclaimed by the President of the Philippines for the use of the government or its constituents, and for public or quasi-public uses. The government sets aside reservations “*intended for common and public welfare and services*” over lands of the public domain such as watersheds, forests, military and naval reservations, town sites, park sites, and highways.

These reservations may be further described as follows:

Civil - refers to lands of the public domain which have been proclaimed by the President of the Philippines for specific purposes, such as town sites, resettlement areas, ancestral lands, etc.

Forest - refers to forestlands that have been reserved by the President of the Philippines for any specific purpose or purposes.

Military - refers to land of the public domain which has been proclaimed by the President of the Philippines for military purposes such as airbase, campsite, docks and harbors, firing ranges, naval base, target range, wharves, etc.

Watershed - a forestland reservation established to protect or improve the condition of the water yield thereof or reduce sedimentation.

The Supreme Court has ruled that when a piece of land has been proclaimed a reservation, it is segregated from the public domain and can no longer be registered as private property. According to the court, reservations for specific purposes other than military reservations made by presidential or executive proclamation are not subject to claims of private ownership. In *Republic v. CA*, wherein a Presidential Proclamation reserved an area for the medical center site of the Mindanao Medical Center in Davao, the Supreme Court held that:

“Lands covered by reservations are not subject to entry, and no lawful settlement on them can be acquired. The claims of persons who have settled on, occupied and improved parcel of land which are later included in a reservation are considered worthy of protection and usually respected, but where the President, as authorized by law, issues a proclamation reserving certain lands... this terminates any rights previously acquired in such land by a person who has settled thereon....”

National parks, another type of reservation, are defined in the Forestry Reform Code or Presidential Decree No. 705 dated 19 May 1975, as "a forest land reservation essentially of primitive or wilderness character which has been withdrawn from settlement or occupancy and set aside as such exclusively to preserve the scenery, the natural and historic objects and the wild animals or plants therein, and to provide enjoyment of these features in such a manner as will leave them unimpaired for future generations." Forest Administrative Order No. 7 identifies the purpose of national parks as follows: to preserve panoramic, scenic or aesthetic interest; to provide for recreation; and to preserve flora and fauna, geological features, historic or prehistoric remains and any other feature of scientific or ethnological interest.

One significant element of every proclamation reserving lands of the public domain, for forest or other purposes, since 1931 is that they have all contained the proviso "subject to private rights, if any there be." This paves the way for indigenous peoples to claim private rights to such lands, in accordance with a new law that promotes their ancestral domain rights.

What IPRA Says About Reservations

The Indigenous Peoples' Rights Act of 1997, also known as IPRA or the Ancestral Domain Law, gives the indigenous groups the responsibility to preserve forests, watersheds and biodiversity areas in their domains from inappropriate development.

One of its main features is the recognition of the indigenous peoples' right of ownership to land and bodies of water that they traditionally occupy. Under the law, ancestral domains cover not only the physical environment but also the total environment, including the spiritual and cultural bonds to the areas that indigenous peoples possess, occupy and use. They have the right to develop natural resources and stay in these territories.

It is interesting to note that the IPRA provides indigenous peoples "*the right to claim parts of reservations, which fall under their ancestral domain, except those that are reserved and intended for common and public welfare and service.*"

The exemption clause limits the indigenous peoples' right to fully enjoy the imminent benefits of the law. Hence, it is important to examine what constitutes common and public welfare. It is also necessary to understand the terms 'public use' and 'vested rights.'

Lands of the public domain are intended for public use. Private lands may also be utilized for public use. According to the Civil Code of the Philippines, among the limitations on private ownership are: (1) expropriation for public use, (2) military requisitions, (3) condemnation laws and regulations, (4) public and government monopolies, (5) laws on waters and mines, (6) laws on public services, (7) public health and safety, and (8) public easements.

Public use is traditionally linked to beneficial use for the community. The Supreme Court has ruled that the term "public use" confers some advantage to the public, but this does not require the benefit to extend to the whole public or a considerable portion of it, or that each individual member of the community has the same degree of interest in such use.

Certain purposes are indisputably recognized as public use, such as the construction of



Palawan in tree-bark garb

roads, bridges, ports, waterworks, schools, electric and telecommunications systems, power plants, public markets, slaughterhouses, parks, hospitals, government offices, and flood control and irrigation systems. In various court decisions, a military base and military academy have also been upheld as public.

Vested rights are immediate, fixed rights of present and future enjoyment to privately owned land that enjoy constitutional protection. It presents a contradiction to expectant or contingent rights, such as those of homestead applicants who must comply with application procedures before the land becomes private in nature and ownership is awarded to them.

Section 56 of the IPRA provides that "Property rights within ancestral domains already existing and/or vested upon the effectivity

of this Act shall be recognized and respected." Essentially, this validates the seizure of ancestral territory in the past. This has been a difficult point of debate among advocates.

According to the Property Registration Decree or Presidential Decree 1529, property rights may include ownership through a Certificate of Title. It may also cover property owners whose rights have vested but have not yet acquired a title and, arguably, even those who do not possess title but has been granted rights to use, exploit or develop resources.

The IPRA law established the National Commission on Indigenous Peoples (NCIP) to award native titles to lands claimed by indigenous peoples in the Philippines, on the basis of communal rather than individual ownership.

The right to claim ownership and develop natural resources needs to be qualified by Section 57 of IPRA, which grants priority rights only 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 "with the full participation of the ICCs/IPs concerned." The use of the term "full participation" instead of "free and informed consent" is another bone of contention among indigenous rights advocates.

At present, many ancestral domains face either actual or potential conflict with reservations proclaimed by the Philippine government.

However, no government agency seems to have a list of ancestral domains that have conflicting claims with reservations. The NCIP only has a list of ancestral land and domain claims from 1998 to 2002. The Department of Environment and Natural Resources has a comprehensive list of Watershed Forest Reserves as of the year 2000, but it does not indicate any conflicting claims. The Malacatang Records Office has a compilation of proclamation orders on reservations, with no apparent indication of conflicts with ancestral domain claims. Security considerations made access to data on military reservations at the Real Estate Office of the Armed Forces of the Philippines in Camp Aguinaldo somewhat difficult.

For purposes of this study, three actual cases of conflict between ancestral domain/land claims and reservations, which closely exemplify the issues involved, have been identified. Most of the data regarding these cases were taken from field interviews and locally available information.

I. Clark Development Corporation / Sacobia Range

According to community leaders, the Aetas were the first people to occupy the plains and mountains now under the separate jurisdiction of the provinces of Tarlac, Zambales, Pampanga, Bataan and Bulacan. They used to depend on their natural resources for food and livelihood, hunting for wild pigs and birds, and catching fish from the waters. But with the onset of modernization, they have now learned to live in permanent houses, their means of livelihood consisting of farming and raising livestock.

Even before the Spanish occupation of the Philippines from the 16th to the 19th centuries, the Aeta (or Balinga as commonly referred to by outsiders) already had settlements in what is now known as Banihan, Tarlac and cultivated rice fields along the Paruwao (now Banihan) River. They flourished even before the Spanish missionaries established what is now known as the municipality of Banihan, Tarlac in 1700.

Documented accounts show that during the American Regime from 1900 to 1950, much of the Aetas' ancestral domains were taken from them and converted into US Military Camps. A clear example was the establishment of the U.S. Military Camp called *Clark Field-Fort Stoenberg Military Reservation*, which occupied a huge part of their ancestral domain. However, the Americans manifested recognition of the Aetas' rights to these by allowing them to continue cultivating their lands within the reservation. For 50 years, the Aetas exclusively cultivated farmlands within the military camp.

During the term of President Ramon Magsaysay in the 1950s however, areas within the US Military Camp were opened to non-Aeta communities for cultivation. Since then, many people have taken advantage of the Aetas' vulnerability to mainstream law and commerce and grabbed their lands. The Aeta became impoverished due to massive dispossession of cultivated land, driving them to the more mountainous parts of their ancestral domain.

The Sacobia Development Authority

In 1975, during Martial Law, Presidential Proclamation 1955 placed some areas of the US military camp under the management of the Sacobia Development Authority (SDA) and transferred portions of the community's ancestral domain to the Sacobia Development Estate. This covered 5,600 hectares of land, most of it within the Aeta ancestral domain, eliciting resistance from the indigenous communities.

In 1982, Aetas in the villages of San Vicente, Calumpang, Mantikayo, Balakbak, Hatiduin, Cadape, Kibladugan Tundus in Barangay San Vicente, Banihan, Tarlac and sitios Cantahilis, Sto. Nino, Banson, Burak, San Martin, Birrog, Mataha, Bagingan, Kaging, Tiayag, Mahilog, Kalbangan, Burakin, Manungkarong, Gayuman, Pantayan, Mahamay in Barangay Sto. Nino, Banihan, Tarlac

filed a petition with the Office of the President for the Declaration of their ancestral domains as Negrito Reservation.

In 1985, the Aeta communities formed the Bantban Aeta Tribal Association or BATA and filed an application for a Community Forest Stewardship Agreement (CISA) with the DENR. To clearly demarcate their territories, the Aeta community established "the Gutierrez line" using traditional landmarks to pinpoint the entire ancestral domain claim.

In 1986, the Municipality of Tarlac officially recognized the Gutierrez Line and issued a Declaration of Policy to establish the Aeta Territories. Records indicate that this was formally communicated to the SDA.

Meanwhile, in 1992, Republic Act 7227 established the Bases Conversion and Development Authority (BCDA) to plan, program and undertake the readjustment, relocation, or resettlement of populations within the Clark and Subic military reservations and their extensions as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units. The law authorized the President to create, by executive proclamation, a Special Economic Zone covering the lands occupied by the Clark military reservations and the contiguous extensions.

The Aetas' Application for CADC

In 1993, the DENR issued Department Administrative Order No. 2 (DAO 2) for the identification, delineation and recognition of ancestral domains. Advocates contend that the term "recognition" was used in the title of DAO 2 to stress the fact that indigenous peoples' rights to their ancestral domains were already vested and the issuance of a Certificate of Ancestral Domain Claim was simply a formal re-affirmation of such vested rights.

Unfortunately, Bantban was not included in the list for the implementation of DAO 2. In reaction, BATA pressed for the inclusion of the Bantban in the scope of DAO 2 as there were 5,000 or more indigenous inhabitants in the province of Tarlac. This was communicated in a resolution dated 14 March 1993 to the DENR, which favorably acted upon the request.

After Bantban was included, the community through the BATA filed a CADC petition with the DENR on August 30, 1993. The Sangguniang Tribu of the municipality of Bantban, Tarlac through Tribal Consultant and Adviser Marcelo R. Gutierrez, also filed a request for identification, delineation and recognition of the Aeta Ancestral Domain in 22 villages in Bantban, Tarlac on 18 October 1993.

For almost two years, there was no action on the petition. Subsequently, the BATA filed another application with the DENR on June 15, 1995. From 1993 to 1995, they launched a series of consultations in various Aeta villages to discuss the contents of DAO 2 and prepared the required evidence and documents to show proof of their claim to the ancestral domain.

In the meantime, Republic Act 7227 established the Clark Development Corporation in 1993 to accelerate the sound and balanced conversion of the Clark military reservations and its contiguous extensions into alternative productive civilian uses to promote the economic and

social development of Central Luzon in particular and the country in general. Presidential Proclamation No. 163 designated the areas covered by the Clark Special Economic Zone (CSEZ), which included the Clark military reservations such as Clark Air Base proper, and portions of the Clark reverted base lands. It excluded areas covered by previous Presidential Proclamations, the areas turned over to the Department of Agrarian Reform (DAR), and areas in the reverted base lands reserved for military use.

On 15 June 1995, the DENR finally acted favorably on BATA's petition for a CADC. On September 12, 1995, the DENR Undersecretary for Field Operations ordered its Regional Executive Director in charge of Tarlac to create the Provincial Special Task Force on Ancestral Domain (PSTFAD) that would take charge of the delineation process.

Formally created on October 25, 1995, the PSTFAD had members from the DENR, Local Government Units, Aeta communities, and PANLIPI as the NGO. However, the DENR Secretary held the delineation in abeyance due to certain issues raised by the Sacobia Development Authority.

On 20 February 1997, the procedure for the issuance of a CADC to the Aetas was re-instituted, at the conclusion of a dialogue held with the CDC and PSTFAD. This dialogue, which was held to, among others, resolve the issues raised against the Aeta petition for a CADC, was just one of the many meetings involved in the process of delineation, where CDC representatives were present.

Publication of the ancestral domain claim was made in local newspapers including *Herald Tarlac* and *Ups and Downers* as required under DAO 2. Notices were also posted in public places. No opposition to the claims was interposed during the prescribed period.

The Task Force made an Ocular Inspection and Validation of the Aetas' CADC claim from 14-18 April 1997. In the same year, following the PSTFAD's recommendation, the DENR issued to the Aeta communities in Bamban, Tarlac, CADC No. 107 which covered an area of 5,515 hectares. While these events were unfolding, the IPRA was meanwhile signed into law by then President Fidel V. Ramos.

