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**“Examining links between land title and  
optimisation of use of the traditional lands  
of the Aytas of Pastolan, Philippines:  
Rights not felt, not seen”**

**A thesis presented  
in partial fulfilment of the requirements for the  
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at Massey University, Palmerston North, New Zealand**

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## **Abstract**

The fundamental development of indigenous peoples lies in the recognition of their rights to their traditional territories. This thesis seeks to examine the experiences of indigenous communities after the formal recognition of their land rights by their respective States. It explores whether this recognition has enabled indigenous communities to achieve optimum use of their lands, whether the land is used for traditional and/or other purposes.

The land rights of indigenous peoples are inextricably connected to their political, economic, and cultural rights. Thus, a framework embodying the political, economic, and cultural factors that influence the use of indigenous territories was used for data collection and analysis. Specifically, a case study was conducted on the Aytas of Pastolan, Philippines, involving six weeks of qualitative field research.

The results reveal a contradiction in the outcomes of the supposed ideals and intents of the formal title for the Aytas of Pastolan. While it guaranteed them the right to live within their territories, the title has not allowed the realisation of other rights emanating from their title, including the rights to fully access their lands and resources. Essentially, the positive gains of the title are lessened by the inadequate implementation of their land rights by the government, resulting to a continued denial of the exercise of the rights of the Aytas.

In conclusion, this study suggests looking beyond the indigenous land title, espousing varying ways to address the void which may emerge after the grant of the formal title, by dealing with each indigenous community distinctively in the enforcement of their rights under the title. It also calls for an assessment of the existing governing institutions of the community, that is, indigenous leadership and traditional decision-making regarding community affairs, as the community faces new challenges brought by the land title. Hence, these challenges demand institutional support, and this study joins other studies that argue a follow-up policy must be instituted, to make meaningful the land rights of indigenous communities.

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## **Dedication**

***Buong pusong iniaalay kay Hesus.***

***Para sa lahat ng Katutubong Pilipino na inilaan at patuloy na ibinabahagi ang  
buhay para sa Lupaing Ninuno,  
at mula sa Ayta ng Pastolan - kay Apo Leonardo Abraham  
na hindi na nasilayan makamit  
ang hangad ng komunidad para sa kanilang Lupaing Ninuno.***

***“Ut In Omnibus Glorificetur Dei”***





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## Acronyms and Abbreviations

<b>AD</b>	Ancestral Domains
<b>ADSDPP</b>	Ancestral Domain Sustainable Development and Protection Plan
<b>CADC</b>	Certificate of Ancestral Domains Claim
<b>CADT</b>	Certificate of Ancestral Domains Title
<b>CALT</b>	Certificate of Ancestral Land Title
<b>DAR</b>	Department of Agrarian Reform
<b>DENR</b>	Department of Environment and Natural Resources
<b>FPIC</b>	Free and Prior Informed Consent
<b>IFAD</b>	International Fund for Agricultural Development
<b>IP/ICCs</b>	Indigenous Peoples/Indigenous Cultural Communities
<b>IPDP</b>	Indigenous Peoples Development Plan
<b>IPRA/RA No. 8371</b>	Indigenous Peoples Rights Act or Republic Act Number 8371
<b>LGU</b>	Local Government Unit
<b>JMA</b>	Joint Management Agreement
<b>NCIP</b>	National Commission on Indigenous Peoples
<b>NGO</b>	Non-government organisation
<b>SBMA</b>	Subic Bay Metropolitan Authority
<b>SKAP</b>	Samahan ng Katutubong Aytas ng Pastolan (community organisation of the Aytas)
<b>Subic II</b>	World Bank Subic Freeport Project
<b>UNWGIP</b>	United Nations Working Group on Indigenous Populations
<b>WAMSIP</b>	Welfare and Management Services for Indigenous Peoples

## CHAPTER I

### INTRODUCTION

#### 1.1. Introduction

*It is simply our wish to freely move around our domains, to fish, to build temporary huts where we can stay<sup>1</sup>. The forest is the core of the Ayta<sup>2</sup>.*

Studies have indicated that indigenous peoples represent fifteen percent of the world's poorest people, and the root cause of their poverty is said to be the loss of control over their traditional lands and resources (United Nations, 2006). To gain control over their traditional territories has therefore become the core of many indigenous people's struggles. This pursuit is central to their existence, and is considered to be inextricably woven with their political, economic, cultural, and spiritual rights (Daes, 2000).

A few countries have begun to recognise the land rights of indigenous peoples, while for many indigenous peoples around the world, this remains an elusive aspiration, or for some, a serious quest as they continue to lose their lands and resources. But even where there is acknowledgment of indigenous people's rights in particular countries, indigenous communities are still confronted with the same obstacles within their traditional territories (Colchester, MacKay, Griffiths & Nelson, 2001). This research thus seeks to examine the experiences of indigenous communities after the formal recognition of their land rights by their respective States. The reasons behind the success and failings of State-led enactments and mechanisms regarding indigenous land rights will be explored in this thesis.

It is hoped that this research will add to the existing body of knowledge on the land rights of indigenous peoples, specifically after a land tenure instrument is given to these peoples. Payne (2000) describes land tenure as "the mode by which land is held or owned, or the set of relationships among people concerning land" (Payne, 2000, p. 2). For the purpose of this study, a land tenure instrument refers to the formal legal document, that is, the land title given to an indigenous

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<sup>1</sup> *Hangad: Malaya lang makakilos dyan..Pwedeng mangisda..Magtayo ng kubo-kubo (Focus Groups 2, June 11, 2011).*

<sup>2</sup> *Ang kagubatan ang pusod ng Ayta (Interview with Ayta, June 17, 2011).*

community in recognition of their ownership rights to their traditional lands and resources. Only a few studies in the literature have explored the impact of a land tenure instrument in terms of enabling indigenous communities to achieve optimum use of their traditional lands and resources (for example, Capistrano, 2010; Okazaki, 2008; Stocks, 2005; Colchester, MacKay, Griffiths & Nelson, 2001; Vidal, 2004). Most studies continue to raise the importance of title or recognition of ownership to their traditional territories for indigenous peoples; however, there is a compelling need to understand the reasons behind the insistence on land tenure instruments by many indigenous communities and other organisations. These reasons are relevant to ensure that land tenure would serve its purpose in relation to the needs and aspirations of indigenous communities.

In the Philippine context, its Indigenous Peoples Rights Act (IPRA) has been described as the only progressive legislation within the Southeast Asian region that recognises the distinct rights of Filipino indigenous communities to their traditional lands and resources (Gatmaytan, 2006). Fourteen years after the law's enactment in 1997, one hundred and fifty six indigenous groups have been conferred with ancestral domain titles, covering 4,196,501 hectares (NCIP, 2010). Yet despite the law's explicit aims to protect, promote and recognise the rights of Filipino indigenous peoples, the experiences of several indigenous communities belie the law's meaning and intents. In this light, this study will focus on the formal title<sup>3</sup>, offering some insights on its influence on the various rights of Filipino indigenous communities. Specifically, a framework identifying the political, economic and cultural institutions that influence the optimum use of indigenous lands and resources will be used for this study. The institutional framework being espoused has also not been given much weight in the existing literature, within the context of understanding the policies on indigenous land tenure.

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<sup>3</sup> The Philippines' Indigenous Peoples Rights Act also recognises the native title of indigenous communities to their lands and resources.



## **1.2. Research aims, questions, and objectives**

This research aims to examine the indigenous land title and its influence in the optimisation of use of the lands and resources of indigenous peoples. Specifically, the main research aim is:

**To inform policy that will support Indigenous Peoples to attain full rights to their traditional lands and resources after the grant of a land tenure instrument.**

The research focused on one key question:

- 1) What are the factors that influence indigenous people's optimisation of use of their traditional lands and resources?

To answer the research question, a framework is conceptualised, taking into account the different institutions that influence the enforcement of the various property rights espoused by the indigenous land title. The term optimisation will also be pondered upon, in terms of the meanings and values that an indigenous comm.

unity place on their lands and resources. Primary research is conducted on the Ayta community of Pastolan, Philippines, who were granted an ancestral domains title in 2003. To gain a deeper understanding of the research question, government officials and representatives of non-government organisations who have known the community or have some influence in the assertion and enforcement of the property rights of the Ayta community will be interviewed.

## **1.3. Significance and Rationale for the Study**

This research started several years ago, influenced by personal encounters and reflections on the experiences of Filipino indigenous communities, in the course of official and voluntary duties as a government lawyer. I witnessed their plight of being separated from their native lands, and those vivid images stayed on, even after I chose another path in a different government organisation. Separation in this sense meant several things — absolute displacement or the lack of freedom within their lands, or continued threats against the lands or the lives of indigenous

peoples resulting from outsider's interests in their lands or resources. The indigenous land title was seen as a viable solution to such threats, by the government, and the indigenous communities affected. The title was meant to secure for them ownership of their lands and resources. The first step of securing the title has been achieved by many Filipino indigenous communities. Most Filipino indigenous peoples, nonetheless, continue to experience various deprivations, including their inability to realise their land rights.

Many studies have explored the significance and justification in giving recognition to the land rights of indigenous peoples (Hayes, 2010; Capistrano, 2010; Stocks, 2005; Colchester, MacKay, Griffiths, & Nelson, 2001, among others). It is argued that this recognition is essential to their right to self-determination (Gatmaytan, 2007) and the right to self-governance (Cornell, 2006). Other studies have focused on the key factors in the economic development of some indigenous peoples (Cornell & Kalt, 2003) or economic options in developing indigenous lands (Anderson, Dana & Dana, 2006; Altman 2004). There is a dearth of information, however, that looks specifically on the strengths and failings of the indigenous land title in relation to its purported aims. Moreover, there are research gaps in examining what happens after the formal grant of tenure to indigenous peoples. This study posits that this information is vital as it provides meaning to the influence of the title in terms of enabling indigenous communities to gain optimum use of their traditional lands and resources, and towards the realisation of their rights to these territories.

Particularly, in the Philippine context, most studies are still evaluating the value of the ancestral domains title. Fourteen years after the enactment of the indigenous law, it is then timely to evaluate the law, not simply in terms of its noble purposes, but in how things can be moved forward beyond the recognition of the rights of Filipino indigenous peoples. This research thus investigates the experiences of an indigenous community after the grant of the indigenous land title, with the intent to attempt to find strategies that will support indigenous communities to achieve optimum use of their traditional lands and resources.

On a rather different note, this thesis comes with some personal quest for meanings and answers that I had while working for Filipino indigenous communities. I remember during the first months working for the Philippines National Commission on Indigenous Peoples, I have encountered some difficulties in understanding the indigenous law. On the ground there were even more challenges. I can surmise that those who read this thesis will encounter the same difficulties and challenges, and more questions may be raised. From my work as a lawyer, I carry visions of an indigenous community whose houses were being demolished or who were threatened with eviction from their lands, thus, I was moved to understand not the just letter but the spirit of the law. In any way possible, I implore that the reader would not dismiss what is written here as romanticising the plight of indigenous communities or regard it with plain naivety. *Res ipsa loquitur* (the thing [or facts] speaks for itself).