Despite the CADC, the Clark Development Corporation complained to different agencies of the government that the Aeta communities impeded the operation of its concluded projects. According to Aeta leaders, these projects were set up by the CDC within the ancestral domain without any consultation with indigenous communities. They claimed that investors entered and occupied part of their ancestral domain and that the CDC guards allegedly harassed the community.

In June 1996, former President Ramos issued Executive Order No. 334 that included in the Clark Special Economic Zone "five thousand seven hundred twenty four (5,724) hectares located in the municipalities of Mahabacat, Pampanga and Bamban, Tarlac, more commonly known as Sacobia, which parcels of land, subject to the final survey and delineation on the ground by the Department of Environment and Natural Resources, are described and defined in Survey No. SWO-03-000083 of the DENR, Region III Land Management Sector. Further vested rights and valid ancestral domain claims within the Sacobia area as verified and validated by the DENR and other pertinent government agencies shall be respected."

He also issued Proclamation No. 805 which states in Sec. 7, under the sub-heading, "Settlement

and Resettlement of Sacobia Communities" that "Subject to existing legal rights and valid ancestral domain claims within the Sacobia area, as verified and validated by the Department of Environment and Natural Resources, communities and permanent residents of Sacobia may be transferred and resettled by the CDC, at the expense of BCDA, to give way to development projects in the area".

Various local government units and government agencies endorsed the inclusion of Sacobia under the Clark Special Economic Zone on condition that legitimate ancestral domain claims of the Aetas will be recognized and respected. The Office for Northern Cultural Communities (now NCIP) for instance, said that there are four sitios in the Sacobia area occupied by the Aeta people who intend to apply for a CADC once the provincial task force was organized. The DENR supported this stand.

On January 9, 1998, the CDC wrote a letter to the Presidential Management Staff protesting the issuance of a CADC to the Aetas of Bumban. The company pressed for the nullification of CADC No. 107 on the grounds that it is in conflict with existing regulations and commitments; that it is a gross misrepresentation of the Aeta community; and that it lacks compliance with survey requirements.

Acting on the complaint, former President Ramos created a multi-agency Joint Action Team on 19 February 1998 to conduct an investigation. The team had members from the DTI, DENR, barangay leaders, and the academe of Tarlac and Pampanga. Among its tasks were to conduct verification surveys of Aetas living in Sacobia and ascertain their ethnic affiliation, total population, and the landmarks of the domain. It was agreed that while the investigation was going on, the existing CADC would not be canceled but no new CADC would be issued either.

The investigation of the Joint Action Team, which started during the Ramos administration, continued under the administration of then President Joseph E. Estrada. After the completion of the investigation, the team's findings and conclusions were submitted to the Office of the Executive Secretary and to the Office of the Finance Secretary. The team found that there were 457 families living in Sacobia, 296 of whom are Aetas who inhabit the central and western part of the area. The extent of the ancestral domain claim more or less tallied with the CADC from the DENR, and there were no inherent conflicts between the IPRA law and the CDC & SDA charters. The investigation also showed that the Aeta people wanted to exercise their right to self-determination (in the context of its usage under DAO No. 54) and to the preservation of their indigenous ways.

The team recommended that the CDC continue its development activities in accordance with the IPRA, which requires Free and Prior Informed Consent and gives indigenous peoples such as the Aetas the final decision on how development shall proceed in their ancestral domain. The team concluded that CDC plans would have to be presented to the Aeta community and revised and modified according to the latter's priorities.

On June 24, 1999, the NCIP wrote a letter to the CDC requesting the latter to respect the rights of indigenous peoples within CADC No. 107. In particular, the NCIP requested CDC security guards to stop threatening the Aetas and to dismantle the checkpoints around their ancestral

domains. In response, the CDC asked for the adjustment of the area covered by CADC No. 107.

On October 15, 1999, NCIP officials led by then Chairman David Dan-as and CDC officials led by then President Rifo Colayco held a dialogue to settle the issues involving CADC No.107, particularly its area coverage.

On November 26, 1999, NCIP officials and staff, together with Aeta leaders, met once more with the CDC functionaries. The meeting was sponsored by Congressman Jesli Lapos of Tarlac, who wanted to get the opinion of the Aeta leaders regarding the problems about CADC No.107. In that meeting, all the leaders expressed the need to retain all 5,515 hectares in their ancestral domain.

Subsequently, on March 1, 2000, another meeting was held with the CDC, in which the company expressed its recognition of the validity and legality of CADC No.107. On April 6, 2000, the NCIP and CDC agreed to prepare a Memorandum of Agreement to recognize the contested CADC. On July 11, 2000, the PSTAD issued another resolution supporting CADC 107.

Business Interests in the Aeta Domain

The previous agreements made by the various stakeholders to recognize the ancestral domain claim of the Aeta community did not seem to deter encroachments in the area. Researchers who paid a field visit to the Aeta settlement in January 2002 have reports from various sources that certain businesses have been put up well within the ancestral domain covered by CADC No.107.

Moreover, the CDC has continued its projects in areas covered by the Aetas' ancestral domain, including a huge Orchidarium with coconut trees planted on the border to mark its boundaries. The orchidarium was fenced to prevent unauthorized entry, and permanent tenants guard the place.

According to the Aetas, more projects were being planned and implemented without their free and prior informed consent. They also disclosed that CDC guards have continually harassed and threatened them.

However, in an interview held in Angeles City in May 2001, the new CDC President, Atty. Eimmanuel Angeles, expressed readiness to recognize the rights of the Aeta communities in the area and to enter into any agreement with them for this purpose. He disclosed that he is aware about the existence of the IPRA and that the CDC has been talking to the Aeta leaders about the company's plans. But he also pointed out that he was mandated by law to continue the previous contracts and commitments of the CDC.

Aeta community representative Lily Sihai later confirmed the commitment made by the new leadership of the CDC to recognize their rights over the ancestral domain.

In 2002, Sihai explained in another interview that recent developments have strengthened their position regarding their ancestral domain claim. She happily announced that the NCIP at that time under Chairman Evelyn Dumanan, had allocated P1.6 million for the survey and titling of the Aeta community ancestral domain claim in Banihan, Tarlac. The funds were taken from the P20 million that President Gloria Macapagal-Arroyo had allotted for the survey and titling of

ancestral domains. Sibul also revealed that following discussions with the CDC, it was agreed that the Aeta community would be given a share of the income of the orchidarium and that the CDC was ready to further discuss with NCIP the issues regarding the ancestral domains claim.

II. Mindoro College of Agriculture and Technology

According to a manuscript in the Malacanang Records Office entitled *Resolving the Fifty-Year MinSCAT Land Conflict: A Test of Determination and Political Will*, the Mangyans are the original inhabitants and the only group indigenous to the island of Mindoro in the western part of the Philippines. Among their settlements are the places they call Kaldayagan and Kalbot.

Sometime in 1948, several landless farmers began clearing and cultivating portions of public lands found in Barangay Alcate and Villa Cervena, in the municipality of Victoria, Oriental Mindoro. At that time, Barangay Alcate was home to Mangyan communities who have been using and occupying the land near the Mag-asawang Tubig River for as long as they could remember.

On June 22, 1951, then President Elpidio Quirino issued Proclamation No. 260 creating the Mindoro National Agricultural School (which later became the Mindoro College of Agriculture and Technology or MCAT) reserving for agricultural school purposes a certain parcel of public domain situated in Barangay Alcate, Victoria, Oriental Mindoro. The law set aside a total of 5,680 hectares that covered the areas occupied by Mangyan communities and farmer settlers. But as time passed, the reservation was no longer used in its entirety for the purpose for which it was established.

Since the reservation was established, the Mangyans and the farmer settlers have reported that they experienced various forms of harassment related to military operations such as indiscriminate cutting and destruction of plants, bulldozing and burning of houses, confiscation of farm implements and forcible eviction, among others.

The Mangyan residents recalled that they were sent to a relocation site, which they tried to develop. However, they were again driven out to give way to a government project called "Palayang Bayan," and ordered to return to their former place in Kaldayagan. There, they continued to experience similar forms of harassment.

On April 21, 1970, then President Ferdinand Marcos issued Proclamation No. 626 releasing 316 hectares of the MCAT reservation, of which 263 was re-proclaimed for the use of the Bureau of Plant and Industry. He also issued Presidential Proclamation 1831 on March 19, 1979 releasing another 1,120 hectares of the MCAT reservation to be disposed under the provision of the Public Land Act, to bona fide occupants. However, the land was not awarded to the rightful beneficiaries, the Mangyans, who are the descendants of the original occupants of the land.

The MCAT management leased 300 hectares of the reservation to Victorias Milling Company (VMC) for the benefit of VMC workers in Negros Occidental, and another 50 hectares to LIVECOR, a private company.

A third party has since emerged in the controversy between the Mangyans and the school. These are the non-IP farmers who have settled in the same place given the fertility of the land.

Interestingly, even during the time of then President Marcos, a significant portion of the reservation had already been alienated in favor of non-IP farmers who have settled in the area.

The Department of Agrarian Reform (DAR) has recently determined that the remaining 2,680 hectares were suitable for agriculture and were no longer used for the original purpose of the reservation. The DAR distributed several hectares to the farmers but the school wanted to retain 700 hectares, half of which is already occupied by farmers. To date, MCAT's total reservation area has gone down to 700 hectares. The Mangyans, on the other hand, claim the same area.

Theoretically, the Mangyans could claim the entire 3,680 hectares based on their occupation of the area since time immemorial, according to Mangyan leader Ka Bering, but they are only claiming a small portion – the farm lots which they currently occupy. However, the school has refused to give them even this much smaller claim.

It was learned that the school wanted to have the area occupied by the Mangyans for two reasons: a) it is contiguous to the actual site of the school; and b) it is already cultivated, making it conducive to agricultural education.

The school was willing to relocate the Mangyans to other parts of the reservation, but the Mangyans refused to leave because the proposed resettlement area is rocky and not suitable for cultivation. Besides, several non-Mangyan families are already in that area. Also, the Mangyans took pride in the fact that the good condition of the farms they occupy is due to their sustainable form of cultivation which they have practiced since time immemorial.

According to Ka Bering, they have already filed a petition for a Certificate of Ancestral Domain Title with the National Commission on Indigenous Peoples (NCIP).

The issue in this case is the right of the Mangyans to claim parts of the school reservation that fall under their ancestral domain. Non-governmental organizations facilitated several consultations and dialogues involving the DAR, MCAT, and NCIP to address the land dispute.

According to the Presidential Management Staff, a Technical Working Group (TWG) conference was held in December 2001 attended by representatives of MCAT, DENR, CHED, PMS, DAR, NAPC, NCIP, farmers and members of the Mangyan groups. Several options were discussed during that meeting, among them:

* *Division of the Land*

MCAT is willing to keep 328 hectares and give 372 hectares to the Mangyans, on the condition that the land owned by the school would be free of squatters. The problem is that 83 out of the 528 hectares already have non-IP squatter – farmers.

* *Relocation of MCAT*

The school is also willing to relocate the campus on the condition that the area is the same, with similar road infrastructure. But according to DENR, this is not possible because there is no land available.

* *Usufruct agreement*

MCAT has agreed to enter into a usufruct agreement with the squatter farmers, thereby giving the latter the right to use the land for their livelihood. But the farmers disagreed with this suggestion.

after discovering that the Mangyan farmers will get to own 572 hectares of the contested property.

a. Re-proclamation

This is being considered as the last option.

III. Central Mindanao University

Established in 1911, the Central Mindanao University started as a settlement farm school dedicated to the teaching of advanced agriculture in Malaybalay, Bukidnon. It moved to Mangkok, also in Bukidnon, in 1927 and was then known as the Bukidnon Rural High School. Later, it was renamed as Bukidnon National Agricultural School.

The school remained in Mangkok until the outbreak of the Second World War. The war destroyed the major installations of the school, with the roads becoming impassable after years of neglect and isolation. The rice lands too became unproductive.

In 1946, when the war ended, there were plans to transfer the school to Musuan, also in Bukidnon, due to the destruction of its old campus. But the inhabitants of Musuan, specifically the Kibalagon people, actively protested the relocation plan, as the land being eyed is part of their ancestral domain.

This was how the problem began.

A preliminary survey was conducted between July and August 1946 to determine the new school site. The survey revealed that the selected location for the school already had Maranao settlers and about 320 Manobo-Talaandig families belonging to the Buntan, Gumba and Anecito clans.

Despite protests from the indigenous communities, their ancestral domain was still included in the school's 3,080-hectare property. The affected indigenous communities therefore wrote to then President Ramon Magaysay requesting that their lands be excluded from the school's territory. The President endorsed the letter to the Director of Lands, who replied that his office would not object to the reservation of lands in favor of the Mindanao Agricultural College subject to the condition that the claim of the different occupants are excluded.

The period following this development saw no substantial action that was taken on the matter. In January 1958, then President Carlos P. Garcia signed Proclamation No. 476 reserving an area of 5,401 hectares of public land in Musuan for the school "*subject to private rights*." At that time, the newly proclaimed reservation covered the cultivated farm lots of indigenous clans.

On April 17, 1961, an attempt to find a solution to the conflict was initiated in the form of a cadastral hearing that was attended by 64 parties who registered their claims. However, this hearing and subsequent hearings did not yield any fruitful result.

Ten years later, the Presidential Action Commission on Land and Agrarian Problems (PACLAP), later renamed Commission for the Settlement of Land and Agrarian Problems (COSLAP), was formed. It recommended the segregation of 400 hectares from the school reservation for distribution to the rightful owners. But the school, now known as the Central Mindanao University, filed a civil case to restrain the order of COSLAP.

In 1971, then President Ferdinand Marcos gave a speech before Bukidnon farmers where he declared the segregation of "whatever area" was occupied by settlers from the school. This prompted some 500 bolo-wielding farmers to enter CMU premises as a sign of occupancy. Clashes between the military and the farmers left properties damaged. The event was marked by tension and nearly bloody encounters between the farmers and law enforcers, as well as the destruction of government property.

The ensuing conflict caught the attention of the government authorities. To defuse the explosive situation, then Acting Secretary of Agriculture and Natural Resources Jose Drilon issued Special Order No. 438 creating a special committee to conduct an investigation on the unrest. The Committee was headed by then Provincial Board Member Esmeraldo Cudal of Bukidnon, hence the name Cudal Committee. It was composed of government officials, as well as representatives from CMU and the farmers. After several meetings, the Cudal Committee gave the President the very same recommendation given by COSLAP. This recommendation led to a Memorandum of Agreement entered into by the farmers and the school administrators in 1971.

In December 1971, the Court of First Instance of Bukidnon handed down its decision on the Cadastral cases regarding the contested land. A total of 275 hectares were granted to certain claimants, but the court specified that the areas adjacent, around, or near the watershed of CMU may be taken by CMU subject to replacement. The decision was contained in an agreement signed on August 4, 1973.

The Maranao settlers, however, did not submit their evidence of occupancy during the hearings. They insisted that the first president of CMU promised them in 1946 that the individual area they occupied at Musuan would be exchanged or substituted with land of equal size and extent vacated by the Bukidnon National Agricultural School at Managok. Unfortunately, the promise was not fulfilled.

On April 8, 2001, Congressman Juan Miguel Zubiri wrote President Gloria Macapagal-Arroyo to seek an amendment of Proclamation 476, which defined the area covered by CMU. In the meantime, the NCIP received a letter from CMU President Dr. Mardonio Lao that they would not oppose the land claims of the indigenous peoples for so long as it is outside the CMU property.

But on July 17, 2001, the concerned indigenous community submitted reports to the NCIP about incidents of harassment, particularly the destruction of shanties and sacred areas by well-armed CMU guards. Similar reports were received on November 1, 2001. These armed guards patrolled the perimeter of the school all week.

In the harassment reports, the indigenous peoples made mention of unresolved killings of certain members of their community, the fencing out of their farms, the demolition of their houses, and the leasing of lots by the school, among others. They also complained about what they perceived was the school's mockery of their culture and spiritual beliefs, as well as the manipulation of indigenous peoples to fight against each other. The community was concerned about their survival, as they had lost their farms and did not have any source of food or basic needs, and there was no suitable place for relocation.

Officials of the NCIP Provincial Office in Bulidnon have taken steps to resolve the controversy. They have examined documents to support individual claims to the ancestral domain, facilitated dialogues, requested meetings with the CMU President, and documented the "penalty" imposed by the community on the President of CMU based on customary law.

Despite these efforts, the problem is yet to be resolved. Although there has been a successful segregation of 519 hectares for the Manobo-Talaandig communities, the Maranao communities have yet to recover their lands that they have been claiming since 1946.

The President's Powers

In the Philippines, two kinds of land are recognized: private land and public land.

"Private land" means any land of private ownership. This includes both lands owned by private individuals, and lands which are the patrimonial property of the State or of municipal corporations. Private lands may be transferred or conveyed only to qualified individuals or entities. Hence, aliens, whether individuals or corporations, are disqualified from acquiring private lands.

Public lands are those owned by the State. The 1987 Constitution provides that all lands of the public domain are owned by the State. Lands of the public domain are classified into agricultural lands, forest or timber lands, mineral lands, and national parks. It further states that only agricultural lands of the public domain may be declared as "alienable or disposable" for the use of claimants. The executive branch of the government has the exclusive power to identify which lands should be classified as agricultural, mineral or forestland.

Traditionally, proclamations classifying public land have been subject to private rights. This is in recognition of constitutional due process. However, this does not prevent the government from either taking the private property of Philippine citizens pursuant to eminent domain proceedings, or limiting its use by exercise of police power. Public lands in the Philippines have been reserved for schools, hospitals, nurseries, penal colonies, national parks, agricultural colonies, town sites, watersheds, geothermal projects, housing, tourism, resettlement, mining, marine, stock farms, and civil and military sites. Lands have also been set aside for export processing zones, and for the use of the Boy Scouts and Girl Scouts of the Philippines. Even the University of the Philippines has received a land grant from the government.

The Office of the President of the Philippines has always been viewed with awe because of the immense powers that are vested in it. In accordance with the Constitution, Section 1 of the Administrative Code of 1987 states that the President shall have control of all the executive departments, bureaus, and offices.

In issuing executive orders and proclamations, the President usually performs the constitutional duty of seeing to it that the laws are faithfully executed. Some rules are promulgated pursuant to statutory authority and in order to carry out the declared purposes of legislative enactments. But if the legislature delegates rule-making functions to the President, the conditions under which the rules are issued, such as public hearings and publication, may be prescribed in the statute. Where a statute confers on the President the authority to promulgate rules and

regulations, both the statute conferring rule-making authority and the rules promulgated thereunder are subject to judicial review.

In view of this, the power to classify lands exclusively belongs to the Executive Department. The President of the Philippines has the recognized competence to reserve by executive proclamation alienable lands However of the public domain for a specific public use or service. Under Section 61(c) of the Revised Administrative Code, the President may "reserve from sale or other disposition and for specific uses or services, any land belonging to the public domain of the Government of the Philippines, the use of which is not otherwise provided by law."

The Administrative Code of 1987, in Section 14 (1), Chapter 4, Book III, also provides that: "The President shall have the power to reserve for settlement or public use and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved area shall thereafter remain subject to the public purpose indicated until otherwise provided by law or proclamation."

It further provides in Section 12, on the Power of Eminent Domain, that: "The President shall determine when it is necessary or advantageous to exercise the power of eminent domain in behalf of the National Government, and direct the Solicitor General, whenever he deems the action advisable, to institute expropriation proceedings in the proper court.

Consequently, the classification of public lands is an exclusive prerogative of the Executive Department of the Government and not of the courts. Specifically, section 6 of Commonwealth Act 141 states: "The President, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into – (a) alienable or disposable; (b) timber; and (c) mineral lands, and may at any time and in a like manner transfer such lands from one class to another, for the purpose of their administration and disposition." It also gives the legislature and the President, upon recommendation by the Minister of Natural Resources (now the Secretary of the Department of Environment and Natural Resources), the power to declare from time to time what public lands are open to disposition or concession.

The President is authorized to establish within the lands of the public domain forest reserves, forest reservation for the national park system, or critical watersheds or for any other purpose, and modify boundaries of existing ones.

Accordingly, the power to classify includes the power to withdraw such classification. This withdrawal may be achieved by revoking the prior reservation and subsequently re-proclaiming the same site for purposes of recognition of ancestral domain claims. This will then go through the process for the issuance of a Certificate of Ancestral Domain Title under the NCIP.

What Indigenous Communities Can Do

There are several options available to indigenous peoples faced with problems concerning overlapping claims between ancestral domains and reservations. The following are recommended

actions that they may pursue to resolve the controversies that have hounded their communities for decades.

*** *Re-proclamation by the President***

The President may consider re-proclamation of reservation sites that no longer fulfill their original purpose. Department heads need to be more vigilant in determining the relevant and actual use of reservation sites. They may form committees to assess the current status of reservations. Such committees may have an indigenous leader as a consultant, without prejudice to the requirement of Free and Prior Informed Consent from the members of the communities found in these areas.

If re-proclamation is considered as an option, a petition may be filed with the NCIP, which would determine actual use of the lands in question, together with the Department of Education in case of school reservations; DND in case of military reservations; and DENR in case of watershed and forest reservations. The NCIP would determine the boundaries of the ancestral domain vis-à-vis the area of the reservation site. Upon determination of non-use of the reserved area for its original purpose, the NCIP would issue a Resolution declaring this fact. It would then recommend to the President a re-proclamation segregating certain parts of the reservation and declaring it as part of an indigenous community's ancestral domain.

*** *Negotiations***

A Memorandum of Understanding may be entered into by the parties involved in the dispute as a *preliminary* or an *intermediate* step before re-proclamation. The Memorandum may contain features of instruments recently utilized by NCIP and CHED in resolving similar disputes.

A Memorandum of Agreement is a good step in reconciling the interests of indigenous peoples and the beneficiaries of reservations. It brings the leaders to the same table to discuss the problem and arrive at a solution that is mutually beneficial to all the parties involved in the dispute. A memorandum seeks to peacefully settle the issue by directly addressing the problems personally brought up during the conference.

Parties can stipulate the terms and conditions that are mutually beneficial to them. (See box on opposite page.) Their MOA shall be submitted to the NCIP for recording, and also for assurance that the agreement is not injurious to any party and gives the indigenous community the right to claim parts of a reservation. The Agreement shall be binding to both parties upon the approval of the NCIP, including the successors in office of the signatories, except if some event/s necessitates the modification of the terms and conditions of the agreement.

During negotiation proceedings, parties need to respect the status quo and no action must be done to injure the parties, especially the indigenous communities concerned.



The following is a sample MOU:

This MEMORANDUM OF UNDERSTANDING (MOU) made and executed this ____ day of ____ (year) at the Malacañang Guest House by and between:

The COMMISSION ON HIGHER EDUCATION, a government agency under the Office of the President, created under and by virtue of Republic Act ____, with office address at DAP Building, San Miguel Avenue, Ortigas Center, Pasig City, represented in this instance by its Head CHAIRPERSON _____, hereinafter referred to as "CHED"; and

The NATIONAL COMMISSION ON INDIGENOUS PEOPLES, a government agency created by virtue of Republic Act No. 8371 or the Indigenous Peoples' Rights Act of 1998 (IPRA), with its principal office at 2/F D&E Building Corner Flores and Quezon Avenue, Quezon City, represented by its Head, hereinafter referred to as "NCIP."

WITNESSETH THAT:

WHEREAS, it is hereby the policy of the State to protect the rights of indigenous peoples to their ancestral domains to ensure their economic, social and cultural well-being by recognizing the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains;

WHEREAS, IPRA provides that indigenous peoples have the right to claim their ancestral domains;

WHEREAS, claims over ancestral domains have been identified in various portions of some existing _____ (reservation site type); in particular: _____ (name);

WHEREAS, there is a need to ensure the peaceful and orderly implementation of IPRA in regard to the processing of IP claims over these ancestral lands and/or domains within land reserved and/or owned by the SUC's;

WHEREAS, it would be beneficial to all stakeholders to immediately address these claims in order to pursue educational, economic, and social development in these areas; and

NOW THEREFORE, in consideration of the foregoing premises the parties have agreed that they shall abide by the following GENERAL FRAMEWORK AND POLICY in dealing with claims over ancestral domains within land reserved and/or owned by the _____ (government agency/instrumentality):

The NCIP, in coordination with _____ (head department) and other appropriate agencies of government, shall initiate and undertake the survey for purposes of this MOU in preparation for the eventual processing of the claims in accordance with the provisions of IPRA;

The _____, through its Chairperson, hereby agrees to immediately facilitate the entry and access to the _____ (site) by the NCIP and such other agencies of government which will form part of a team tasked to conduct a survey of the areas claimed by the IP's;

NCIP shall request assistance from the PNP as the need arises for a peaceful and orderly conduct of its functions and to prevent any untoward incident during the survey; and

NCIP and _____ shall form a joint technical working group to provide technical and secretarial support in the undertaking of the above-mentioned functions.

This chapter is based on a case study prepared by the Menes Human Rights Center regarding indigenous peoples' claim to parts of reservations. It takes a legal viewpoint on the topic, which has become a bone of contention among indigenous communities and various government agencies in some parts of the country. Primary data was gathered from interviews and focus group discussions with community elders in Barangay Victoria in Oriental Mindoro and the Municipality of Bamban in Tarlac, and senior government staff. Secondary sources of data include government agencies, support groups for indigenous peoples' rights, and university libraries.



Displaced T'boli families
in South Cotabato—
a familiar scene in places
where conflicts regarding
ancestral domains remain
unresolved for years.

CHAPTER 3

FROM PICKET LINES TO REOCCUPATION: A B'LAAN COMMUNITY GOES FOR LAND REFORM

Is it possible to reclaim ancestral domains through the agrarian reform law?

Human rights are not always articulated in laws that, by their very nature, are compromised and articulated ideals. Laws are not descriptive statements of reality, nor are they predictions of inevitable events. Sometimes, the law itself contradicts the rights of individuals and peoples, as in the case of the B'laan community in Sitio Lamcuah, in the southern Philippines.

Prior to the passage of the Indigenous Peoples Rights Act (IPRA), the Lamcuah B'laan looked at agrarian reform as one of the available legal remedies in their attempt to gain tenure security over the lands they are claiming as ancestral territory.