Notwithstanding the seemingly gloomy picture depicted here and the challenges that may arise in unearthing and expounding the research question, this thesis aims to provide a hopeful reflection of the stories to be shared by the case study, and from these stories, a surge of positivity may be found amidst its complexities, not only for policy-makers, but also for indigenous communities. As one Ayta participant revealed, if we don't solve it now, these will become the problems of the next generations. May this thesis therefore provide some answers, through the story of the Ayta community that bring to light centuries of struggles by this community.

#### **1.4. Thesis Outline**

This thesis is organised into seven Chapters. Chapter 2 provides a theoretical framework for this research. It presents an overview of land as property, including the indigenous people's property rights to their lands and resources. A glimpse into the indigenous people's land rights movement is likewise given. Finally, various studies conducted on indigenous communities which enabled them to develop their lands and resources are discussed. Then a conceptual framework identifying the political, economic and cultural institutions

that influence the optimum use of indigenous territories is featured to guide this study.

In Chapter 3, the indigenous people's land-rights in the Philippine context is conveyed, anchoring the discussion on the law—The Indigenous Peoples Rights Act of 1997. The Philippine land system is described to show the general classification and manner of acquisition of lands in the Philippines. Then the indigenous law is expounded, tracing its origins and the rights recognised and protected under the law. This Chapter concludes by elucidating the realities in practice concerning the law's implementation.

In Chapter 4, the methodology used in the fieldwork undertaken in the Philippines from May-July, 2011 is narrated. A description of the methods used for data collection and analysis, are explained. Reflections from the fieldwork are shared, highlighting some of the experiences in observing the day-to-day events transpiring in the community and witnessing the deprivations of the indigenous community.

In Chapter 5, the case study is introduced, providing a profile of Pastolan Village and the socio-economic characteristics of the Pastolan community, which notably, includes non-indigenous households. The key characteristics and the way of life of the Ayta community are reported, indicating the distinct regard of the Aytas for their traditional lands and resources. An account of the historical and legal underpinnings, as well as the titling process of the ancestral domains of the Ayta community, are elucidated and provide an important setting for the next Chapter.

In Chapter 6, the factors that influence the optimisation of use of the ancestral domains of the Aytas are identified and examined. The ancestral domains title of the Ayta community lays down the premise of the discussion, providing a detailed description of its strengths, and a critical analysis of the restrictions which prevented the community from achieving the benefits of the title. The last part of the Chapter explains the gaps ascertained after the grant of

formal title to an indigenous community. Finally, a summary of the key findings is stated.

In Chapter 7, a discussion of the conceptual framework in Chapter 2 is merged with the findings presented in Chapters 5 and 6. This Chapter explores the possible approaches after the grant of the ancestral domains title, suggesting strategies that will support indigenous peoples to achieve their aspirations from the title. The Chapter concludes by putting forward support initiatives and possible areas for further research on the land rights of indigenous peoples.

## **CHAPTER II**

### **PROPERTY RIGHTS IN LANDS: AN OVERVIEW OF LAND AS PROPERTY AND THE INDIGENOUS PEOPLE'S LAND RIGHTS**

#### **2.1. Introduction**

Security of tenure for indigenous lands has been the pursuit of many indigenous peoples around the world. The Declaration on the Rights of Indigenous Peoples (2007) obliges nation-states to give legal recognition and protection to the rights of Indigenous Peoples over their lands, territories and resources which they traditionally own, occupy, use or acquire (United Nations, 2007). Several countries, even prior to the United Nations' Declaration, conferred on their indigenous peoples the right to own, use, and develop these lands and resources. Such formal recognition of ownership over indigenous people's lands has changed the way indigenous communities perceive and manage their territory and its resources (Velez, 2011). Nonetheless, many indigenous communities continue to face challenges to fully exercise their land rights, despite already being acknowledged as owners of these lands.

The literature on the land rights of indigenous peoples is largely focused on the importance of secure tenure in enabling indigenous peoples to utilise their traditional territories. However, there is less information on how these peoples can be supported after being given formal recognition to their rights to their traditional territories. This is relevant in order for indigenous communities to gain optimum benefit from these territories. The purpose of this chapter is to examine the institutional factors that influence the ability of indigenous peoples to fully utilise their traditional territories. Historical perspectives on the evolution of property rights to land, followed by a focus on the nature and origins of indigenous land rights, are discussed. The political, economic and cultural factors that enable indigenous communities to develop their traditional lands and resources are then described. Finally, the conceptual framework to be used to guide the conduct of this research is presented.

## 2.2. In the beginning: the struggle to claim rights to land

### *Tracing the origins of property rights to land*

Property is understood as resources over which ownership interests pertain (Harris, 2002). Along the same line, property as a right over things revolves around the component of rights which may include such rights as the right to use, the right to possess, and the right to exclude (Cohen, 1927). It is said that the struggle for land and the corresponding rights over land have continually evolved over the history of human beings (Jachoby, 1971). Anthropological evidence reveals that during the first 300,000 years of the evolution of the human species, people lived nomadically as hunter-gatherers (Elickson, 1993). It is assumed that the history of agriculture started the relationship of humans with land.

In an economic context, the supply of animals and plants for human consumption appeared to be endless during the early stages of human civilisation (North, 1981). But, given the characteristics of a common property resource and competing groups of the populace, a solution necessitated the creation of property rights (Elickson, 1991). This brought about the development of exclusive communal property rights that could limit the use of the diminishing resource base (North, 1981).

In hindsight, the history of the evolution of property rights first consisted in excluding outsiders from harvesting the resource, and then limiting the intensity of exploitation of the resource by insiders (North, 1981). Property rights are considered an important institutional arrangement (Feder & Feeny, 1991). As Cohen (1927) explicates, property is sovereignty, contrary to the Roman-inherited distinction between property (*dominium*) and sovereignty (*imperium*). Property rights are perceived as both *dominium* over things and *imperium* over human beings (Metzer & Engerman, 2004). In human relationships, it is a vehicle of power and within the context of land, a determinant of its occupation, possession and ownership (Denman, 1977). Thus, property rights bear an exclusionary

relation between owners and other individuals, creating an interpersonal power relation (Cohen, 1927).

For indigenous peoples, their property rights to land is viewed more as *imperium* (sovereignty), since indigenous communities exercise their spiritual, economic, political and other rights over their lands. Land is not merely property (*dominium* over things), but an amalgam of “material and spiritual element to preserve their cultural legacy and to transmit it to future generations” (Wiessner, 2011, p. 136, citing the Inter-American Court of Human Rights, 2001).

### ***The indigenous people’s land rights movement***

For indigenous peoples, the struggle for recognition of rights to land has been one of the dominant issues over the past centuries, since the concept of property rights to land emerged. Land is necessary for the survival of indigenous peoples as culturally distinct people (Richardson, Shin & McNeil, 2009). The relationship of indigenous peoples with their lands is considered fundamental to their “identity, personality and humanity” (Henderson, 1995, p. 196, as cited in Daes, 2001, p. 7).

The land and territorial claims of indigenous peoples is deemed embedded in history, prior to the establishment of States. Since indigenous peoples were the prior occupants of lands that eventually became part of the territory of an emergent State, Plant (1994) argues that their rights are considered to have never been ceded to the State. Under the governance of the State, the assimilation of indigenous peoples as members of the general populace has been one of the prominent political aims of the State (Perry, 1996). This has resulted in attempts to dissolve indigenous groups, or relocate tribal communities, to allow other members of the State to use their lands and resources (Metzer & Engerman, 2004). In extreme circumstances, some indigenous communities have been subjected to genocide as in the case of the United States and Australia in the nineteenth century; and in Brazil, Irian Jaya, East Timor and other places in the twentieth century (Perry, 1996). As a consequence of State assimilationist policies, many indigenous populations have begun to lose their identities including their territories, and their status as indigenous peoples has been subject to a lot of challenges (Daes, 2001).



However, for some indigenous communities, their way of life persists and remains, despite enormous upheavals and threats to their existence.

Most indigenous peoples have not conceded to the concept of individualised tenure introduced by most countries within their respective jurisdictions. As a consequence, collective property rights have been claimed, recognised, and accorded to indigenous peoples at various levels around the world. As early as the 17<sup>th</sup> century, Britain signed treaties across Canada and New Zealand, recognising the rights of Native Americans and Maori, respectively, over their lands (Richardson, Shin & McNeil, 2009). For its part, the United States government entered into treaties with its own native tribes until 1871 (Richardson et al., 2009). In Australia, the government accorded some Aboriginal communities specific rights to their land through legislation in the 1960s (Australian Museum, 2009). In the Philippines, the recognition of the rights of indigenous peoples over their lands culminated through amendments made in the Public Land Act in 1963. But it was in 1997, through the enactment of Republic Act No. 8371, known as the Indigenous Peoples Rights Act, that significant acknowledgment of the land rights of Filipino indigenous peoples have been made.

National indigenous movements began to form in the 1960s (Canada, US, Australia and Latin American countries), though some indigenous groups started way back in the early twentieth century (Engle, 2010). These national indigenous organisations began to move in an international sphere, establishing international networks of indigenous peoples. With those movements, international instruments codifying the rights of indigenous peoples were passed. Presently, this is known as the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples; it addresses both individual and collective rights of native populations (United Nations Office of the High Commissioner on Human Rights, 2008).

***Indigenous people's land rights: a right or privilege***

Property is not to be understood as an absolute right embracing all aspects of land use (Von Benda-Bekmann, Von Benda-Beckmann & Wiber, 2006). Property is not only ownership of a thing such as land, but consists of a bundle of rights designed and enforced by the societies which grant these rights (Segger & Weeramantry, 2005). For each State, a land tenure system defines how property rights to land will be allocated within society (FAO, 2008). Generally, property rights refer to an overlapping bundle of rights<sup>4</sup> derived from multiple sources, such as the State, customary law and local laws that provide the basis for claiming rights to property (Meinzen-Dick & Mwangi, 2009). Property rights to land thus come as a grant from the State, which gives the grantee the stream of rights emanating from the law (Bracewell-Milnes, 1982). For that reason, many States acknowledge the land rights of their indigenous communities, but typically restrict or withhold use of the natural resources, for instance in the case of Filipino and Australia's indigenous peoples (Richards, 1997; MacKay, 2001; Altmann, 2004; Stocks, 2005, citing VanCott, 2002; Gatmaytan, 2007).

No "universal" or "one-size fits all" definition for indigenous property rights exists (Anaya & Williams, 2001, p. 43). It is important to note that "indigenous land rights cannot be viewed as separate and distinct from cultural rights, from political rights, from economic rights and from religious and spiritual rights, these rights are inextricably connected" (Colchester, MacKay, Griffiths & Nelson, 2001, p. 21, citing Daes, 2001). As in the Americas and elsewhere, Anaya & Williams (2001) posit that each indigenous community possesses their own unique traditions and customs that define their property rights. Therefore, even without official State enactments, such traditional land and resource use patterns create forms of property that are recognised and observed within and among indigenous communities (Anaya & Williams, 2001). With their source in indigenous people's own customs and usages, international and domestic legal institutions and organisations have come to recognise and respect that indigenous people's own

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<sup>4</sup> Rights may cover access, use, development or transfer and, as such, exist in parallel with ownership (Payne, 2000, p.2).

knowledge can effectively evidence the existence, scope, and characteristics of their land tenure rights (Anaya, 2001).