The story of the B'laan is replete with manifestations of the contradiction between laws and rights. However, laws can also change, resulting in tensions that can create opportunities for advancing the interests of a community.

Legal recognition of existing rights can take place, as seen in the IPRA law. But while IPRA was enacted as a remedial measure, restorative justice cannot take place overnight. For the Lamcuah B'laan, overlapping tenure instruments issued over their ancestral domain made the recognition of their claims more difficult.

From Hunting Grounds to Pineapple Plantations

The B'laan people are found mainly in the western and southwestern part of Mindanao island. Sitio Lamcuah, located at the foot of Mount Manumon in Barangay Madiga, is part of the ancestral domain of the B'laan. It is located in the municipality of Polunolok, province of South Cotabato.

To the B'laan community, the place is traditionally known as Kolon Sebo, the hunting ground of their ancestors. With a total land area of around 2,000 hectares, Kolon Sebo was considered sacred and integral to their existence. Permission is needed from designated elders before hunting can be done; otherwise, punishment may be imposed.

To the owners of Dole Philippines (DoleFil), which has a vast pineapple plantation in the area, Lamcuah is technically called GSS-211 and GSS-390. The B'laan people who are seeking to reclaim their ancestral land are found in the middle of the pineapple plantation.

In Polomolok, especially to fellow B'laan, the Lamcuah community is also popularly known as "pikit." The term refers to the 10-month picket they staged in neighboring Koronadal, South Cotabato and inside GSS-211 lots in Barangay Polo in Polomolok as a land reoccupation strategy in 1995.

The B'laan people in Lamcuah are the remaining group from the original 168 families (around 600 members) who staged the longest mass action for the recognition of their ancestral lands by the government. As a group, they claim an aggregate total of 94 hectares out of 341.88 hectares (in 35 lots) being claimed with other B'laan communities.

The actual occupants number around 50 families. They utilize portions of the 56.67 hectares of land turned over to them by the DoleFil Agrarian Reform Beneficiaries Cooperative, Incorporated (DARBCI) as part of a compromise agreement forged on November 10, 1997.

The Community Center is located inside GSS-211, Lots 37 and 38. Within the Center, around 50 makeshift huts stand on 100- to 225-square meter parcels of land. A basketball court that doubles as solar dryer, a half-finished multi-purpose hall, a health center, and communal toilets are also found in the Center.

Since the land was granted, the community has struggled to survive with the small portion available for agriculture. They lack basic services, adequate food, and sufficient livelihood. Water is a major problem, with only a small rain-fed water reservoir-tank providing for their needs. Residents have to fetch drinking water from another village five kilometers away, paying up to 30 pesos per 10-liter container. On top of these problems, the community is still seeking security of tenure through the resolution of a Certificate of Land Ownership Award (CLOA) case.

Due to the harsh living conditions and organizational conflicts, many community members opted to resettle in other places. Some of them continued to cultivate their allocated farm lots in Lamcuah while others looked for work in adjacent towns and barangays. They grow crops such as corn, rice and cassava as well as vegetables for their daily sustenance.

How the B'laan People were Displaced

The B'laan people lived sufficiently within their ancestral territory until 1939, when the first wave of "Christian" settlers, usually referring to land speculators from Luzon and Visayas, settled on an area within Kolon Sebo called Landan and Polo. According to the B'laan, these settlers borrowed land from the indigenous community. The migrants planted crops like rice and potatoes on their borrowed land. Later, the second wave of "Christian" settlers arrived and occupied the remaining areas of the B'laan. Like the previous settlers, they asked for a plot of land from the B'laan, which the latter lent provided that the occupied land would be returned to them.

This system of lending-borrowing is similar to what is currently known in civil law as *usufruct*, which gives a person the right to enjoy the property of another with the obligation of preserving

in form and substance unless the land title or the law provides otherwise. The borrowed lands however were never returned to the B'laan.

With the incessant arrival of "Christian" settlers, it took sometime for the B'laan to realize that their ancestral territory had become rice, abaca, ramin, and potato plantations. The encroachment pushed them to higher areas of Mount Matutum, outside Kolon Sebo.

On July 5, 1961, then President Carlos P. Garcia issued Executive Proclamation No. 762 that officially reserved 2,507 hectares of land in the Municipality of Polomolok for "settlement purposes" of "Non-Christians" (also called Native B'laan), under the administration of the Commission on National Integration (CNI).

The issuance confined the B'laan within the reservation, even though their ancestral territory extended beyond its borders. Being simple and peace-loving people however, the B'laan contented themselves with the reservation, as it provided assurance and security from further encroachment by migrant settlers. They worked and tilled the land according to their pace and culture. Survival was no longer a threat, for they lived within the bounty of their immediate environment.

The protection was short-lived however, as the fears of the B'laan materialized. Piece by piece, settlers managed to get legal titles to the B'laan ancestral lands under the *Torrens* system of land registration, even though the indigenous peoples had communal ownership of these lands and the settlers were merely their usufructuaries. The *Torrens* system allows applicants to obtain a title for a piece of land after court proceedings.

In addition, sometime between 1963 and 1966, the state-run National Development Corporation (NDC) was able to acquire 505.22 hectares of land within the reservation that it subsequently leased to Dolefil.

Alarmed, the CNI lodged a complaint against the NDC. Negotiations were conducted and on July 25, 1974, CNI Commissioner Datu Mama Susuat and NDC Chairman Constante L. Farinas signed a Memorandum of Agreement regarding the land.

The Agreement required NDC to return 26 lots with a total area of 163.34 hectares to the CNI. These lots are known as the *Surrendered Lots*. In return, the CNI recognized the validity of the NDC's acquisition by sale of 35 lots with a total area of 341.88 hectares located in the municipalities of Polomolok and Tugji in South Cotabato. The lots were known as the *Retained Lots*.

Unaware of the top-level negotiations, the B'laan continued to occupy portions of the 35 lots retained by NDC. However, Dolefil allegedly ejected some B'laan families who were not so fortunate.

With the land issue still unresolved, another pivotal event occurred in the 1970s. The B'laan were caught in the fight between the Christian vigilante group *Ilaga* and the Muslim rebel group *Milakatirra*.

To avoid getting into the crossfire, most of the B'laan families evacuated to the lowlands, leaving behind the land that their forefathers had handed down to them. The armed conflict resulted in massive displacement of B'laan communities, depriving them of access to their land and practically threatening them with extinction. The B'laan in *diaspora* were confronted with the issue of survival.

When the conflict subsided in the late 1970s and early 1980s, the B'laan ventured back to their ancestral lands. Upon their return, they were surprised to see the face of their land transformed. Instead of their usual corn and vegetable plots, they saw multiple rows of pineapple plantation. They could hardly find a space to settle and to build makeshift huts for shelter. Some B'laan families tried to eke out a living along the border of the plantation, or in areas that settlers and the corporation had not yet occupied, but their houses were immediately demolished upon orders of the Dole management.

The B'laan people were confused about how their homeland, especially the reservation, was taken away from them when they neither sold nor exchanged it. Some of the educated members of the tribe made some research and discovered the CNI-NDC deal.

The Comprehensive Agrarian Reform Law

In 1988, the Comprehensive Agrarian Reform Law (CARL) or Republic Act No. 6657 was enacted. Its goal was to distribute land to the tiller. The agrarian reform system covers the following:

- 1) All alienable and disposable lands of the public domain devoted to or suitable for agriculture;
- 2) All lands of public domain in excess of the specific limits;
- 3) All other lands owned by the government devoted to or suitable for agriculture; and
- 4) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

Because of this law, 8,000 hectares of land leased to Dolefil by the Government were identified for redistribution. Several B'laan occupant-cultivators were recognized as potential agrarian reform beneficiaries, but for unknown reasons, the entire area was awarded instead to the Dolefil Agrarian Reform Beneficiaries Cooperative Inc. or DARBIC. The group is composed of the corporation's employees and their relatives, who were given Certificates of Land Ownership Award (CLOA).

The land identified for redistribution covered the 35 *Retained Lots* of NDC that it had turned over to the Department of Agriculture. The transfer resulted mainly from the mistaken presumption that the lots in question were public land. Instead of fulfilling its function as an instrument for social justice, CARL was used to further deprive the B'laan of Lamcuah of their ancestral domain.

Ancestral domains and lands, however, are treated differently under CARL. The implementation of CARL in these areas may be suspended for the purpose of identifying and delineating such lands. In the Lamcuah case, the implementation of CARL should have been suspended to delineate the ancestral domain of the B'laan.

The B'laan Struggle to Reclaim their Land

Through the years, the Lamcuah B'laan have attempted to regain possession and recognition of their rights to their ancestral lands, together with various support groups, through legal strategies and mass campaigns. B'laan women, men and children opposed the awarding of their land to

agrarian reform beneficiaries, primarily claiming that the area belongs to the B'taan by virtue of Executive Proclamation No. 762.

On April 26, 1995, around 150 families held a picket in front of the DAR office at the Provincial Capitol of South Cotabato. The protest action dramatized their claims over the disputed 35 *Retained Lots* lost to NDC and later to CARP. This went on to become a 10-month picket, and these claimants were consequently known as "*pikit*" (localized term for picket).

The B'taan people encountered various difficulties while in the picket line. Although they received food, medicine, and money from support groups, these were not sustained during the ten-month mass action. Health conditions, especially of women and children, deteriorated. The long dry spell also compounded their problems.

On the other hand, the "*pikit*" drew attention to the B'taan' plight. The media picked up their stories. A Congressional hearing was held to investigate the issue. The government was forced to confront the problem. DAR officials mediated the negotiations between the community and DoleFil/DABRI. Apparently, when DoleFil distributed some of their leased land to their farmers through DABRI, the company parceled the whole pineapple plantation. By the time of the picket, the disputed 35 lots (also known then as GS-211) had already been divided further into smaller lots.

The "*pikit*" inspired other B'taan to push their various claims. To simplify matters, the DAR created a Task Force to look into a probable compromise. The Task Force was composed of the "*pikit*," representing four clans, and the other group of claimants, representing seven clans.

The four "*pikit*" clans were represented by Antonio Imba, Renato Bagun, Jr., Terry Kauran and Lilia Dyumalin. They were known as the *Imba group* and they demanded the return of Lots 8, 10, 12, 37, 38, 39, 42, 44, and 53.

The other B'taan clans identified the lots they were claiming as follows:

- | | |
|----------------------|---|
| 1) Galitan Clan | Lots 20, 22, 23, 24 |
| 2) Makompong Clan | Lots 13, 14, 40 |
| 3) Ola-Danibong Clan | Lots 9, 39 and other lots at
Kablon, Pulumulok |
| 4) Lalinbau clan | Lots 47, 48, 49, 50 |

At dawn on February 5, 1996, around 50 families from the ranks of "*pikit*" claimants decided to reoccupy the disputed areas. After living for 10 months in the picket lines and with dim hopes for a quick resolution of the case, they set up makeshift tents and shanties along the access roads and waterways of the pineapple plantation. On their small lots, each family planted crops. Access to water supply was very difficult. Their small patches of greens survived on rain and moisture.

To meet their daily needs and sustain the community struggle, some family members had to work elsewhere. While earning a living, leaders were also busy planning and organizing, meeting support groups, and seeking more assistance from concerned groups and individuals. They also received dole-outs from local politicians, even as the B'taan expected more from them.

Seven years after the "*pikit*" and with no relief in sight, the B'taan re-occupied the land they were claiming, in GS-211, in February 2002. The DoleFil area was then newly plowed and ready

for the planting season. As a form of direct action to reclaim their ancestral lands, the B'laan decided to plant corn on the plowed land. Makeshift houses were built beside the corn plots.

Dolefil management requested a dialogue with the community after the occupation, and both sides reached an agreement. The community was willing to vacate the lots and return them to Dolefil provided that the company pays a percentage of the projected harvest value of the corn already sown by the community; withdraws the case on injunction against community leaders; replace the housing materials that were destroyed by its management, and shoulders the medical expenses of those injured in the demolition.

In addition, Dolefil proposed a Working Group composed of concerned parties to look into the ancestral claims of the B'laan, facilitate the resolution of the DARAB case, and resolve other adverse claims.

Legal and Conflict Resolution Processes

LRC-KoK, a non-profit organization that provides legal services, has continuously worked with the Lamcuah B'laan and local support groups since the community actions started in 1995. The law group formalized its partnership with the B'laan by appearing as the legal counsel for the *Imba* group in a Motion for Leave to Intervene filed at the DAR Arbitration Board, which had assumed jurisdiction of the case, on June 1, 1996. DARAB granted the Motion and ordered the *Imba* group to file their Appeal. The main arguments of the B'laan interveners, particularly the *Imba* group, was that the lots they were claiming should be excluded from the land that DAR will be awarding to DARBCI. After it was filed, the DAR advised the B'laan groups (namely the *Imba*, *Lanmban* and the *Galkan, et al.* clans) to draft a joint proposal.

Various negotiation meetings ensued, but the *Imba* group opted not to enter into a compromise agreement. Instead, they demanded that all nine lots with a total area of 94 hectares be returned to them. LRC-KoK manifested its partners' formal withdrawal from negotiations in a DARAB hearing on November 11, 1996. The counsels also moved for an urgent resolution of the case.

Eventually, all the clans except the *Imba* group agreed with DARBCI to amicably settle the case. On February 10, 1997, a Compromise Agreement was executed between *Lanmban, et al.* and DARBCI. On September 18, 1997, DARAB approved the awarding of 128,154 hectares to these claimants. As the respondent, Dolefil filed a motion to reconsider the order, which has not been resolved as of 2002.

In September 1997, the DARBCI changed management. The new leadership was more sympathetic to the Lamcuah B'laan and talks for an informal negotiation opened up. After a series of dialogues among the *Imba* group, Dolefil and DARBCI, the three parties forged a new compromise agreement on November 10, 1997, with regard to the 97 hectares, particularly lot numbers 37, 38, 39 and 44. The agreement provided, among others, that DARBCI and Dolefil would turn over to the B'laan 56.67 hectares of land and withdraw pending criminal and civil cases they had filed against the B'laan by the end of 1998.

On June 11, 1998, DARAB approved the Compromise Agreement and ordered the case closed,

without resolving pending issues. LRC-KsK filed a Partial Motion to reconsider this specific part of the order on July 28, 1998. Five years hence, the motion has not been decided.

As part of the transition for the implementation of the Iuhia group's compromise agreement, the B'laan vacated the reoccupied area in Barangay Polo and were temporarily relocated at a dam site in Barangay Landan, Pulomolok, South Cotabato where they stayed for 13 months. Food and water became their primary problems, along with insufficient area to plant crops. The only space available was a backyard garden for vegetables. The drought at that time aggravated their problem. They had to buy potable water or walk for two hours to reach a stream. Community members, especially the elders and the children, suffered various health problems due to lack of water and clean toilets. Some people were forced to leave the temporary relocation site because of these conditions, while others had to find work far from the area to sustain their families.

Finally, in January 1999, the Iuhia group resettled in the 56.67-hectare area turned over to them in Sitio Lamcuah, Barangay Maligo; hence the name *Lamcuah B'laan*. They established their Community Center on Lot Numbers 37 and 38, the only contiguous lots, which have a combined size of 22.2 hectares.

Some of the families who had left the temporary relocation area at the dam site earlier returned to join the community in Lamcuah. Others decided not to stay in Lamcuah due to lack of water sources and work opportunities, but expressed interest in claiming their respective shares of land.

Since the remaining 37.33 hectares are still in litigation, the B'laan community of 58 families has tried to survive on what they have. The average landholding for every family is a mere 2,000 square meters. Consequently, many of the B'laan have to look for work in the urban centers to augment their earnings. A number have become, at one time or another, Dolefil workers.

Lot numbers 10, 12 and 44 were reserved for individual and communal farms. A wide creek divides Lot 12, thereby decreasing farm space. Aside from meager land, other problems continue to hound the community.

A communal farm was supposed to be established on a 12-hectare land in Lot 44 but this move did not prosper because of internal conflict involving some of the B'laan leaders regarding the occupancy and use of the land. When customary conflict resolution processes failed to provide a solution, the conflict unfortunately led to court cases that further complicated the situation.

Amid these trying circumstances, the B'laan leaders remained true to their calling by exercising utmost care in handling the conflict. For the Lamcuah B'laan, their sense of community prevails despite adversities and differences in principles. They knew that their disagreements must not be made to overshadow the suffering that they all have gone through together on account of the loss of most of their ancestral domain.

Aside from the inter-clan conflict, the Lamcuah community also had to deal with certain Visayan settlers who occupied a portion of Lots 10 and 12 by virtue of a certificate issued by Dolefil, allowing them to utilize the land in exchange for their lots that were contiguous to the Dolefil plantation. The community leaders asked Dolefil, DAR and DARDCI to discuss and settle

the conflict with the settlers. They also brought the issue to the Working Group that was put up by Dolefil in the aftermath of the February 2002 land occupation. The Polomolok Municipal Government stepped in to facilitate the negotiations.

Because of these adverse claims, only 14 to 18 hectares of land remain as farm lots for the entire community.

For five years, there has been a virtual standstill in the Luncuab B'laan struggle to gain security of tenure over the land they used to have. Although they have won partial victory, they continue to suffer external threats to their survival. In a sense, victory was hollow as they continue to be hounded by poverty and internal conflict.

Land Reform as a Strategy

One of the primary reasons why the B'laan decided to reclaim their ancestral domain through the agrarian reform law was to prevent further encroachment of the CLOA holders on their territory. The intervention filed with DARAB was primarily a defensive action. It was more prudent, at that time, to engage in an existing litigation rather than initiate it because they were already negotiating with the different parties involved when the case was filed.

Another reason was that, at the time of the negotiations, the nature of the players had changed. A new DARAB administration came in and the then Chairman of the Board was more amenable to negotiations.

Some people ask why the B'laan invoked the land reform law instead of IPRA. The reality is that at the height of the conflict, IPRA had yet to be enacted. (See sidebar below)

The need to reacquire their lands for the establishment of their community and to ensure their survival was also a major influence in their decision to follow the land reform route. Their experience of encroachments and the presence of the pineapple plantation in their ancestral territory forced them to take advantage of what they believe is a faster process of acquiring land where they can settle as a community.

The story of the B'laan claim in Luncuab is replete with compromises. Time and again, community members have wondered: how much land will we be forced to give up before our ownership over our ancestral lands is recognized?

The Luncuab B'laan and support groups are using a combination of legal and non-legal strategies to help resolve adverse claims within lands occupied by the indigenous community. This is necessary, as court cases, whatever the results may be, cannot totally put an end to such conflicts. However, the community's capability to go beyond the legal option in resolving current issues and problems needs to be strengthened. Conflict resolution mechanisms that are appropriate to the community and support their traditional practices have to be applied for the benefit of the entire B'laan community.

Equitable distribution of the land has been a source of tension among community members. The land use plan they prepared prior to their relocation in Luncuab was readied on the assumption that there will be no adverse claims. Community leaders had proposed for the equal

distribution of the farms but some families are not amenable because it would further reduce the size of their land area.

TENURIAL OPTIONS FOR THE LAMCUAH B'IAAN

While the Lamcuah conflict was going on, several options were presented as possible solutions to the problem. A brief description of these options and the decisions of the Lamcuah B'taan are presented here **DENR Administrative Order No. 2, series of 1993**

As the precursor of IPRA, what is popularly referred to as DAO 2 provides for rules and regulations for the identification and delineation of ancestral land and ancestral domain claims throughout the country. Through the issuance of Certificates of Ancestral Domain Claims (CADCs) or Certificates of Ancestral Land Claims (CALCs), it recognizes the claims of the indigenous peoples over ancestral domains or lands. It does not, however, recognize indigenous peoples' ownership of such domains/lands. The B'taan, therefore, decided not to utilize this option.

Comprehensive Agrarian Reform Law

The Comprehensive Agrarian Reform Law (CARL) or Republic Act No. 6637 was another option for the community, as they can apply as beneficiaries to the land. The law specifies qualified beneficiaries as landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority: (1) Agricultural lessees and share tenants; (2) Regular farm workers; (3) Seasonal farm workers; (4) Other farm workers; (5) Actual tillers or occupants of public lands; (6) Collective or cooperatives of the above beneficiaries; and (7) Others directly working on the land.

The Agrarian Reform Law is fundamentally incompatible with ancestral domain ownership, as it clearly states that there is a transfer of existing rights of ownership from landowners (covering public and private lands) to identified beneficiaries. The basis behind ancestral domain ownership is that the indigenous peoples have possessed and cultivated the area since time immemorial.

This conceptual distinction is also translated in the provisions of the law. Hence, the order of priority of beneficiaries under CARL has no specific reference to indigenous peoples working on the land. In fact, in applying the priority list of beneficiaries to the claim, the B'taan community is its last priority for land distribution as they are considered as "others directly working on the land." The B'taan are not agricultural lessees or share tenants because tenancy presupposes that they are not the owners of the land. B'taan are also not farm workers, nor are they "actual tillers of public lands" because the land they are claiming is not public land; rather, it is their ancestral domain.

DAR Administrative Order 4, series of 1996 attempts to reconcile the inequities by providing regulations governing the issuance of CARL Beneficiary Certificates (CBCs) to indigenous cultural communities and peoples pursuant to Section 9 of CARL. However, the conceptual issue resurfaces because the order covers "public agricultural lands" occupied by indigenous cultural communities. If indigenous peoples apply for CBCs within their ancestral domain, would this be an admission that the land is government-owned?

Indigenous Peoples Rights Act of 1997

This law, better known as IPRA or Republic Act No. 8371, came several years after the conflict in Lamcuah started. The law provides the Lamcuah B'taan the opportunity to apply for a Certificate of Ancestral Domain/Land Title (CADT/CALT).

Conceptually, the application of IPRA to the land tenure problems of the B'taan is the most appropriate way of solving the problem. However, the Lamcuah B'taan had non-legal factors to consider that pushed them into getting a CLOA under CARL rather than a CADT under IPRA.

For one, the Department of Agrarian Reform which was tasked to implement CARL was already in place, while the National Commission on Indigenous Peoples which was mandated to implement the IPRA took sometime to take shape. Support mechanisms for the speedy distribution of land were also available, as well as services for agrarian reform beneficiaries. The NCIP meanwhile, was still in the process of organizational restructuring and had limited technical capability to undertake delineation proceedings. From experience, the B'taan also found DAR to be responsive in their call for help in pursuing their case. As it is, the B'taan of Lamcuah had already suffered the injustices of dispossession and displacement from their ancestral domain for decades. They could no longer wait for their rights to their own ancestral lands to get recognized.

Given these realities, the community leaders have entertained other possibilities such as entering into a contract growership with DoleFil. (See sidebar) Careful study and consultations among community members are being solicited before engaging with DoleFil management. In some parts of Polomolok, however, B'laan communities have already entered into contract growership with DoleFil.

The Lamcuah B'laan community has attempted to manage the area based on their customary laws and allocated the lots according to clan claims. However, with many adverse claims and internal conflicts, equitable utilization and management of available resources are certainly a challenge.

The Need for Leadership and Unity

After seven decades of struggle, the Lamcuah B'laan still have to resolve many conflicts in their quest to reclaim their ancestral lands. They remain marginalized and have yet to possess their lands fully.

Security over ancestral lands is often articulated as ownership and control of traditional area and the resources found therein. In the case of the B'laan of Lamcuah, the quest for ownership and control over their ancestral domain has been elusive. Ancestral lands provide the economic basis for their survival as individuals and communities, help define political and social roles of each member, serve as context within which cultural interactions are transacted, and are the

cradle of their identity, consciousness and spirituality. The continuing dispossession and displacement of the B'laan of Lamcuah of their ancestral lands has not only deprived them of their land but also of the source of their identity.

It took 45 months of sacrifice and commitment before the Lamcuah B'laan was able to reclaim portions of their claim. The Lamcuah

CONTRACT GROWERSHIP

Contract agreements undertaken by DoleFil can take the following forms:

- (1) **Farm Management Contract** - The manager, in this case DoleFil, is entitled to plant any crop and develop the farm as it sees fit. The owner bears all the farm costs of production including the amortization of capital improvements and infrastructure, which the manager is required to make and finance under the terms and conditions of the contract.
- (2) **Grower Agreement with Contract to Buy** - The nucleus estate smallholders' growers scheme for production, processing and exportation of pineapple will be purchased from a group and/or individual small farmers.
- (3) **Shackpine Growers Agreement** - This is a program under the Department of Agriculture implemented through LEAD (Livelihood Enhancement for Agricultural Development) that provides financing to farmers, associations, or cooperatives through the Land Bank. DoleFil is the sole buyer of all pineapple produced by the growers' association. A 10-year contract gives the corporation absolute control over the area and allows it to grant cash advances to the landowner or to the grower, who will be indebted to DoleFil even after the contract is consummated. Expenses incurred by the company in improving the area are also charged to the grower or landowner's accounts.

REFERENCE: Altamare Forum for Research in Mindanao, Inc., Castle and Cooke Operators in Mindanao, Bantawa. Economic and Social Indicators of Mindanao

B'laan were able to sustain their long and difficult struggle because of strong legal grounds to back up their claims, deep sense of ownership of the struggle, assistance from support groups and individuals, their inherent patience, and their strong internal cohesiveness.

When they resettled in Lamcuah, the B'laan prepared a development and land use plan for the area. The women reorganized themselves and strengthened their community health program. The leaders actively established linkages with like-minded individuals and support groups to assist in re-building their community.

Through the help of individuals, various support groups and the local government, the Lamcuah community was able to construct a multi-purpose building, health center, day care center, and communal comfort rooms. Trained community health workers were able to respond to their basic health needs. The community cooperative was re-activated, but it did not last long. There were also some initiatives to establish a local organization to enhance their capability to manage community projects.

Immediate government assistance for basic services is essential for the community's daily needs. Additional support is also necessary to further develop their capability for alternative livelihood such as blacksmithing, dressmaking, and making handicrafts.

The B'laan people created a Task Force to provide overall leadership, while community leaders supervise their respective clans and serve as point-persons for development projects. However, some B'laan elders have expressed concern over the tendency of young leaders to make hasty decisions without proper consultation with them or Task Force members. There is clearly a need for proper delineation of tasks and responsibilities in the community to avoid inefficiencies.