### **2.3. From struggle to progress: internal and external factors that influence the use of indigenous people's lands**

#### ***The theory of institutions***

As described earlier, land tenure is a system of institutions that govern the rights to use and access land (Adams, 2001; Food and Agricultural Organisation, 2008). Cornell & Kalt (2003) argue that institutions are pivotal in transforming the claims of indigenous peoples over their lands into rights. Furthermore, in order to give meaningful effect to these rights, institutional arrangements are deemed to be necessary (Stocks, 2005; Dietz, Ostrom & Stern, 2003; Leach, Mearns & Scoones, 1997).

Since the 1980s, there has been significant interest in looking into the role of institutions in theorising and explaining the changing conditions among diverse groups of individuals (Baert & Da Silva, 2010; North, 1992). New institutionalism finds its origins and pervades the field of economic history; but it also cuts across many other disciplines, such as political science, law, business, and anthropology (Droback & Nye, 1997).

The new institutional economist Douglas North (1995) defines institutions as the “humanly devised constraints that shape human interaction” (p.3). Specifically, in the context of common property resources, institutions are described as a “set of accepted and social norms and rules for making decisions about resource use” (Richards, 1997, p. 97). Neal (1988) identifies three characteristics of institutions, these are: patterns of human actions; rules that provide order to these activities; and “folkviews” that justify both the activities and the rules (Neale, 1988, as cited in Adkisson, 2009, p. 33). Ostrom (2011) further propounds the purpose of such rules – they are meant to provide order and a set of standards.

It is said that most economic institutionalists have gained insights from the pioneering work<sup>5</sup> of Ronald Coase's on transaction costs (Droback & Nye, 1997). According to Coase (1988), there are costs of making transactions in a market economy, which should be part of the economic analysis. But while Coase's work revolve around the costs of economic organisations; Douglass North has been more concerned into exploring transaction costs involved in the overall economic operations (North, 1997). While this work by institutional economists depicting institutions based on a transaction costs approach is described to be "functionalist" (Leach, Mearns & Scoones, 1999, p. 237), it becomes relevant in so far as some institutional economists have also begun to explore the under-examined costs of measuring and implementing property rights (Droback & Nye, 1997). This latter view finds significance in this research, as this study seeks to examine how Filipino indigenous peoples can be supported after grant of formal title, which relates to the enforcement of their property rights. More importantly, some studies reveal that despite the recognition given on the land rights of indigenous peoples, most State organisations lacked financial and other resources to protect indigenous people's lands (Stocks, 2005; Colchester, MacKay, Griffiths, & Nelson, 2001).

Another point institutional economists consider is the human element, which they deem can act to change the framework of institutions to enhance their economic well-being (North, 1995; Adkisson, 2009). Since individuals have the choice in the manner they wish to respond to institutions, Toye (1995) points out that there can be no general assumptions that institutions will be appropriate. Although it is argued that individuals are not only motivated by self-interest but they can also be moved by altruistic and other ideals (Eggerston, 1996). The new institutionalism that pervades in the political science field also tackles the human element (March & Olsen, 1984). Institutions are said to likewise play a central role in political theory.

Three strands of thought emerge from this new institutionalism in political science: the rational choice or positive political theory; sociological institutionalism, and historical institutionalism (Peters, 2005, citing Hall and

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<sup>5</sup> The Problem of Social Cost (1960); and The Theory of the Firm (1937).

Taylor, 1986; Rothstein, 1996; Immergut, 1998). Within rational choice theories, there are a variety of perspectives on institutions, these are the principal agent, game theoretic and rules based model of institutions (Peters, 2005). Despite internal differences among these three approaches, they share the same assumption that individuals are the players in the political process, and that each act rationally for their personal benefit (Peters, 2005).

Accordingly, rationalists define institutions as the “aggregations of rules that shape individual behaviour and individuals act rationally to those incentives and constraints established by those rules” (Peters, 2005, p.51). In the same manner, historical institutionalists define institutions as the “formal or informal procedures, routines, norms and conventions embedded in the organisational structure of the polity or political economy” (Hall & Taylor, 1996, p. 938). Generally, they associate institutions with organisations and the rules crafted by formal organisations. This view is considered narrow, as some organisations may continue to exist even when the rules that created them have become irrelevant (Powell and DiMaggio 1991, as cited by Leach, Mearns & Scoones, 1997). Also, some institutions have various or no direct organisational affiliations, for instance, kinship ties, laws, cultural values, indigenous systems, yet may be critical in understanding the land rights of indigenous peoples (Leach, Mearns & Scoones, 1997). It follows then to clarify the distinction between institutions and organisations, institutions may be construed as “the rules of the game of a society,” while organisations are “the players, or groups of individuals bound together by some common purpose to achieve objectives” (North, 1995, p. 23).

In the sociological arena, new institutionalism investigates the role of institutional elements in defining and shaping “values, norms, interests, identities and beliefs” (March & Olsen 1989, p. 17). Thus, sociologists view that institutions emerge to give legitimacy to certain rules of conduct and behaviour that concerns power relations and socio-cultural norms (March & Olsen, 1989). Anthropological and social work on institutions converge in some ways. First, they construe institutions in terms of practices—what people do and their structured response to events that shape their histories; and their social, cultural and political structures (Metha, Leach, Newell, Scoones, Sivaramakshan, & Way, 1998).

Sociological institutionalists therefore define institutions more broadly than political institutionalists, referring to not only rules, norms or procedures, but including the “symbol systems, cognitive scripts, moral templates” that provide meanings for human action (Campbell, 1995, as cited in Hall & Taylor, 1996, p. 947). This definition embraces what is regarded by some authors as informal institutions (Leach, Mearns & Scoones, 1997, 1999).

The description of institutions above-mentioned encompass rules, practices and norms, which some authors view as merging rules, norms and behaviour altogether (Leach, Mearns & Scoones, 1997). For purposes of this study, the description given by Leach, Mearns & Scoones (1999, 1997) on formal and informal institutions will be applied. Since recognition of the land rights of indigenous peoples is usually enforced by the State, this study adopts the following definition - “formal institutions are rules that require exogenous enforcement by a third-party organisation, the rule of law is an example” (Leach, Mearns, & Scoones, 1999, p. 238). While “informal institutions may be thought of as those upheld by mutual agreement, or by relations of power or authority, and rules are thus enforced endogenously” (Leach, Mearns, & Scoones, 1997, p. 26). This definition on informal institutions is relevant for this study as it is commonly known that indigenous communities have their respective traditions or customs pertaining to land which are still maintained and observed within their communities. In this sense, the above description given by sociological institutionalists is also considered for this research.

The role and significance of formal and informal institutions in defining, enforcing and restricting the land rights of Philippine indigenous peoples will thus be explored. This research however notes that the institutions described in the following sections are not fixed solutions applicable to all indigenous communities. The diverse histories, local settings, and capabilities of indigenous communities (among others) would therefore suggest the need for different approaches. Generally, the years of exclusion from their internal and external environments, and the dependency-nature of most State policies, have led to the weakening of many indigenous communities’ own institutions and capabilities (Altman, 2002b; Stocks, 2005). Hence, the discussion under each context may present some factors

which are not institutions per se, but rather, they represent the dynamics that affect the enforcement of these institutions to optimise the use of the traditional lands and resources of indigenous peoples.

***Institutional context: the political, economic and cultural institutions that impact on the rights of indigenous peoples to their traditional territories***

In most countries in the world, indigenous peoples have emphasised the fundamental relationship with their lands, which is considered to be indispensable for their continued survival as a people. The United Nations Report<sup>6</sup> on indigenous peoples explicates that this relationship must be understood in terms of the spiritual, social, cultural, economic and political essence of these lands to indigenous peoples (Daes, 2001). The foundation of the framework for this study is the formal recognition of the rights of indigenous peoples to their lands and resources and its intended outcome of optimising the use of these lands for the benefit of indigenous peoples. In line with the relationship of indigenous peoples to their lands, the political, economic, and cultural institutions that influence the optimum use of indigenous people's territories will be identified and discussed.

The political, economic and cultural institutions emanate or are influenced by external and internal factors. Institutions emanating from external factors will be discussed first, followed by those with internal attributes. These factors have been identified based on the experiences of some indigenous communities; while others have been argued by some authors that impact the rights of indigenous peoples to their traditional lands and resources. But despite the classification (political, economic, and cultural), the division between the three is not clear-cut. As will be discussed, there is ample room for overlap, and the assumption made under each category may not be strictly considered to fall only under such classification. The complexities underlying each institutional context provide a reason for this. Moreover, as stated above, indigenous people's relationship with their lands are considered to endure various meanings or significance for indigenous peoples.

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<sup>6</sup> United Nations Commission on Human Rights Report on Indigenous Peoples and their relationship to land prepared by the Special Rapporteur for Indigenous Peoples, Erica A. Daes, 2001.



Lastly, the framework will not be limited to institutions, as defined earlier in this Chapter, but will include other factors that influence or impact the way these institutions operate, particularly, in terms of achieving the optimum use of the lands and resources of indigenous peoples.

### **Political institutions**

Political institutions are the “external institutions which are designed, imposed and enforced by a political authority” (Kasper & Streight, 1998, p. 31). Thus, they include formal political institutions introduced and enforced by the State. State-prescribed indigenous land rights include permanent occupation and usufruct rights over lands and resources in the case of the Amerindians of Brazil, Canada’s aborigines and the American Indians, or ownership over indigenous lands applicable to Philippines indigenous peoples and New Zealand Maori. These State policies primarily aim to provide recognition to the rights of indigenous peoples to their traditional territories.

### ***Formal titling or recognition of rights to lands and resources***

Several authors have explored the importance of security of tenure through the grant of legal title or some formal instrument that recognises the rights of possession or ownership of indigenous peoples to their traditional territories (Velez, 2011; Capistrano, 2010; Indian and Northern Affairs Canada, 2008; Altmann, 2004; Schwartzmann & Zimmerman, 2005; Stocks, 2005; Colchester, MacKay, Griffiths & Nelson, 2001). Hoekema (2010) asserts that secure tenure is fundamental to protect the position of owners or users and to stimulate in a way, local trust of State power. Yet this assertion fails to clarify how secure tenure can protect indigenous peoples, since some authors have also found that other property regimes co-exist on indigenous lands (Altman, 2004; Vidal, 2004; Stocks, 2005). Moreover, most often, States refuse to acknowledge the various rights of indigenous peoples to their territories, since many indigenous lands are rich in exploitable natural resources or are situated in productive land areas (Daes, 2001; Altman, 2004; Engle, 2010). Hence, local trust on the State may be difficult for indigenous communities in such cases.



In order to establish the importance of tenure in the case of indigenous lands, a review conducted on Canada's federal comprehensive land claims policy reported that this policy had given clarity and certainty in ownership rights to Aboriginal lands and resources (Indian and Northern Affairs Canada, 2009). This is because Canada's federal policy provides treaty settlements embodying rights of ownership over lands including self-governance within land reserves of indigenous communities in Canada (Indian and Northern Affairs Canada, 2009).

Contrary views, however, regarding the grant of security of tenure through legal titling were reported by some authors. For one, Velez (2011) found that titling of indigenous lands in one instance caused a form of displacement for indigenous communities (Velez, 2011). Yet the same author qualifies that without the land title, many displaced communities would eventually lose their lands (Velez, 2011). Cases cited in Brazil, Colombia and other Latin American countries highlight how indigenous communities suffered a decrease of security in tenure as a result of the titling process (Pacheco, 2009). Pacheco (2009) explains this, saying that the legal title of indigenous communities will not bring real security unless these communities or the State can protect their lands from outsiders.

Alternatively, some authors have put forward their views on how the titling of indigenous people's traditional territories may be enhanced. Altman (2004) suggests that the "institutional design" for native title, being a new form of property regime, needs to consider existing land and resource rights that may dispute or vary from customary laws (Altman, 2004, p. 518). Similarly, Hoekema (2010) proposes a different way, suggesting a policy that recognises both the communal title and individual land rights of indigenous peoples without further legal processes (Hoekema, 2010). Hoekema's suggestion seems to be suitable in situations where legal processes would be burdensome for indigenous peoples (Pacheco, 2009). This situation was observed in the Philippine setting, where the indigenous law was found to be bureaucratic and burdensome for indigenous communities, due to the usage of Western terminologies and methods by the government (Novellino, 2000). But the approach advanced by Hoekema (2010) still needs empirical backing, to demonstrate how this recommendation will work in relation to non-indigenous citizens of the population, since most countries adopt

a legal system requiring a formal document to evidence title to lands. Moreover, legal processes on land titling are intended not only to provide security to the land owner but also as a guarantee to third persons that they are dealing with the real owner of the property as evidenced by his/her title (Noblejas, 1992).

Another important consideration is the enforcement of the rights under the legal title given to indigenous peoples. A study on indigenous land tenure concluded that despite the legal advances to safeguard indigenous land rights, such laws are still not enforced on the ground (Colchester, MacKay, Griffiths & Nelson, 2001). The authors cite some of the reasons for the non-enforcement of indigenous policies by the State, that is, few governments provide adequate funding for legal titling programmes for indigenous peoples or have contradicting policies that limit the rights to use, own, or control indigenous lands (Colchester et al., 2001).

Hence, some authors posit that new institutions are necessary to allow indigenous communities to fully utilise and effectively manage their vast lands and resources after formal grant of title (Schwartzmann & Zimmerman, 2006 citing Brandon, 1996; Schlager & Ostrom, 1992). Stocks (2005), for one, conceives that strong State institutions that support the implementation of laws governing indigenous communities are crucial. This author cites the case of Brazil, which has rules that are clear and a State organisation directed to specifically implement laws concerning indigenous communities (Stocks, 2005). Accordingly, several studies have shown that State support after titling of indigenous lands is crucial in the optimisation of the use of these lands.

### ***State support after titling/formal recognition to their traditional territories***

Several authors assert that security of tenure is not tantamount to sustainable development of indigenous people's lands and resources that would benefit these communities (for example, Schwartzman & Zimmerman, 2005; Stocks, 2005; Prill-Brett, 1994). Thus, some countries have created different institutions and/or mechanisms to support indigenous communities after the grant of formal tenure to their lands. For instance, Canada carries out its Federal

policy by integrating an implementation plan for its treaty settlements. This implementation plan creates governing boards, procedures and policies for business, and the requisite funding to facilitate the execution of plans. Moreover, the plan is construed to be an iterative process characterised by regular monitoring, feedback and corrective action (Indian and Northern Affairs Canada, 2008).

In the same way, New Zealand allows some of its tribal lands to be managed and conserved by multi-stakeholder committees composed of government representatives, conservation groups, and the claimant *hapu*<sup>7</sup>. State support, as well as various working boards to manage indigenous lands and resources were found to be necessary for an effective and productive use of indigenous lands in these countries (Hoekema, 2010; Indian and Northern Affairs Canada, 2009; Schwartzman & Zimmerman, 2005; Pavlovich, 2003).

In addition, some authors illustrate institutions that created partnerships between local communities and public authorities lead to more successful management of resources. Hoekema (2001) states that instituting co-management institutions may provide effective management policies, but however clarifies that the relationship in such arrangement must be based on equal and autonomous positions for the parties involved (Hoekema, 2001). Furthermore, the same author suggests that transparent and accountable formal structures are crucial to ensure that the management of these lands and the benefits of developing these lands are equitably applied within the indigenous community (Hoekema, 2001; Loomis, 2000). This notwithstanding, some authors argue the value of independence in governance by indigenous peoples within their lands (Cornell & Kalt, 2003; Begay, Cornell, Jorgensen & Kalt, 2007; Anderson, 1997).

### ***Tribal/community governance***

“Communal governance”, although in limited form, is said to be present and practised by many indigenous communities (Korovkin, 2001, p. 42). This form of governance is linked with the way indigenous community leaders have performed

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<sup>7</sup> The *hapu* denotes the larger village community in Maori society (Law Commission, 2001 citing Durie, 1994).

roles similar to that of the government (Korovkin, 2001). Cornell & Kalt (2003) term this as “tribal sovereignty” (p. 15). However, it is argued that sovereignty, as defined in Chapter 1 and by other authors, “consists more of continued cultural integrity than of political powers” (Porter, 2005, p. 54). Hence, instead of tribal sovereignty, this will be referred to as community governance, referring to the government organisation(s) of an indigenous community.

Studies on Indian reservations and from other indigenous communities indicate that one of the major factors in their development capacity is governance (Begay, Cornell, Jorgensen & Kalt, 2007, citing Bräutigam and Knack 2004, Cornell and Kalt, 2003, Evans 1997; M. Jorgensen 2000, Knack and Keefer 1995, La Porta et al. 1999, North 1990, Ostrom 1992). As Cornell (2001) puts it, “leadership matters”, and for American Indian Nations, it was established that genuine autonomy given to their leaders produced results favourable to their community (Cornell, 2001 p. 96; Cornell, 2006).

Further, some authors argue that it is not sufficient that indigenous peoples have the power to govern within their territories (Trosper, Nelson, Hoberg, Smith, & Nikolakis, 2007 citing Cornell & Kalt, 1992). Hayes (2010) maintains that the first step is to recognise the rulemaking capabilities and power of indigenous communities. But in this case, Hayes fails to consider that in some indigenous communities, indigenous authority may have been eroded (Stocks, 2005). Thus, in Latin America, with the exception of Peru, “indigenous governing institutions” were found to be weak (Stocks, 2005, p. 98). For this reason, Stocks (2005) believes that the future challenge is for indigenous groups to improve their own organisations.

For example, in American Indian Nations, “political reorganisation” was undertaken, involving efforts regarding “separation of powers and professionalising and streamlining the tribal bureaucracy” (Cornell, 2001, p. 93). This relates to issues of power. Cornell & Kalt (2001) posit that the political environment within indigenous lands must be balanced to such a degree that power is not concentrated within a certain group of individuals. This has also been raised by several authors, stating that indigenous authority must be spread out

and diverse, and a system of checks and balances be in place between and among members of the indigenous community (Begay, Cornell, Jorgensen & Kalt, 2007). Thus, some studies conclude that tribal or community governance must be supported by the governing institutions of the community backed up by formal governing institutions (Cornell, 2001, 2002; Cornell & Kalt, 2003, 2006).

***Traditional/Informal governing institutions complemented by formal governing institutions***

Formal institutions relating to State recognition of the rights of indigenous peoples to their traditional territories have been shown in various studies to be affected by the informal governing institutions and internal organisations of indigenous communities. As defined earlier, informal institutions are those upheld internally or by mutual agreement (Leach, Mearns, & Scoones, 1997, p. 26). Thus, informal governing institutions described here refer to the traditional governing institutions of indigenous communities.

In several studies (Cornell, 2001; Cornell & Kalt, 2003; Cornell, 2006) conducted on American Indian development, the role of “tribal governing institutions” was found as key to the economic development of American Indian communities (Cornell, 2001, p. 92). Cornell (2001) uses North’s (1990) definition of institutions (which has been defined earlier in this Chapter), and did not categorically provide a specific definition on tribal governing institutions. He however identifies the institutional elements constituting successful economic development for the Indian communities, which account as to what comprise tribal governing institutions – “stability in the rules themselves; depoliticising day-to-day business decisions and their dispute resolution; bureaucratic structures and procedures that can get things done predictably and reliably” (Cornell, 2001, p. 93-94). Tribal governing institutions therefore include not only the laws or rules that govern community affairs, but also the government organisation(s) of the community (the latter has been earlier referred to as community governance).

Moreover, it is not enough that the informal governing institutions of indigenous communities be in place. These informal governing institutions have to be complemented by formal governing institutions for an effective indigenous self-

governance (Cornell & Kalt, 2001). However, it is not clear who would create this, what constitutes, and how these formal governing institutions would be enforced. As illustrated in a study conducted on indigenous land tenure: the uncertainties of which institutions own or manage the land on behalf of the indigenous community and who is authorised to negotiate with third parties have led to misunderstandings, facilitated manipulation by outsiders and also allowed a mismanagement of resources (Colchester, MacKay, Griffiths & Nelson, 2001). This mismanagement has been said to be caused by indigenous factions, individuals and elites within the community, who may take advantage of these economic opportunities to advance their personal interests to the deprivation of the community (Colchester, et al., 2001.).

Begay et al. (2007) put forward that the indigenous governing organisations and institutions of indigenous communities must be able to conform to two tests: effectiveness, that is, the formal and informal institutions must be able to respond to the changing and evolving demands of their environment, holistically; and legitimacy, they must be recognised and respected by the internal and external society (Cornell, 2001). Moreover, although indigenous peoples may have an interest in designing their own rules, a “broader policy support” to facilitate implementation is vital as held in the cases of three Miskito communities in Honduras, Latin America (Hayes, 2010, p.46). Enforcement is said to be critical to the success of managing common pool resources (De Janvry, Gordovillo, Sadoulet, & Platteau, 2001; Ostrom, 2005 all cited in Velez, 2010).

Independence in indigenous governance or leadership is held to be key in the economic development of American Indian Nations, as transfer of authority to these peoples leads to more informed, appropriate, and viable solutions (Cornell, 2006). Nevertheless, there is a need to consider that in reality, many indigenous institutions and organisations may lack capacity and resources (Altman, 2004). Thus, Altman (2004) argues that historically, “there may have been too much State governance for dependence in indigenous context and not enough governance for development” (p. 529). The dependency or assimilationist nature of past and present State policies has contributed to the lack of capacity by indigenous communities to assert their responsibility in managing their land and resources

(Hanstad, Prosterman & Mitchell, 2007; Martin, 2001). Still, successful governance mechanisms deployed by those directly affected was determined to be relevant for the sustainability of indigenous lands and resources and one of the key factors in the economic successes of most American Indian reservations.

Once indigenous communities have gained effective institutions for governance, Cornell & Kalt (2001) advance that indigenous peoples can wield effective development strategies, and this will be discussed in the following section.

### **Economic institutions**

Economic institutions are the formal and informal institutions that govern the economic activities of indigenous communities, for example, State-led support to develop or manage indigenous lands, and indigenous economic systems. For this purpose, the economic context for indigenous peoples would include aspects that enable the use of indigenous lands and resources, as well as mechanisms to protect indigenous territories.

#### ***Institutional mechanisms for economic or development options for indigenous lands and resources***

While security of tenure provides indigenous peoples with specific rights to their traditional territories, the literature explicates that regaining ownership over these lands does not guarantee economic gains that would benefit the entire community (Velez, 2011; Schwartzman & Zimmerman, 2005; Lund, Odgaard & Sjaastad, 2006; Rynard, 2000; Anderson, 1997). Altman (2004) considers “restitution of land and recognition of customary property rights in common law” created possible avenues for indigenous economic options, but this does not guarantee that economic development will result. Different ways towards developing indigenous lands have been found and several recommendations abound in the literature.