At the same time, it is necessary to enhance the capability of the leaders to manage not only projects and programs but the entire community as well. Leadership training appropriate to their indigenous systems would help preserve their unity and cohesiveness amid internal and external threats. Potential second liners should also be identified and trained. The option to evolve a more appropriate leadership system and structure remains, as long as they consider the lessons from their previous experiences.

In the face of many concerns that still have to be addressed, there is an even greater need to firm up the community's resolve, commitment, and unity in pursuing their claim. The Lamcuah B'laan have built a community in the middle of a pineapple plantation in a span of 47 months. They are still waiting for the immediate resolution of the remaining 37.53 hectares under DARAR adjudication, and eventually, the issuance of their CLOA.

Community organizing is a crucial factor in sustaining the resolve of the Lamcuah B'laan in their struggle. Consolidation is vital in achieving community objectives and reconciling conflicts regarding equitable resource allocation and management.

Several generations of B'laan have been deprived and dispossessed of their land and their identity. The decades of struggle of the B'laan will not end until a new generation of B'laan will enjoy their birthright, the right to their ancestral domain.

WHAT THE GOVERNMENT CAN DO

The long-standing struggle of the Lamounah B'laan highlights several points:

- * Ancestral domain ownership implies that the area has always been private and never formed part of the public domain. As such, the acts of dominion such as disposition or transfer over these lands may not be appropriate.
- * There is a need to lessen the bureaucratic requirements for CADT/CALT application in order to encourage more indigenous communities to avail of this option for tenure security. IPRA is an attempt to give justice to the indigenous peoples who have been displaced and have long been fighting for recognition of their ancestral domain. Additional processes and decision layers that make it difficult for indigenous communities to obtain CADT/CALT should be avoided.
- * The support services and mechanisms provided under CARL need to be mirrored in IPRA.
- * For indigenous groups who might choose CARL as an option, the government has to put in place the necessary provisions for the grant of tenure instruments to indigenous peoples. The issuance of tenure instruments under CARL should not be based on the premise that ancestral land is part of the public domain. In this particular case, since the B'laan of Lamounah are also farmers, they should also be given the same access to support services under CARL that non-IP farmers have.



This analysis is based on the strategies and partnerships that the B'laan forged with support groups such as the local Social Action Center of the Catholic Church, and the Legal Rights and Natural Resources Center (LRC), which wrote this paper.

Research methods include extensive reviews of unpublished documents, particularly internal documents from LRC and case files from the Department of Agrarian Reform. Focus group discussions were conducted among the Lamounah B'laan and LRC staff working with them. Interviews with key informants such as community leaders and members of local support groups were undertaken. Between July and November 2002, this study was presented to the B'laan community for review and validation.

CHAPTER 4

MANAGING PARTNERSHIPS IN THE MANGYAN TAGABUKID HOMELAND

Sibuyan is the second largest among the seven islands that comprise the province of Romblon located in central Philippines. One of its significant geographic features is Mt. Guiting-guiting, which has attracted conservation support from a number of international donor agencies due to its rich biodiversity. It is home to the Mangyan Tagabukid, one of several groups of indigenous peoples in the country.

In the 1990s, the Kabang Kalikasan ng Pilipinas (KKP), the Philippine organization of World Wildlife Fund (WWF), started a five-year Mt. Guiting-Guiting Biodiversity Conservation Project. It aims to conserve and manage the rainforests of Mt. Guiting-Guiting through the development of sustainable resource-based enterprises in Sibuyan Island. It assumes that ecologically and financially sustainable income opportunities for the indigenous people of Sibuyan will divert their attention from potentially destructive socio-economic activities. The project design is also based on the premise that once the indigenous peoples obtain security of tenure in their ancestral domain, they will aggressively protect their natural heritage.

To fulfill these objectives, the project included an inventory of Sibuyan's resources to determine the optimum mixture of income generating enterprises, and the delineation of their ancestral domains in preparation for securing their Certificate of Ancestral Domain Title (CADT). While doing these two major activities, an institutional partnership emerged among several government line agencies, local government units (LGU), non-government organizations (NGOs), and the Mangyan Tagabukid community.

Government agencies that joined the partnership include the National Commission on Indigenous Peoples (NCIP) and the Department of Environment and Natural Resources (DENR). A European Union-funded project called "National Integrated Protected Areas Programme" or NIPAP facilitated the partnership. The local government units of all three municipalities in Sibuyan — Magdwang, Cajubocan, and San Fernando — were also active participants. Among the NGOs involved in the project consortium, which was led by the KKP, were the Philippine Rural

Reconstruction Movement (PRRM), the Evelyn B. Javier Foundation (EBJF), the MAGCASA Foundation, and the PANLIPL.

Under the Indigenous Peoples Rights Act (IPRA), NCIP is mandated to provide services to indigenous peoples in delineation and resource management planning, which used to be the tasks of the DENR, but due to its limited technical and financial capability, NCIP could not undertake the work alone. For this reason, the agency enlisted the help of the KKP and the PANLIPL, through a partnership agreement, in the implementation of this project.

Through NIPAP, the DENR focused on protected area activities such as resource mapping with a geographic information system (GIS), the preparation of a general land use plan, the conduct of inventories and socio-economic surveys, and the holding of educational campaigns.

The LGUs were involved primarily because the Mangyan Tagabukid ancestral domain falls within their political jurisdiction. Negotiations with local officials were part of the process to ensure that they would appreciate the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) of the Mangyans, and integrate it in their local development plans.

Other partners extended technical, administrative and legal assistance in the process.

The Mangyan Tagabukid people actively led the delineation process, amply demonstrating that indigenous peoples can supervise such an activity. They were involved in the inventory of resources, protection of the area, and resource management planning.

The Conservation Project

The Mt. Guiting-Guiting biodiversity conservation project affected more than 400 Mangyan families who make a living from swidden farming, charcoal making, and gathering of minor forest products such as rattan, resin, vines, and honey. Even with their marginal sources of livelihood, they face increasing competition from aggressive migrants. Due to lack of income, the Mangyans had no choice but to go deeper into the forest in search of food and livelihood. Hence, getting their CADT became imperative to the project.

In view of these objectives, the biodiversity project carried out the following activities:

- * Social analysis and livelihood survey of communities that have an impact on the conservation of Sibuyan's forests
- * Resource inventory of Sibuyan Island for possible livelihood opportunities
- * Development of community-based enterprises that would help conserve the forests

The project was anchored on the idea that sustainable development rests on democratic decision-making and shared responsibility for the ecosystem. As such, the participatory process of planning, program implementation, and evaluation were followed throughout the project.

At the start, consultations were held among various stakeholders to come up with consensus on important matters, such as the development of a specific work plan for biodiversity conservation. These stakeholders included the three municipalities, peoples' organizations (POs) and NGOs, NIPAP personnel, KKP staff, and the Tagabukid community.

The collective vision of the participants, as reflected in the proposed activities, was drawn

from a series of small group discussions and plenary sessions. Since Mt. Guiting-guiting was a common project area of NIPAP and KKP, it was also necessary to define their respective functions. They signed a memorandum of agreement stipulating their respective roles and responsibilities.

The task for NIPAP was as follows:

- ❑ Institution and capability building of the Protected Area Management Board (PAMB) and staff
- ❑ Delineation and demarcation of boundaries
- ❑ Design and implementation of general management plan
- ❑ Protection and management of the park
- ❑ Evaluation and monitoring of biodiversity

On the other hand, KKP would concentrate on the following aspects:

- ❑ Development of alternative livelihood for local communities
- ❑ Strengthening of community-based resource management through the preparation of a plan
- ❑ Evaluation and monitoring of resources related to livelihood projects
- ❑ Assistance to the indigenous/upland communities in getting land and resource tenure

Since the two projects shared a common long-term objective and complementary short-term objectives, both parties agreed to maximize opportunities for coordination. These were done at every stage of environment-related activities to avoid overlap, duplication, waste of resources, and conflict. Both projects shared information, database access, maps, and relevant documents. They also coordinated in the implementation of information, education, and communication (IEC) activities.

Collaboration with other stakeholders was evident in the project's written agreements and terms of reference. It demonstrated a process of program complementation. With KKP as lead agency, program services of other institutions involved in the consortium were tapped where they were needed. Thus, some form of program partnership evolved among PRRM, EBF, MAGCAISA Foundation, PANLIPI, and the Tagabukid, with each one assuming the tasks that fall under their regular programs.

PRRM's core program is called Sustainable Rural District Development Program (SRDDP). Community empowerment is the central element of SRDDP, translated as increasing people's capability for self-governance. It is implemented in several areas in the Philippines and covers such themes as sustainable agriculture, natural resources management, people's livelihood financing, alternative trade, and policy reform at the local government level. An NGO founded in 1952, PRRM led EBF and MAGCAISA Foundation in the implementation of livelihood activities for this project.

EBF has been providing venues for institutional development and dialogues between local institutions and other sectors. It aims to empower local executives and LGUs, citizen leaders, and people's organizations toward public service, local autonomy, and participatory democracy. It has been working in Sibuyan Island since 1993, and is the most prominent local NGO there.

MAGCAISA Foundation takes its name from the first letters of the three municipalities in the Island: Magdiwang, Capidocan, and San Fernando. The foundation is an association of local

governments and is headed by municipal mayors. It aims to unite the three LGUs and serve as the integral framework for the development of Sibuyan Island. Its programs are focused on environmental protection and poverty alleviation. It carried out activities along this line in the biodiversity conservation project.

PANLIPi is an organization of lawyers formally established in 1987. It has since been providing various services to IP communities such as legal advice and counseling, research assistance in bureaucratic procedures, and paper work essential to project preparation and corporate documentation. PANLIPi is one of the pioneering NGOs in helping the indigenous peoples secure their tenure over their ancestral domains. It provided assistance to the Mangyan Tagabukid people in conducting consultations on land and resource tenure, applying for a Certificate of Ancestral Domains Claim (CADC), and in para-legal training.

AnthroWatch, another NGO assisting indigenous peoples, joined the team later to assist in conducting anthropological studies on the ancestral domain claims of the Mangyan Tagabukid.

Joint planning meetings were held annually with the concerned agencies. These served as venues to update project collaborators on activities, formulate and agree on a monitoring system, assess project progress, and discuss salient issues and plans.

At the core of the partnership are the Mangyan Tagabukid who benefited the most from the process, not only in terms of their livelihood and security of tenure over their ancestral domain, but also in gaining the experience in managing such collaboration. This learning is significant, as the full implementation of IPRA would require IPs to have bridging social capital that will enable them to access outside resources, especially from government agencies and other entities. This would inevitably require working in partnership with multi-sectoral institutions.

The Mangyan Tagabukid of Sibuyan

The Mangyan Tagabukid have settled and lived in the rugged mountains and valleys of Sibuyan Island since time immemorial. Here, they maintained their distinctive identity, culture, and traditions in the context of their relationship to the land and the forests.

Physically, the Mangyan Tagabukid are of medium build, shi-eyed with high nose-bridge, and have fairly elongated faces with dark brown eyes. Some have curly hair. Their skin color varies from reddish brown to dark brown. Observations indicate that the Tagabukid are predominantly of Indonesian origin, with a slight mixture of Negrito and Chinese blood.

According to latest estimates, the population of indigenous communities in Sibuyan is about 4,000. Their communities are found along the fringes of the Camiguin River, which dissects the island from its headwaters in Cajiliocan and inundates through the recesses of Mt. Gutting-gutting and Mt. Conico before emptying out to sea through San Fernando.

Most of the Mangyan Tagabukid are in the barangays and sitios of Hagunuit, Guimalan, Panaguitingon, Kahuytaman, Gumbiliang, Alibugon, Sinapowan, and Dawo in Cajiliocan. They are also found in Azagra, Guintac-on, Layag, Parangkalan, Parao, Campalon, Agwa, and Tacloban in San Fernando. These communities tend to be located in or close to the forest.

A keen consciousness of belonging to a group that ascribes self-identity from shared qualities, common ancestry, history, cultural traditions, and language defines their ethnicity as Tagabukid. Hence, despite external influences, they exhibit strong bonding and adherence with the culture of their ethnic group.

The culture of the Mangyan Tagabukid is basically rooted in an integrated lifestyle that maintains harmonious relationships among people, nature, land, and environment. They use and manage resources in accordance with their indigenous knowledge systems and practices (IKSP). They possess intimate knowledge of the forest due to their close relationship and strong dependence on it.

Like other indigenous communities, the Mangyan Tagabukid people believe in nature spirits whom they should appease and respect. Thus, they perform rituals and offer gifts to the spirits before, during, and after planting in their swidden farms. During harvest season, a thanksgiving for good harvest is celebrated. Here, community members gather in one place and share the first harvested crops. They feast on rice, fresh water fish, shrimps, crabs, and native wine. During the post-harvest period, they make an offering of newly harvested rice and wine to the spirits of dead relatives.

Despite contact with lowlanders and other outside groups, they still carry on with their traditional and cultural practices. They value harmonious relationships, a trait that helped them nurture smooth partnership with other groups.