To begin with, Altman (2002a) suggests treaty arrangements that provide the terms for the utilisation, management and support of indigenous lands. These arrangements would allow indigenous communities to create economic options for the development of their lands (Altman, 2002a). Canada’s treaties with indigenous



peoples grant funding to implement defined activities; the funds received were used to establish a range of businesses which significantly expanded indigenous participation in Canada's economy (Indian and Northern Affairs Canada, 2009). Meanwhile, New Zealand treaty settlements provide financial compensation for lost revenues for lands or resources taken from Maori people, where some groups have utilised this compensation money as a foundation to build their development strategies (Sullivan & Margaritis, 2000).

As stated above, some Canadian indigenous communities have used the entrepreneurship approach for the development of their lands. At the same time, this approach was sought to end dependency and improve the socio-economic circumstances of the whole community (Anderson, Dana & Dana, 2006). Similarly, Andean indigenous peoples pursue their own development through community-based enterprise, where the community acts collectively as entrepreneur and gains derived from the enterprise are used for the benefit of the community (Peredo, 2001, as cited in Peredo, Anderson, Galbraith, Honig, & Dana, 2004). Thus, several authors submit that regardless of the historical and cultural differences among indigenous communities, entrepreneurial enterprise is seen as key to the economic development of these communities (Anderson, Dana & Dana, 2006; Peredo, Anderson, Galbraith, Honig, & Dana, 2004; Kendall, 2001; Anderson, 1997).

Yet opening the doors to outsiders may have positive or negative results. In analysing the problems affecting the relationship between Australia's aboriginal land owners and the mining industry, Neate (2004) proposes partnerships through sustainable agreements. The author delves further, explaining that these agreements should be negotiated in such a manner that will balance competing interests and resolve issues (Neate, 2004). By the same token, Canada's First Nations collective approach through joint business ventures with non-aboriginal partners has been successful and generated benefits for its peoples (Anderson, 1997). This is so because revenues derived from enterprises were devoted towards social objectives, "beyond simple wealth creation" (Anderson, Dana & Dana, 2006, p. 54). For example, the case studies conducted amongst First Nations communities illustrate how subsequent entrepreneurship opportunities are



identified based on the broad objectives and capabilities of the community members (Anderson, Dana & Dana, 2006).

On the contrary, some authors posit that the entrepreneurship approach to economic development for indigenous peoples needs to be taken with caution. This is because indigenous peoples often lack organisational and sound governance structures, including qualified manpower (Loomis, Morrison & Nicholas, 1998). Thus, to protect the position of indigenous peoples who intend to use the business approach or engage in the market economy, regulations for investment and for using indigenous lands and resources are proposed (Hoekema, 2010; Mitchell, 2007). Further, these authors add that these policies should contain transparent processes for community consultation and payment schemes or exclusionary privileges (Hoekema, 2010; Mitchell, 2007). Specifically, one American Indian tribe has put in place the kind of institutions that investors would trust to deal with the tribe (Cornell, 2001).

From the experiences of some American Indian Nations, self-rule backed up by “effective institutions of governance” proved to be key ingredients in making their economic assets productive (Cornell, 2001, p. 92). “Institutional mechanisms for governance”, which consists of formal and informal institutions that governs the economic activity are found to be necessary, based from the experiences of some Native American Indian communities (Trosper, Nelson, Hoberg, Smith & Nikolakis, 2007, citing Cornell & Kalt, 1992, p. 228). These mechanisms created an enabling environment for Native American Indian communities’ development to prosper (Trosper et al., 2007, citing Cornell & Kalt, 1992).

Rynard (2000) raises another possible form of support, suggesting funding for governance and services to develop these traditional lands and resources of indigenous peoples. Ovide Mercredi, current Grand Chief of the Assembly of First Nations (AFN), succinctly explains this, elucidating the First Nations’ view of the relationship between economic development and self-governance — “If we gain [political] power for the community but we don’t get the economy, we have power that cannot exercise itself” (Mercredi, 1994, p. 7, as cited in Anderson, 1997). Nevertheless, the literature fails to discuss where and how funding would be

obtained and how it will be used by indigenous communities. Cornell (2002) argues that funds which allow tribes autonomy and focus on specific needs of the community can accomplish more. Thus, funding support is not the key consideration, but how the money will be spent by the indigenous community.

Notwithstanding the various assertions to develop indigenous people's lands, it is worth emphasising that indigenous communities' aspirations in terms of the development of these lands must not be looked at solely on the desire to achieve positive economic outcomes (Wiessner, 2011). The experiences of some indigenous peoples show that assimilating with the market economy has not been profitable, instead, precious resources have been used or squandered without their equivalent recompense (Lasimbang, 2008). Moreover, according to Wiessner (2011), even with individual property law, there is a shift in the purpose beyond "maximisation of economic benefits to the flourishing of humans"; hence, he believes that indigenous land tenure should be guided by the same criteria.

### ***Indigenous economic systems***

The economic base of indigenous peoples rests with their territories, hence, security of tenure over these territories is held paramount (Velez, 2011; Altmann, 2004; Schwartzmann & Zimmerman, 2005; Rynard, 2000). The indigenous economic system is considered "an economic and social totality that connects and governs the lives of indigenous peoples" (Lasimbang, 2008). Lasimbang (2008) further describes this relationship, saying that the traditional economic systems of indigenous communities have sustained the resources through "social responsibility and harmonious relationships" (p. 42). In a sense, the traditional economic systems of indigenous communities converge with the customary (Altman, 2004; Lasimbang, 2008). As described by the First Nations Development Institute —

Indigenous economics is the science of dealing with the production, distribution, and consumption of wealth in a naturally holistic, reciprocal manner that respects humankind, fellow species, and the eco-balance of life (cited in Wuttenee, 2004, p. 3).

The findings of studies in American Indian reservations point out that the institutional requirements of successful economic enterprises for indigenous peoples require that the economic systems of indigenous peoples matches the cultural institutions of these peoples (Cornell & Kalt, 2003; Trosper, Nelson, Smith, & Nikolakis, 2007). Wuttune (2004) explains this further, expressing that effective economic development strategies recognise the importance of strong leadership (political) that takes into consideration the needs, as well as the value systems (i.e. kinship) of the community (social and cultural). But the separation between economic and political decision-making is also seen as an element to having effective economic institutions, to ensure that rules are implemented and to prevent political abuses (Trosper et al., 2007).

Another point to consider is the centuries-old traditional economic systems which have been considered to have sustained indigenous peoples, including their natural environment. In the 2008 Asia indigenous development conference, while indigenous communities admitted the enormous possibilities of joining the market economy, they felt that as far as possible, the principles of their traditional economic systems should still be advanced and transferred to the next generations (Lasimbang, 2008). In this way, the view of Altman (2004) may be considered in this regard. This author discussed the workings of a “three-sector hybrid economy” which he attributes from five case studies in North Australia (Altman, 2004, p.514). This notion of economy is said to compose of three sectors: “the customary<sup>8</sup>, the market, and the State” to differentiate it from “the usual two: market and state, or private and public” (Altman, 2004, p. 514). Overall, his study concludes that policy should aim to advance what is working in indigenous communities and to focus efforts on these three sectors, allowing spaces for present and future overlaps within these sectors (Altman, 2004).

Several authors have mentioned the yearning of some indigenous communities for a “mixed economy” that encompasses their traditional land-based economic practices (Elias, 1995; Myers, 1996; Duhaime, Searles, Usher, Myers &

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<sup>8</sup> Altman (2004) defines customary, as the customary non-market sector, referring not to the “hunter-gatherer economy or the domestic domain”, but thinks of it as “modern”, utilising both new and old technology (p. 521).

Frechette, 2004, all cited in Trosper, Nelson, Hoberg, Smith & Nikolakis, 2007, p. 228). Other authors stressed the importance of allowing indigenous communities to define the terms of the economic development they intend to pursue (for example Wuttunee, 2004; Smith, 2005). Implicitly, the literature puts forward that the external economic institutions need to consider the way of life of the community, taking into account the different assets of the community (Altman, 2004; Wuttunee, 2004; Lasimbang, 2008; Eversole, 2010). As Cornell (2003) puts it, the successes in the economic development of some American Indian Nations indicate the existence of institutions with a cultural match to these communities (Cornell, 2003).

### **Cultural institutions**

*The recognition of traditional rights must go hand in hand with measures to protect the local institutions that enforce responsibility in resource use (Brundtland Report, 1987, p. 116).*

Many indigenous peoples are known for their land-based culture. In this section, the cultural institutions will include indigenous people's values, practices and traditions pertaining to their relationship with their lands and resources. The institutions to be discussed here cover mostly the internal attributes of indigenous communities. However, the principles of communality and inalienability of the lands of indigenous peoples have also been the subject of formal institutions (i.e. laws or policies, international declarations) to ensure that these lands will remain in the hands of indigenous peoples for the benefit of future generations. A clear example is the Philippines' Indigenous Peoples Rights Act, which declares that the lands of its indigenous peoples are the indigenous community's property and prohibits the sale or any form of transfer of interests, including the destruction of these lands.

Collectively, it is argued that the lands and resources of indigenous peoples form the core of their identity and the basis for specific forms of social and political organisation (Griffith, 2001). Indigenous notion of ownership perceives land not as property but as "Mother Earth", intended for various purposes, ranging from the spiritual, social, cultural significance, to its material uses (Uquillas & Dinerstein, 1997, as cited in Richards, 1997, p. 102; Griffith, 2001). Thus, for indigenous

peoples, “culture manifests itself in various forms, including their ways of life associated with the use of land resources” (United Nations Human Rights Committee, cited in Engle, 2010, p. 165).

This holistic concept of “territory” is said to be in contrast with the non-indigenous economic theories of land, which view landholdings as a commodity, intended as a means of production (Griffith, 2001, p. 29). However, transformations are said to be occurring in this perceived relationship, due to the demands of prevalent times and the needs of indigenous communities (Gatmaytan, 2007; Anderson, Dana & Dana, 2006; Lasimbang, 2008; among others). Despite this, many indigenous communities still embrace this rootedness to their traditional territories (Daes, 2001; Lasimbang, 2008; Engle, 2010).

### ***Communality and inalienability of indigenous lands***

Engle (2010) states that the understanding of land as culture signifies the communal concept of property. This communal concept has been mostly interpreted in international and local court decisions involving some indigenous peoples. In one of the landmark decisions<sup>9</sup> by the Inter-American Court of Human Rights cited by several authors (such as Engle, 2010; Wiessner, 2011), the communal form of collective ownership of lands was taken to mean “ownership which is not centred in the individual but rather in the group and in the community” (Engle, 2010, p. 167). Also, this collective nature of indigenous lands is said to be connected with the concept of inalienability<sup>10</sup> (Gray, 1994, cited in Posey, 1998). This concept of inalienability has been imposed by most States on the lands of their indigenous populations, prohibiting them from transferring the ownership of their lands to non-indigenous individuals or groups (Engle, 2010).

In Altman’s view (2004), the communality and inalienability features of indigenous lands provide “incentive” to ensure that the utilisation of these lands is “ecologically sustainable” for succeeding generations (Altman, 2004, p. 522). But it is argued that these two cultural institutions are more than just incentives, rather, they constitute significant aspects of indigenous landholdings which relate to their

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<sup>9</sup> The Mayagna Awas Tingni Community vs. Nicaragua

<sup>10</sup> Inalienable: Incapable of being lawfully alienated, surrendered or taken away by another (Ortiga, 2004).

very nature and form an integral part of the lives of indigenous communities. As Wiessner (2011) puts it, “cultural preservation and flourishing” lie at the root of the claims to traditional territories of indigenous peoples (Wiessner, 2011, p. 129).

Some authors however raise some issues against this collective or communal concept of indigenous lands. Rowlands (2004) and Gatmaytan (2007) maintain that the issue of inalienability fails to recognise the conflict between collective and individual rights on indigenous lands. In the same regard, Duncan (2003) creates a distinction between individualised forms of tenure versus common property rights in land as to its influence in Australia’s aboriginal economic development. The author argues that the establishment of individual rights to the land that is most likely to lead to the largest gains in welfare for indigenous communities (Duncan, 2003). Similarly, private property rights economists contend that communal rights incur more transaction costs rather than the individualised property rights regime (Williams, 1993; Warby, 1997; Duncan, 2003; Hughes, 2005; Hughes & Warin, 2005, all cited in Venn, 2007).

Yet Duncan (2003) does not categorically proposes that land ownership on indigenous people’s lands be individualised (Duncan, 2003 as cited in Altman, 2004). A similar view is taken by Engle (2010), explaining that the concept of inalienability limits the possible economic arrangements for indigenous lands (Engle, 2010). But the author contradicts herself, saying that the individualisation of ownership would go against native populations’ cultures and undermine their “indigenusness” (Engle, 2010, p. 182).

In a study conducted on the economic implications of inalienable and communal title, Venn (2007) argues that the individualisation of indigenous lands raises ethical and practical issues because of the importance of maintaining the connectedness of indigenous peoples to their lands for their “social, cultural, and spiritual well-being” (Venn, p. 137). In the same light, cultural capital is believed to have no substitutes, and a degree of care is needed in order not to diminish this resource base, which cannot be guaranteed in the case of individualised land tenure (Throsby, 2000). Moreover, in the case of Australia’s indigenous peoples, it

is said that strengthening the communal property rights to land is more likely beneficial to their long-term well-being (Venn, 2007).

Finally, other authors point out that collective tenures present certain problems in practice, such as misunderstandings amongst community members leading to divisiveness within the community, and personal interests prevailing over community interests (Colchester, MacKay, Griffiths & Nelson, 2001).

### ***Indigenous way of life and values***

“Culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples” (United Nations Human Rights Committee, cited in Anaya & Williams, 2001, p. 51). Indigenous communities have survived distinctively within their environment as a result of their unique systems of managing their lands and resources, embodying the principles of sustainability (Inter-Commission Task Force on Indigenous Peoples, 1997). This Task Force on Indigenous Peoples illustrates that indigenous communities possess an environmental ethic, carrying specific values that revere nature, exercise restraint in resource exploitation, and promote cooperation and cross-generational communication with concern for the well-being of future generations (Inter-Commission Task Force on Indigenous Peoples, 1997).

It is often claimed that the right to occupy and use the lands and resources of indigenous peoples is fundamental to their right to exist as culturally distinct peoples (Engle, 2010). Indigenous territory is valued as an integrated resource that sustains the community and provides an opportunity for present and future generations to live (Griffith, 2001). Accordingly, it is conceived that the basis of the claims of indigenous peoples to their lands lie in the realm that their culture has to thrive and be nurtured, for them to survive as a people (Thornberry, 2002, as cited in McGoldrick, 2007; Wiessner, 2011). In the view of an anthropologist, the need to survive by indigenous peoples is not used in a materialist sense: “*comunalidad*”<sup>11</sup>

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<sup>11</sup> A term which signifies “communal ways of life” (Meyer, 2010); or what Luna (2010), describes as the “epistemological notion that sustains an ancestral, yet still new and unique, civilising process, one which holds back the decrepit individualisation of knowledge, power, and culture” (p. 86).



is a way of understanding life as being permeated with spirituality, symbolism and a greater integration with nature” (Luna, 2010, cited in Wiessner, 2011, p. 128).

Moreover, cultural values predominant in many indigenous communities, such as reciprocity of goods and labour, equity and cooperation, strengthen cultural essence and reinforce kinship ties (Radcliffe & Laurie, 2006; Schwartzmann & Zimmerman, 2005; Richards, 1997). With this, some authors challenge that the foundation of institutions must be compatible with the values of the indigenous group they serve (Eversole, 2010; Chapeskie, 1995, as cited in Schwartzmann & Zimmerman, 2005). It was not however clear what type of institutions is referred to by these authors. In this regard, other authors argue that the formal institutions and the institutional mechanisms affecting indigenous people’s territories should consider the distinct relationship of these peoples with these territories and the communal values revered still by these communities (Wiessner, 2011; Smith, 2005; Daes, 2001).

In conclusion, it is widely accepted that culture plays a pivotal role in all facets of indigenous affairs, hence, the importance to understand the linkages and interdependence amongst the political, economic and cultural aspects in indigenous people’s lives (Lasimbang, 2008; Cornell, 2006; Cornell & Kalt, 2003; Loomis, 2000; Anderson, 1997). Despite the insistence of looking at the values of indigenous peoples, the studies cited have neglected to consider how these values affect the optimum use of the traditional territories of indigenous communities. Moreover, the economic and cultural diversity of indigenous communities lead to local circumstances which will require local solutions matched with local aspirations (Altman, 2004). Thus, cultural institutions, together with political and economic institutions will be examined in this study in relation to their impact in enabling, restricting, or shaping the optimum use of indigenous territories.

## **2.4. Conceptual framework**

The literature suggests that to achieve optimum use of the traditional lands and resources of indigenous peoples is not only influenced by the grant of formal tenure over these lands and resources. Institutional and other factors impact the

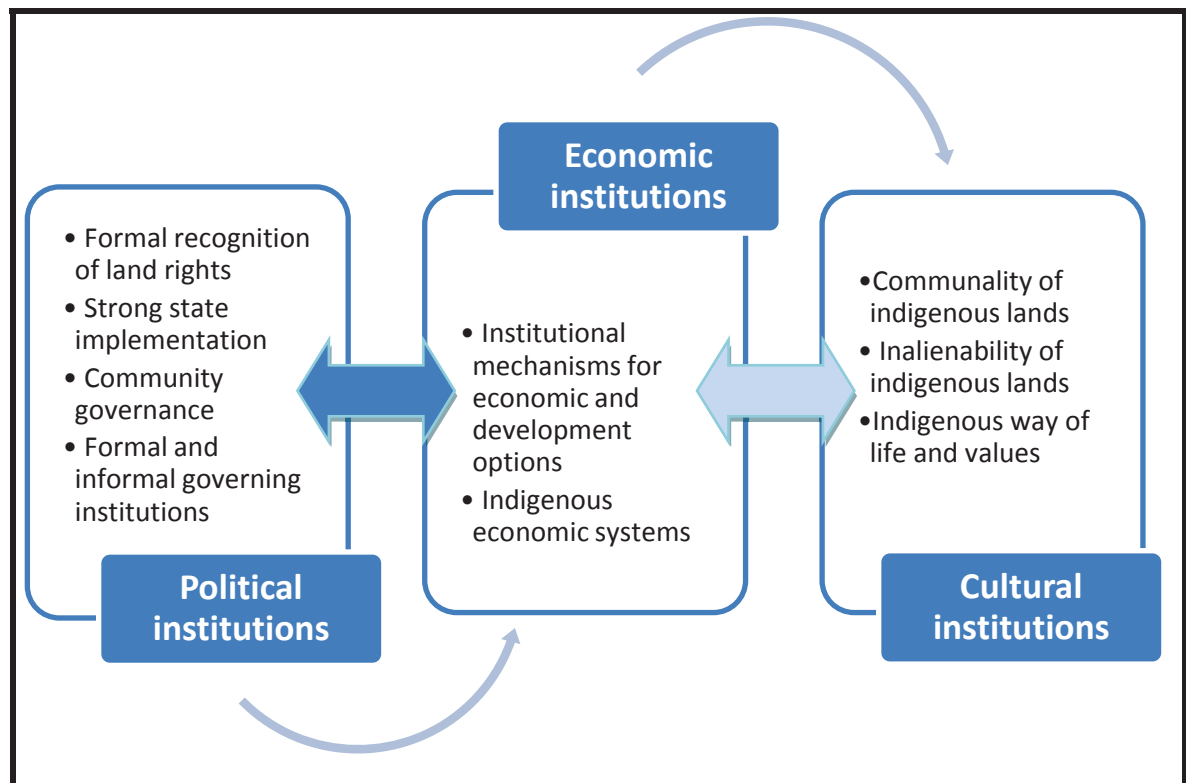


way indigenous peoples have gained optimum use over their traditional territories. These factors were classified into three main themes above: (i) political, (ii) economic, and (iii) cultural (Figure 1). These factors are deemed to be interconnected.

Four key political institutions have significant impact in the exercise by indigenous peoples of their land rights – formal titling or recognition of the rights to the traditional lands and resources of indigenous peoples; strong State policies that enforce and support the land rights of indigenous communities; indigenous community's governing organisations; and traditional governing institutions complemented with formal governing institutions. The literature highlights that grant of ownership or rights to use traditional lands and resources of indigenous peoples will be meaningless without State institutions and external support that facilitate the implementation of their land rights and the development of these lands and resources. Transformations in tribal leadership or community governance are seen as necessary, linking it with the economic aspect, to bring the kind of development which is chosen and beneficial to the community. Thus, while the importance of indigenous governance institutions is seen, formal governing institutions would constitute and form part of the broader policy support for the development of indigenous lands.

Two key economic institutions can be considered to enable indigenous communities to develop their lands, that is, institutional mechanisms for economic or development options for indigenous lands and resources, and the indigenous economic systems. The literature noted treaty arrangements that provide a mechanism of support (technical and financial) to develop indigenous lands. Partnership arrangements with non-indigenous entities were also mentioned, but with conditions to protect indigenous land owners and their lands/resources, such as regulations for community consultation and privileges. Another factor that came through, though not clearly described in the literature, is the indigenous economic systems. These indigenous economic systems relate to the way of life of indigenous peoples, as discussed in the cultural factors.

Three key cultural factors were depicted to have influence in the use of indigenous territories: the communal nature and the inalienability feature of the use and rights over their lands, and the indigenous way of life and values of indigenous peoples. While some authors view these features as restrictive in allowing the full use of traditional territories of indigenous peoples, some authors view that these factors create an incentive that will guarantee the intergenerational sustainability of these territories. Furthermore, the literature explicates that indigenous peoples value their traditional territories not in a materialist sense, but rather, it is the source of their very existence as a people. There is also a need to look into the traditional values such as reciprocity, kinship and communal ties to see their possible linkages in the utilisation by indigenous peoples of their territories.



**Figure 1. Conceptual Framework**

The above conceptual framework (Figure 1) will be applied to data collection and analysis regarding the research question in this study: “what are the factors that influence indigenous people’s optimisation of use of their traditional lands and resources?” While the establishment of effective political institutions

would allow economic institutions and opportunities for development in indigenous lands, the literature suggests that political and economic institutions require a cultural match with the indigenous community. Above all, these three factors are inter-connected, as the political, economic, cultural and spiritual rights of indigenous peoples cannot be separated and are deemed necessary for a complete understanding of the land rights of indigenous peoples.