Among the Mangyan Tagabukid, leadership and authority exist on two levels, the internal and external. Leaders on both levels must possess the following qualities: capacity to unite people, ability to uphold the laws of the community, consistent performance of duties, respect for community, affable and accommodating nature, no vices, and God-fearing.

Traditional leaders are the authority concerning the welfare of the entire community. They are composed of prominent elders from various groups in their respective settlement clusters. The elders' main task is the settlement of conflicts and the maintenance of harmonious co-existence among various kin groups. When important community functions are affected, they can intervene in marital and family conflicts as well as inter-family feuds. Other roles of traditional leaders include healing and performing rituals.

The Mangyan Tagabukid people have external leaders whom they chose to serve as their representatives in organizations outside the community, such as local government bodies. These leaders are literate, usually young men who have experienced life outside the community and are often also descendants of the kin group of traditional leaders. In some instances, external leadership can be transferred by virtue of marriage to the kin group of traditional leaders.

They have high respect for and give much credence to their leadership. Hence, leaders are key players in dealing with their membership. While they maintain traditional leaders, the presence of external leaders is a clear indication that the Mangyan Tagabukid people have already developed their institutional mechanism for managing assistance from outside sources such as LGUs and NGOs. This further indicates that they have opened up their culture to accommodate

changes that will work in their favor when they secure land and resource tenure.

The oral history of the Mangyan Tagabukid provides a glimpse into the entry of the church and Christian religion, and introduction of education, as agents of transformation in the community. Long-held practices and beliefs were modified and the Tagabukid became ambivalent about traditional ways that were inconsistent with Christian beliefs.

Community elders recalled that during the Spanish period, many Tagabukid families were forced to settle in the lowlands to render forced labor. Therefore, they opted to settle in inaccessible areas within the mountains instead of resettling in the town centers. Lowlanders who refused to render forced labor to the colonizers joined them. The lowlanders' integration into mountain communities resulted in their assimilation to the Tagabukid's way of life. Meanwhile, the latter acquired cultural elements brought by lowlanders and adopted them to suit local conditions. Prolonged contact resulted in mixed marriages, bringing forth a new generation of Mangyan Tagabukid. Lowlanders who marry into the Tagabukid are considered as one of the group if they have lived with the indigenous community for a long time.

The Mangyan Tagabukid have learned to recognize the rights of a few families of lowlanders over some portions of ancestral domains that the latter came to possess through direct purchase or as pioneers in those areas. These families have come to consider themselves as Tagabukid as well, distinguished only from original Tagabukid through user rights for having purchased lands from original settlers.

Exposure to outside forces through in-migration has resulted in a certain degree of acculturation among the Mangyan Tagabukid people. Learning and embracing some of the ways of the lowlanders may be considered as a cultural adaptation, which enabled them to cope with changes around them. Nonetheless, the influx of lowlanders and their integration into the IP community has threatened the Mangyan Tagabukid's hold over their domain to some extent.

Ancestral Domain in Sibuyan

The Mangyan Tagabukid occupy an area of about 12,000 hectares straddling the mountain ranges of Mt. Sibuyan and Mt. Guting-guting, within the municipalities of Cagdiocan and San Fernando. It is located in the interior part of the island, resting mostly on the backbone of the mountain range traversing eastern Sibuyan.

There are three general land use types in their ancestral domain: settlements, farm lots, and forests. Houses occupy only a small portion of the land. Most of the surroundings are planted to ornamental plants, root crops, vegetables, and fruit trees for household consumption.

The Mangyan Tagabukid people depend on swidden cultivation of tubers for daily sustenance. A variety of root crops comprise their staple food, with rice and corn as supplement. The practice of intercropping and overlapping cycles of tubers, corn, rice, and vegetables help to secure the household food supply.

Root crops are regularly sold in the town market to provide income for purchasing basic needs such as soap, salt, kerosene, and matches. Banana and seasonal fruits are also sold to

augment household income. Gathering of Nito vines, which are made into saleable handicraft products, is an alternative source of income for some families.

Traditional rice varieties are planted in rain-fed swidden farms, but their susceptibility to pests and bird infestation deters the Tagabukid from regular rice cultivation. Instead, they prefer the wild growth of edible legumes called *upflan* because it regenerates easily and does not deplete soil fertility.

The forests provide ample grounds for hunting. Each settlement cluster has its own hunting zone. Hunters from another settlement are allowed to utilize the forests of adjacent settlements as long as the authority over the territory is well established through verbal agreements.

In the rivers, they use homemade fishing equipment, including traps and gill nets, to catch fish and other aquatic resources. They have prohibited the use of poison because it does not only kill the fish but also contaminates the water.

The Mangyan Tagabukid people have long struggled for the recognition of their right as the indigenous peoples of Sibuyan. They hold on to their lands by virtue of "time immemorial possession." The concept of securing their ownership in their domains was spurred by a series of attempts to displace them from their lands.

In the 1950s, government attempts to populate Sibuyan Island resulted in the migration of lowland populations into the Mangyan Tagabukid's domain. As a result, the IPs scrambled to secure land titles as a means of protecting their land. The concept of land titling through the Torrens system was introduced to them in the 1960s, but it was never realized as the government started to classify non-alienable and disposable public lands.

In the 1980s, the DENR persuaded the Mangyan Tagabukid to join its Integrated Social Forestry Program (ISF). However, this was not acceptable to the IP community because the program limits their landholdings to only a few hectares, as compared to the actual areas of their communal ancestral domains.

It was only in the late 1990s that the Mangyan Tagabukid found the real expression of their concept of native title, first through DENR's DAO 2, and later through IPRA.

Partnership for CADT Application

The Mangyan Tagabukid were initiated into the process of working for the formal recognition of their rights to their ancestral domains through the biodiversity conservation project of KKP. This paved the way for the delineation of their domains with the collaboration of various sectors including at least four NGOs, led by PAMLIPI as the legal and Indigenous Peoples' development consultant.

There were four essential elements in the partnership: 1) Consultations and consensus building, 2) Role definition, 3) Program complementation, and 4) Joint implementation.

Consultations and consensus building refer to transparent discussions aimed at building agreement on particular issues and plans. In the Mangyan Tagabukid experience, consultations also served as fora for politicization and empowerment.

The key to convergence lies in strategically harnessing synergies among different programs toward achieving common goals. Within this context, the value of consultations and consensus building cannot be overemphasized. They provided opportunities for the Mangyan Tagabukid, as the major stakeholder, to gain awareness of their situation, articulate their goals, decide what to do, plan and work together.

During the first consultation with PANLIP in August 1997, the Mangyan Tagabukid people discussed strategies for the recognition of ownership and obtaining security of tenure over their ancestral domain. Around 105 Mangyan Tagabukid participants were present in the meeting, together with other NGO representatives and LGU officials. The Mangyan Tagabukid people were made aware of their rights and the options available to them.

The consultation served as a venue for airing complaints, clarifying issues, and building consensus. The Mangyan Tagabukid courageously expressed their thoughts, feelings, opinions, and choices concerning security of tenure over their ancestral domain.

During the open forum, a tribal chieftain voiced out his concern regarding the inability of concerned government agencies to facilitate the processing of their land titles despite the cadastral survey done almost two decades ago. Another community member expressed opposition to the awarding of government contracts for reforestation within the ancestral domain to outsiders. He alleged that most IPs have been displaced from their lands and those who remained were prohibited from clearing lands for swidden farms. One participant presented a sketch map and sought advice on how to secure his ownership over a parcel of land that he bought from a lowlander, as the sale was not in writing.

Still another community member raised fears that IPs might be ejected from their ancestral domains once the National Integrated Protected Areas System (NIPAS) law is fully implemented. His fears were based on the provision that beyond the buffer zone, no human activity is allowed in the forest area. He claimed that in some areas of the forest, IP communities have been engaged in sustainable extraction for centuries and they have not depleted their resources.

Others expressed their disappointment over what they perceived as the government's inability to deliver basic services to the community including health, education, infrastructure, and credit facilities. They also vented their frustration over the lack of marketing support for indigenous products. As a result, many IPs have fallen prey to unscrupulous businessmen.

After thorough discussions with the elders and members of the Mangyan Tagabukid community, including long hours of question and answer interactions, it was unanimously decided that the Mangyan Tagabukid will avail themselves of DENR DAO No. 2 without prejudice to privileges granted under other land tenure instruments already issued to some IPs, such as Certificates of Land Ownership/Awards (CLOAs), Certificates of Stewardship Contracts (CSCs), and the like.

Through their leaders, the Mangyan Tagabukid people coordinated with PANLIP and other participating institutions all throughout the delineation process that ran from 1997 to 2002. They made use of community assemblies as venues for keeping themselves abreast of the status of the delineation process, thresh out issues regarding their CADT application, resolve

conflicts, and understand programs and policies that affect their rights.

A key element in forging the convergence framework was the definition of roles, responsibilities, and accountability among the various parties with independent programs. This helped to avoid negative inter- and intra-organization dynamics, which could lead to confusion and conflicts. All collaborating agencies were responsible for ensuring that plans were effectively and efficiently carried out. Tasks and responsibilities were distributed equitably according to the participating institutions' capabilities, interests, and disposition. Fortunately, the various agencies agreed to perform functions pertinent to their respective mandate and competence.

PANLIPI assumed the responsibility of providing legal resources and assistance to the Tagabukid in the delineation of their ancestral domain. On account of its extensive experience in working with IPs, PANLIPI was also responsible for creating culture-sensitive approaches to IP organizational development. In addition, the group took charge of liaison work between Tagabukid and the concerned government agencies and LGUs.

A series of paralegal seminars provided the Tagabukid with the capability to negotiate their interests within the larger society. With more confidence, they were able to deal with local government officials, national government agencies, NGOs, and even international development agencies that have projects affecting their ancestral domain.

PANLIPI held a paralegal training course for selected Tagabukid leaders where they discussed the concept of developmental legal assistance, the Philippine system of government, *katurungang pambansag* (harangy justice system), and procedures in civil and criminal courts as well as other administrative bodies. Meta-legal and other strategies for defending their rights were also discussed. As a result, the Mangyan Tagabukid formed a paralegal volunteer group with members in the three municipalities, and appointed coordinators who would have easy access to them.

In addition, PANLIPI gave advanced paralegal training to the volunteers and apprised them on basic criminal, civil, and administrative procedures, as well as case flows, judicial pleadings, various tenure instruments, and IP rights under IPRA. PANLIPI lawyers introduced legal clinics and held consultation sessions with the paralegal volunteers to assist them in performing their functions.

On account of their training, the Mangyan Tagabukid paralegals were able to help in conflict resolution within their community. Among the legal issues resolved were the installation of a solar-powered electric facility by outsiders, introduction of community-based forest management projects, permit to construct a school building, and exclusion of a large portion of their ancestral domains in a government reforestation contract granted to an outsider. The paralegal volunteers demanded that free and prior informed consent should be obtained from the Mangyan Tagabukid and that all other projects be held in abeyance until their ancestral domain is delineated and they have been granted a CADT.

Because of the paralegal volunteers' campaigns against illegal activities, other sectors started to ask permission from Mangyan Tagabukid leaders whenever they need to gather forest

products. In 2002, PANLIPI and KKP conducted a seminar on forest laws prior to designation of the Mangyan Tagabukid as forest guards. The training was held in collaboration with the protected area superintendent of Mt. Guiting-guiting Natural Park. This further empowered the IPs to guard their ancestral domain.

Mapping the Ancestral Domain

AnthroWatch worked on the census of IPs, their genealogy, cultural mapping, and collection of proof that the Mangyan Tagabukid possessed their ancestral domain since time immemorial. The testimony of elders was crucial in drawing up an ethnographic profile and determining the extent and ownership of ancestral domains.

An initial community map was prepared with the assistance of PANLIPI. A second map was later prepared with the help of other assisting organizations, but the result showed a smaller area than that identified by the Mangyan Tagabukid, as certain areas that did not seem to have any use to the indigenous peoples were accordingly excluded in the process. The Mangyan Tagabukid people decided to revert to the first map, noting that the excluded areas were part of their ancestral domain even if, to an outsider, they appear not to have any economic value. This episode underscored the wisdom in the constitutional provision of allowing the indigenous peoples' elders to determine the extent of their domains through customary law. It also demonstrated the principle of self-delineation, even as adequate safeguards are in place to ensure that the decision of the indigenous peoples will not be arbitrary.

Meanwhile, the Mangyan Tagabukid people formed their own ancestral domain committee to widen the opportunity for involvement at the community level. Selection of members was based on a set of criteria they all agreed on, such as barring paralegal volunteers, tribal elders, and leaders from heading the committee although they may act as advisers. They also agreed that no two members should come from the same clan, so that other potential community leaders can take on the responsibility. This was their way of defining their role and outlining the tasks, an institutional mechanism that runs parallel to what the other organizations did in defining their roles. It will be noted that the Mangyan Tagabukid social structures are often egalitarian in nature. They avoid mechanisms that could lead to monopoly of certain tasks and powers, except for their traditional leaders.

Even in a dialogue with NIPAP on the issue of overlapping areas between ancestral domains and the protected area, the Mangyan Tagabukid sent 81 participants, a large number according to usual standards. However, broad-based representation is common in an indigenous cultural environment.