## **CHAPTER III**

### **THE PHILIPPINE CONTEXT REGARDING LAND RIGHTS FOR INDIGENOUS PEOPLES**

#### **3.1. Introduction**

In this Chapter, the situation surrounding the indigenous peoples and their land rights in the Philippine context is presented. State recognition of the rights of Filipino indigenous peoples to their ancestral domains has been said to be “critical in resolving the intrusion into their domains by migrant non-indigenous Filipinos, with the Philippine government deemed as an indispensable party” to this incursion (Flavier, 1997, p. 12, as cited in Supreme Court of the Philippines, 2000).

This Chapter starts with an overview of the Philippine land territory and resources, including the land system in the country. The Philippine policy, the Indigenous Peoples Rights Act<sup>12</sup> which gives recognition to the different rights of Filipino indigenous communities will be explained. Throughout this Chapter, the traditional lands and resources of indigenous peoples will be referred to as ‘ancestral domains’, the term used under the law to refer to the traditional lands and resources of indigenous communities. Finally, a detailed description of the issues and concerns found in the literature before and after titling of indigenous people’s lands is presented.

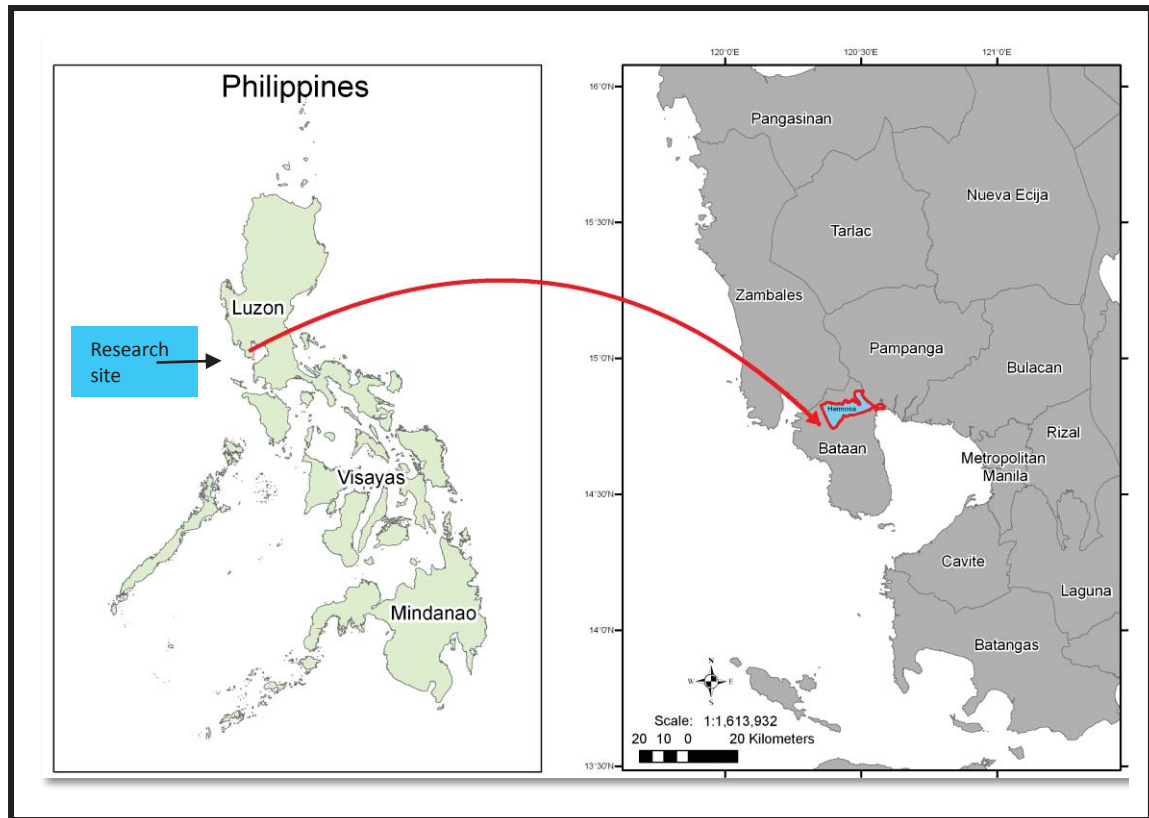
#### **3.2. The Philippine land mass and resources**

The Philippine archipelago lies above the equator in Southeast Asia, between latitude 4° and 21° north and longitude 116° and 127° east. It is composed of 7,107 islands, with a total land area of 299, 404 square kilometers (Moog, 2006) (See Figure 2). The Philippines’ physical features are composed of a rugged group of islands consisting of mountains, plains, bays and lakes, rivers and waterfalls, valleys and volcanoes (Zaide, 2010). It has a tropical marine climate with wet and dry seasons. The country is divided into three island groups: Luzon, Visayas and Mindanao, with these groups divided into seventeen regions, eighty provinces, one hundred thirty eight cities, 1,496 municipalities and 42,025

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<sup>12</sup> Republic Act No. 8371, known as “The Indigenous Peoples Rights Act of 1997”.

barangays<sup>13</sup> (National Statistical Coordination Board, 2010). As of 2005, Filipino indigenous communities reside in at least sixty three of the country's provinces (Adamat, 2005). Under the Indigenous Peoples Rights Act, indigenous people's areas have been named into seven ethnographic regions, to distinguish them from the country's official tally of seventeen regions.



**Figure 2. Map of the Philippines.**

Source: Alan Moscoso, University of the Philippines-Visayas, 2011<sup>14</sup>

### ***An overview of the Philippine land system***

The Philippine land administration is governed by various laws, regulations, procedures and processes. As a consequence, the Philippine land system is governed by multiple institutions and administered by various organisations. Notwithstanding these diverse land laws, the Philippine Constitution provides the general framework for the disposition of its lands, applying the concept of *jura regalia* or the Regalian Doctrine. This doctrine as a concept was first introduced by Spain during the 16<sup>th</sup> century when the Philippines was then its colony (Supreme

<sup>13</sup> Provinces, cities, municipalities, and barangays comprise the political structure of the Philippines, with the province considered as the largest unit (National Statistical Coordination Board, 2010)

<sup>14</sup> Alan Moscoso drafted Figures 2 & 9 specifically for this thesis.

Court of the Philippines, 2000). The Regalian doctrine considered all untitled lands in the Philippines under the control of the Spanish Crown which passed the same to the US colonial government as public lands before transferring it to the Philippine State, after its independence (Cuasay, 2003). Under the Philippine system of land ownership, lands are generally classified as private or public (Philippine Constitution, 1987). Private lands are lands that have been segregated from the public domain by any grant from the State. Public lands refer to all lands that have not been acquired by private persons or entities and are generally classified as agricultural or non-agricultural lands. Specifically, lands of the public domain are categorised as agricultural, forest or timber, mineral lands and national parks (Philippine Constitution, 1987). Only lands identified as agricultural may be declared as disposable and eligible for private ownership (Philippine Constitution, 1987).

The alienable lands of the public domain in the Philippines can be subjected to two types of titling: judicial or administrative. Judicial titling is made through application with the courts having territorial jurisdiction over the lands applied for; while administrative titling is coursed through the Philippine's Department of Environment and Natural Resources (DENR). For indigenous peoples, the titling process is administered by the National Commission on Indigenous Peoples. Once titled, these lands are placed under the Torrens system of registration. Essentially, the Torrens system requires the issuance of an official certificate of title evidencing the ownership of the property described therein, in the name/s of the person/s named in the certificate, and subject to such liens and encumbrances as thereon noted or the law warrants or reserves (Noblejas, 1992). In the case of indigenous land titles, the title is in the name of the indigenous community (see Appendix Two for copy of a Certificate of Ancestral Domains Title).

### **3.3. The Philippine Indigenous People's Land Rights**

*"You ask us if we own the land. And mock us, 'Where is your title?' Such arrogance of owning the land when you shall be owned by it. How can you own that which will outlive you?" – Macliing Dulag, Kalinga tribal leader, Northern Cordillera, Philippines*  
Source: Legal Rights and Natural Resources Centre, Kasama sa Kalikasan, 2001

## **A. Understanding the Philippine Indigenous Law**

### ***Indigenous Peoples Rights Act: its origins and salient features***

Over the years, several indigenous communities and various support groups have demanded recognition of the rights of indigenous peoples in the Philippines. These groups were successful in moving for the inclusion of a section on indigenous people's rights in the 1987 Philippine Constitution (Rico, 2007). The Constitution enunciated principles for State mandated protection of the rights of indigenous peoples to their ancestral domains, including the applicability of customary laws in determining the extent and ownership of these domains. Later, a campaign for the enactment of the law followed, which resulted in the enactment of the Indigenous Peoples Rights Act or Republic Act No. 8371 (Bennagen, 2007; Rico, 2007). The Indigenous Peoples Rights Act (IPRA) was a result of six regional consultations and one national consultation with indigenous peoples across the country (Supreme Court of the Philippines, citing Flavier, 1997). It is considered a law made by the indigenous peoples themselves because of their active participation in its preparation (Rico, 2007).

The law enunciates four key rights of indigenous peoples: 1) rights to their ancestral domains; 2) rights to self-governance and empowerment; 3) right to social justice and human rights; 4) right to cultural integrity. It also created the National Commission on Indigenous Peoples as the government office mandated to implement the policies and programs for indigenous peoples.

### ***Indigenous Peoples in the Philippines***

According to Hedman & Sidel (2000), there is a "notable absence in Philippine history of a pre-colonial, indigenous civilisation" — those identified today as Filipinos (Hedman & Sidel, 2000, p. 141). They highlighted however the assertion in one key elementary Philippine textbook that the Aytas or Negritos were the first people to have come to the Philippines (Carmona-Potenciano & Battad, 1987, as cited in Hedman & Sidel, 2000). The focus of the case study in this research is the Ayta community of Pastolan, Hermosa, Bataan, Philippines. The Aytas of Pastolan is one among several Ayta indigenous communities residing in

the municipality of Hermosa. Ayta indigenous communities also reside in other parts of the province of Bataan.

There are considered to be 110 ethno-linguistic tribes in the Philippines, with the Ayta indigenous group being one of them (Rex Bookstore & National Commission on Indigenous Peoples, 2000). Of the Philippine population of 94 million in 2010, indigenous peoples represent approximately 15% of the country's population (National Statistical Coordination Board, 2011; Australian Government Aid, 2011). From this 94 million, the Aytas number about 140,591 individuals, and they are settled in specific Regions within the country (Rex Bookstore & National Commission on Indigenous Peoples, 2000).

Filipino indigenous peoples are considered among the poorest and most disadvantaged in Philippine society—illiteracy, unemployment, and poverty incidence are much higher among them than the rest of the population (Asian Development Bank, 2007; International Fund for Agricultural Development, n.d.). In 1997, the Philippine government passed Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of the Philippines (IPRA). IPRA conferred to indigenous peoples the right to acquire formal recognition of ownership and possession over their ancestral domains and ancestral lands.