Since the NCIP is the agency that is officially recognized and mandated to conduct the survey and delineation of any ancestral domain, Mangyan Tagabukid leaders signed a Memorandum of Agreement with the NCIP to facilitate the partnership with support groups. This agreement has paved the way for KKP and PANLIPI assistance in the process. It was a legal requirement that had to be fulfilled before the NCIP is allowed to delegate these functions and

give authority to the Mangyan Tagabukid people and their assisting organizations.

Prior to the survey of ancestral domains, the Mangyan Tagabukid set up several delineation teams and assigned NGO facilitators for each team so that the work could be done properly. Each team included the following: (a) ancestral domain committee members at community cluster and island wide levels; (b) representatives of NGOs including PANLIPI, KKP and AnthroWatch; (c) NCIP through its provincial officer; and (d) LGUs through their municipal development officers. The protected area supervisor of DENR was also involved in the survey, although he was not formally with the team of facilitators.

Joint implementation was the norm during the delineation process. The team of facilitators held orientation and planning meetings attended by members of the ancestral domain committee and representatives of KKP, AnthroWatch, PANLIPI, NCIP, and the Office of the Mayor of San Fernando. The team crafted a strategy and a detailed plan for the actual survey of ancestral domains. The strategy called for the formation of two teams of facilitators to save time and encourage the participation of all IPs in the actual survey, as they can easily point out where their residential areas, farms, and hunting grounds are located. All government agencies concerned were invited as survey team members.

Training on the use of GPS (Global Positioning System) for selected facilitators was also part of the strategy. The GPS training workshop allowed the ancestral domain team members and facilitators to familiarize themselves in the use of the equipment. This ensured that the Tagabukid would not be left out in the process of determining the boundaries of their domains, which is against the principle of self-delineation.

In the first survey, the two teams went to opposite direction and made arrangements to meet later at a converging point to complete the survey. Mangyan Tagabukid members identified the landmarks representing the boundaries, and from these points, the GPS readings were taken. Afterwards, an evaluation was held to draw lessons and guide the next survey in other areas. On the positive side, the participation of communities was overwhelming - the IP members came in droves and were in high spirits. On the negative side, poor communication and lack of safety devices hampered the survey. The functions of support groups were then redefined to meet contingencies such as food preparation, troubleshooting, and updating of census.

Community-based survey teams assisted in the formal delineation of the ancestral domain, sharing the responsibility and facilitating the resolution of boundary conflicts.

Teams of facilitators reconvened for the survey of the bigger section of the ancestral domain. This time, they were more confident, armed with lessons drawn from experience in the earlier phase. In the process of doing the survey, community meetings and consultations were conducted to clarify matters on rights and boundaries. These consultations enriched the knowledge of survey teams and allayed the fears of some IP leaders. It took 11 days to finish the entire survey. The two teams met and conducted an evaluation afterwards.

In managing the joint implementation process, the Mangyan Tagabukid offered their human capital—their members. They openly worked with members of the team who came from other

agencies without feeling intimidated. This was a significant accomplishment, as it enabled them to participate in a joint undertaking with a higher level of confidence. The experience also gave them the opportunity to gain additional learning. Moreover, the process has helped clear their doubts about the motives of external groups coming in to assist them.

Without the active involvement of the Mangyan Tagabukid, the survey could not have progressed that fast, considering the boundary conflicts that had to be resolved. They were able to demonstrate that they need not only be beneficiaries or recipients of a project. They can also be main players in project implementation.

The Ancestral Domain Team and NGO Facilitators prepared the maps to be submitted to NCIP. GPS data were plotted in the presence of the ancestral domain team. A 3-D map was prepared that clearly showed the contour of the Mangyan Tagabukid ancestral domain.

Collaboration in Crafting a Development Plan

The preparation of the Tagabukid's ADSOPP, like the delineation process, was a product of consensus building within the indigenous community as well as inter-agency collaboration, mostly with the assisting NGOs.

Just as they did during the survey, Ancestral Domain Committees again took charge of different aspects of the planning process. The Mangyan Tagabukid led in the collection and analysis of

data, and determined the support they needed from assisting NGOs. PANLPI was requested to discuss the process of ADSOPP and to facilitate the initial documentation of customary laws. Other assisting NGOs were requested to provide research tools for gathering data, particularly on the local economy.

With more responsibilities to handle, the indigenous community felt it was time to create an island-wide organization. In 2001, PANLPI and KKP facilitated the formation of the "Awasayon ng Trihong Sibuyan Mangyan Tagabukid, Inc." or ATSMI. Its first set of officers was elected during their indigenous peoples' assembly. The ATSMI council consists of 15 members elected at the congress; all seven chairmen served as policy-making body of the organization. The organization was immediately registered with the Securities and Exchange Commission so that it would attain legal personality.

The Mangyan Tagabukid ADSOPP

There are five components in the plan:

1. Economic Development and Livelihood

- * Analysis of current activities and adoption of policies
- * Conservation and Protection Plan in relation to forests, bodies of water, minerals and other resources

2. Infrastructure

- * Community Center and Tribal Halls
- * School Houses
- * Bridges
- * Improvement of Barangay Roads
- * Water Impounding system
- * Tribal Market place
- * Power lines

3. Capability Building

- * Decision making structures
- * Organization of ATSMI
- * Creation of Committees
- * Policy regarding settlers and indigenous settlements
- * Identification of appropriate training

4. Indigenous Culture and IKSP

- * Protection of sacred sites
- * Protection of burial grounds
- * Culturally sensitive curriculum design culture
- * Documentation of customary law and practices
- * Teaching customs and traditions to the youth
- * Adherence to customary laws
- * Community repository of material culture

5. Health and Sanitation

- * Proper hygiene and cleanliness of physical surroundings
- * Health centers and medical supply for common illnesses

The formation of ATSMT was timely and significant due to the prevailing situation in Siluyan Island at that time. First, the Mangyan Tagabukid had to deal with continuous illegal logging by lowlanders inside their ancestral domain, which was being blamed on the IPs. Second, there was the issue of overlapping areas of the ancestral domain and the protected area as proposed by DENR, NIPAP, and PAMB. Third, several interest groups have intruded into their ancestral domains. Fourth, private and government agencies had initiated development programs such as the mini-hydro dam without getting free and prior informed consent from the indigenous community. And lastly, there was a need for effective implementation of the ADSOPP.

In 2001, PANLIPI facilitated an orientation on a proposed ancestral domain and protected area co-management framework. It was meant to determine the terms and conditions of the Mangyan Tagabukid people if ever they would enter into any joint undertaking for development and/or management of their ancestral domains encompassing the declared protected area.

The output of the orientation was the first draft of the ATSMT's co-management framework that defined the group's guiding principles and core values. Foremost of these were: the recognition and respect of their rights; the need for the co-management plan to be in accordance with their ADSOPP and customary laws and to adhere to the development priorities they have identified; and strict observance of the whole process of free and prior informed consent. In addition, the Tagabukid were willing to harmonize the different laws and policies affecting them, such as IPRA and NIPAS, without compromising their basic IP rights.

The development of the Mangyan Tagabukid ADSOPP started with information dissemination about the process. PANLIPI held orientation seminars, with the participation of the NGIP, in various community clusters. Pertinent provisions of IPRA and its IRR, as well as the role of NGIP in the formulation of ADSOPP, were discussed. The Mangyan Tagabukid participated actively in the orientation programs, and later set up the organizational structure of the AD Committee.

After this, a participatory baseline survey and needs assessment was done by the Mangyan Tagabukid with the assistance of PANLIPI and Anthrowatch. With the NGOs providing the tools and techniques, the Mangyan Tagabukid Ancestral Domain Committee did the actual collection of baseline data on the following:

Ancestral Domain – records of the survey process, petitions, resolutions, and maps showing the extent of the ancestral domains as well as the 3D map showing the contours and topographic features of the land;

Resource management – uses, techniques and indigenous knowledge systems and practices;

Infrastructure – inventory of existing infrastructure within the domain;

Social Services – type of social services received and from whom;

Economic Activities – sources of livelihood, marketing network, production activities, indigenous ownership patterns;

Women – role in production and other community activities, special needs, if any;

Youth – role in community development

Two workshops were later held to consolidate the data gathered, evaluate the needs

Some of the pertinent questions of the IPs are listed below:

Ownership of land:

If a title is issued to the tribe, who will keep the title?

Under the collective scheme of titling, will it still be possible to secure individual titles?

Can IPs continue to occupy lands they presently possess?

How will land distribution be effected within the domains?

Use of land:

Will swidden farming continue?

Obligations and responsibilities:

Will IPs pay real estate taxes?

Can lands within CADT be sold, or encumbered to third persons, or transferred among heirs?

Governance:

Can the establishment of a tribal barangay be immediately pursued?

These queries indicate the IPs' limited awareness of the legal implications of the provisions of the IPRA law, and the valid anxieties they have concerning security of their ancestral lands.

expressed in the baseline survey, and decide on proper responses. The Mangyan Tagabukid actively participated in the formulation of the ADSOPP document, with PANLIP staff acting as resource persons. (See page 74)

A month later, ancestral domain teams held consultations among all the communities to validate the findings and plans indicated in the ADSOPP. The validation process resulted in the full acceptance of the plan by Mangyan Tagabukid people. It was also a venue for reaching out to IPs in remote areas of the ancestral domain, and to inform them about the plans.

Afterwards, the Mangyan Tagabukid initiated a series of LGU orientation seminars on IPRA. PANLIP was requested to make presentations to the three LGUs on the pertinent provisions of the law. Meanwhile, the Tagabukid leaders were assigned to make a presentation of the ADSOPP and to encourage local government units

to support the plan.

At this point, several challenges surfaced:

- * Changes in the political leadership following local elections necessitate new orientation processes aimed at ensuring continued support for the ADSOPP.
- * No final solution has yet been found on the issue of how to manage the overlapping sections of the ancestral domain and the protected area. There is a need for stronger support from the PAMB for the co-management scheme.
- * Problems in the identification of the rightful claimants to the ancestral domain have stalled the issuance of the CADT over the area.

A Different Approach

A rights-based approach was used for the development of the Mangyan Tagabukid community. It led to their genuine participation in effecting changes in the society and to a more effective process of eradicating poverty in their midst. The approach focused on the elimination of unequal access to law, basic services, land, and resources, among others. It raised the community members' awareness of their human rights, which gave them the courage and ability to claim what they deserved. In addition, the approach proved that indeed, human development is essential to realizing human rights, and human rights are essential to achieving full development.

For partnership to occur and become effective, partners had to be able to negotiate on an equitable basis, without discrimination. Therefore the process was premised on a full deliberation of the fundamental rights of IPs, especially those stipulated in IPRA.

PANLIP facilitated a series of seminar-workshops that enabled the Mangyan Tagabukid

people to analyze their situation, articulate their rights, and affirm these rights through discussion about IPRA provisions. Volunteer lawyers thoroughly discussed IPRA provisions and responded to the queries of participants. *(See sidebar on opposite page)*

The Mangyan Tagabukid made use of the workshops as venues for strengthening their position and for getting more attention to their plight. They came up with a resolution asserting, among others, their rights over the ancestral domain and their call for the area to be delineated, recognized, and issued a title. It further expressed their call for the delivery of social services such as roads, bridges, schools, and medicine, and livelihood support.

Despite their deep-seated orientation toward verbal and non-written arrangements, the Mangyan Tagabukid have learned to formalize their demands and requests through written formalities such as a resolution. They began adjusting partly to the formal operation of the government and other institutions, knowing that these could help facilitate their expected responses. This has validated their decision to select leaders from among their ranks who can read and write and transact business through existing modes.

Continuous information dissemination on IPRA and other laws regarding the rights of IPs have made the Mangyan Tagabukid more conscious and resolute in defending their rights to ancestral domains. During a NIPAP public hearing on the proposed Mt. Guiting-guiting protected area, about 90 IP members from different communities attended the meeting, surprising the organizers with their numbers and also their preparedness and courage in asserting their views.

On the other hand, the IGL orientation conducted by PANLPI among municipal officials of Magdiwang, Cajidiocan, and San Fernando contributed to greater awareness and sensitivity among local officials to the life ways, needs, and aspirations of the Mangyan Tagabukid. The meeting focused on salient points of the IPRA law and updates on the Mt. Guiting-guiting biodiversity conservation project. Most of the questions from the government officials revolved around overlapping claims, illegal activities, and services needed by the IPs.

In response to the need for better coordination with the outside world, more Mangyan Tagabukid leaders who can relate easily with outsiders have emerged through the years. These leaders are now members of different committees such as those pertaining to the ancestral domain, forest protection, and networking.

The partnership in Sibuyan included joint monitoring and evaluation through annual assessment and planning sessions. Such goal-oriented collaboration among members made it possible for each participating agency to make informed decisions on how to sustain the project.

Their efforts were not in vain. The NCIP has since approved the CADT of the Mangyan Tagabukid people of Sibuyan. It covers a total area of 7,718 hectares in the municipalities of Cajidiocan and San Fernando with 1,846 individual beneficiaries.



This chapter is based on case study prepared by PANLPI, in close coordination with the Asangyon ng Tribong Sibuyan Mangyan Tagabukid, Inc.

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