The IPRA defines indigenous peoples as referring to —

a group of people or homogenous societies who have continuously lived as organised community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilised such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits' (RA No. 8371, 1997).

The same law also defines indigenous peoples as those groups of people who have resisted political, social and cultural inroads of colonisation, or those who have retained their own social, economic, cultural and political institution though they may have been displaced in their traditional domains (RA No. 8371, 1997). Previously, in other laws, indigenous peoples were referred to as tribal Filipinos, cultural or ethnic minorities, or Non-Christian Filipinos.



***The ancestral domains and the indigenous concept of ownership under the Indigenous Peoples Rights Act (IPRA)***

Pursuant to IPRA, indigenous people's lands are the private, but community property of indigenous peoples, and therefore they belong to all generations (Republic Act No. 8371, 1997). Indigenous ownership of the lands precedes the Regalian doctrine on land ownership, hence they are presumed to have never been part of the public domains. The indigenous concept of ownership encompasses ancestral domains and sustainable traditional resource rights (Republic Act No. 8371, 1997). The Indigenous Peoples Rights Act gives a definition of ancestral domains:

Ancestral domains refer to all areas generally belonging to indigenous peoples comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by indigenous peoples, by themselves or through their ancestors, communally or individually since time immemorial, and which are necessary to ensure their economic, social and cultural welfare.

It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by indigenous peoples but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of indigenous peoples who are still nomadic and/or shifting cultivators.

Thus, ancestral domains include not only the physical but the spiritual and cultural bonds of indigenous communities to these areas (RA No. 8371, 1997). In this regard, the law prohibits the disposition and destruction of these ancestral domains (RA No. 8371, 1997). To formally recognise the rights to the ancestral domains, a certificate of ancestral domain title is given in the name of a specific indigenous community, after complying with the procedures laid down by the government.

The Indigenous Peoples Rights Act affirms that indigenous peoples have the rights of ownership, including the right to develop their ancestral domains, among

others. Included in this right to develop their domains, indigenous communities have the right to a share in the benefits from the utilisation and development by outside entities of their land and resources (RA No. 8371, 1997). In addition, any proposed development or utilisation of the natural resources by an outsider requires the free and prior informed consent of the concerned indigenous community. The consent comes in the form of a certification precondition that contains either the free and prior informed consent of the affected indigenous community or their rejection of any proposed arrangement for the use or access to their domains.

### **B. The Filipino indigenous people's land rights: examining the law and realities in practice**

The struggle for the recognition of the land rights of Filipino indigenous communities spawned decades ago. Several laws have been enacted since the 1960s seeking to give protection and recognition to their rights. However, laws enacted prior to Republic Act No. 8371 have not fully addressed the long-standing claims of indigenous peoples for recognition of rights as indigenous peoples, including their rights to their ancestral domains.

A year after the passage of the IPRA, its legality was questioned before the Supreme Court of the Philippines.<sup>15</sup> As a result, the law was not enforced until the Court resolved its constitutionality in the year 2000. After the Supreme Court's pronouncement, work for the Philippine government's Commission for Indigenous Peoples (NCIP) began. NCIP passed several administrative orders to facilitate the titling process of an expected 8-10 million hectares of ancestral domains/ancestral lands belonging to the 110 ethno-linguistic tribes nationwide (Cuasay, 2003).

There are two types of title provided under the IPRA: the Certificate of Ancestral Domain Title (CADT), and the Certificate of Ancestral Land Title (CALT). The basic distinction between the two is that the certificate of ancestral domains title pertains to and is applied in the name of the ethno-linguistic tribe, while a

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<sup>15</sup> Case was entitled "Cruz and Europa versus Secretary of Environment and Natural Resources, Secretary of Budget and Management and the Chairman and Commissioners of the National Commission on Indigenous Peoples".

certificate of ancestral lands title is named after an individual or clans or families whose rights over these ancestral lands have already been devolved by their tribe (RA No. 8371, 1997). Application for these titles is filed with the National Commission on Indigenous Peoples.

To facilitate the development and protection of ancestral domains, an Ancestral Domains and Sustainable Development and Protection Plan (ADSDPP) is prepared by the indigenous community with the assistance of the NCIP and non-government organisations. This development and protection plan embodies the goals and objectives, policies and strategies of indigenous peoples for the sustainable management and development of their ancestral domains and all their resources. It may also include indigenous knowledge systems and practices (NCIP, 2004a). This plan is regarded as the blueprint of an indigenous community's total development plan (NCIP, 2004b).

Despite IPRA's impact in asserting recognition of indigenous people's rights over their ancestral domains, several authors posit the difficulties and antagonism of some indigenous communities in its application (Gatmaytan, 2007, 2006; Molintas, 2004; Castro, 2000). Gatmaytan (2007) and Castro (2000) contend that IPRA has caused disunity amongst indigenous communities (Castro, 2000). Some of the most predominant concerns on the enforcement of the rights to the ancestral domains of indigenous peoples will be illustrated.

For one, the provisions of the IPRA are said to have created "generalised notions" of indigenous peoples, indigenous tenure and indigenous cultures (Sanz, 2007, p. 131; also mentioned by Gatmaytan 2007; Malayang, 2001; Novellino, 2000). However, the authors argue that in reality, indigenous communities may have differences in land tenure, which is not necessarily limited to the communal land tenure espoused by the IPRA (Gatmaytan, 2007, 2006; Sanz, 2007; Castro, 2000). Second, the State continues to deny the sovereignty of indigenous peoples to make such rights effective, for instance there is a difference in ownership between "land surface and sub-surface resources", where the State retained its rights over sub-surface minerals (Cuasay, 2003, p.62). In a similar vein, there is still a need for the Philippine government to reconcile its other existing policies

and interests which seem to contradict State policies giving recognition to the rights of indigenous communities (Capistrano, 2010; Novellino, 2000). By way of example, the weakening of the right to prior and informed consent of indigenous communities, to accommodate the government's policy on mining, among others, has been cited (Capistrano, 2010). Finally, problematic issues arising prior to and after titling of ancestral lands seem to negate the spirit and the noble intentions of the IPRA. These problematic issues will be taken up in the following section.

### **C. Indigenous Peoples Rights Act: some issues and concerns *ex ante* and *post ante* to titling of indigenous lands<sup>16</sup>**

The indigenous law has been considered as a vital instrument in paving the way for the recognition of the rights of Filipino indigenous peoples over their ancestral domains. Security of tenure conferred by the IPRA prevented further displacement of many indigenous communities. Likewise, it created an incentive for certain indigenous communities to utilise the land and its resources in a sustainable manner (Capistrano, 2010; Dressler & McDermott, 2010; Suminguit & Burton, 2000). For example, the Tagbanua indigenous community of Coron, Palawan, after being given the title in 2004, opened their ancestral waters and collected fees from tourists, while at the same time, part of the community's management strategy is the observance of the sacred and restricted areas within these ancestral waters (Mayo-Andal, Dalabajan, & La Viña, 2006; Sampang, 2006).

In another example, being indigenous helped the Kankanaey and Bago indigenous community of Bakun, Benguet to gain access to these lands and resources and to negotiate the use of these assets with outsiders (Schippers, 2010). To illustrate, the Bakun community used their ancestral domain title to create a better position in negotiating with entities wanting to operate in their domains (Schippers, 2010). In addition, Dressler & McDermott (2010) explicate that the recognition of land rights of indigenous communities has strengthened their confidence and awareness of political and administrative processes. In this case, Dressler & McDermott (2010) argue that this confidence enabled indigenous communities to establish linkages with various organisations that may be tapped for needed resources and advocacy of their rights.

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<sup>16</sup> See Table 2, p. 51 for the summary.

Nonetheless, despite the recognised gains from the IPRA, actual experiences of indigenous communities are instructive in analysing the law's relevance and impact over indigenous people's land rights. In several case studies undertaken after the passage of this law, Castro (2000) and Gatmaytan (2007, 2006) have pointed out that IPRA failed to reflect on the different notions of territoriality of indigenous communities. Thus, the common proposition under the IPRA on tenurial arrangements has faced challenges from certain indigenous communities (Leonen, 2007). Some indigenous communities have become critical of the communal titles issued pursuant to the law, and would thus opt not to apply for the ancestral domains title (Gatmaytan, 2006; Castro, 2000).

However, the criticism of the communal nature of ancestral domains has overlooked one of the primordial intents of the Indigenous Peoples Rights Act — to preserve ancestral domains for future generations of indigenous peoples. Moreover, the IPRA does not reject individualised tenure practices of indigenous peoples, rather, it merely gives formal recognition on the rights of indigenous communities to their ancestral domains thru the grant of a formal land title in favour of a particular ethno-linguistic tribe. In fact, these authors fail to cite a particular situation that shows that the land title prevented an indigenous community from exercising their actual land use practices. Indeed, if IPRA was enacted to give land titles to individual owners, then there would be no distinction between the regular title issued pursuant to the Philippine general land law and the IPRA's ancestral domains title. Essentially, a certificate of ancestral domains title is a mere evidentiary paper, and therefore, the rights of the community are considered to exist regardless of the title (Dumas, Vergara, & Carpentero, 2009, citing a Talaandig indigenous community leader).

Another weakness raised against the Indigenous Peoples Rights Act is that the processes stipulated in the law for claiming rights over ancestral domains/ancestral lands are said to be bureaucratic and burdensome for indigenous peoples (Novellino, 2000). This is due to the usage of Western terminologies and methods prescribed by the implementing government agency (Novellino, 2000). For example, the State requires geodetic surveys in delineating ancestral domains/ancestral lands which require precise methods, as opposed to

the use of traditional landmarks and more “fluid” determination by indigenous peoples (Malayang, 2001, p. 665, citing Van der Veur, 1982). Additionally, Gatmaytan (2007) asserts that the “simplicity and romantic assumptions” under the IPRA complicates its invocation and contributes to the difficulties in its implementation for indigenous communities (Gatmaytan, 2007, p. 21). However, the literature lacks empirical backing as it fails to show the difficulties experienced by indigenous communities during the titling process.

Also, it is noted that some ancestral domains are not contiguous areas, thus, demarcation of boundaries may be difficult and the possibility that internal and external conflicts may arise, creating a complicated process (Malayang, 2001). That notwithstanding, the authors pointing out the complexities of the titling process ignored the fact that these procedural requirements are meant to ensure the integrity of an ancestral domains title. The credibility of the title is necessary to protect it from being questioned or nullified before any courts or administrative body. Otherwise, it would render the title worthless and prone to challenges which are disadvantageous to indigenous communities, considering that they often lack the resources to possibly defend their title.

Equally, studies show that there are varying reports on the effectiveness of the organisation [NCIP] tasked to carry out the provisions of the IPRA. Gutierrez & Borrás (2004) argue that weak institutions established by the State to implement the rights of Indigenous Peoples drag down IPRA’s enforcement and hold back the law’s promise and ideals. A member of the Matigsalog-Manobo community of Upián expressed that there should be a “follow-up policy” after the IPRA, a course of action that addresses indigenous people’s needs after title is given to them (Dumas, Vergara, & Carpentero, 2009, p. 5). Moreover, in a case study conducted by the same authors, an NCIP informant admitted that the organisation played a very “passive role” in the implementation of the rights of indigenous peoples (Dumas et al., 2009, p. 5).

In addition, there are reported incidents showing that the NCIP exerted their influence in inappropriate ways, pushing indigenous groups into commercial arrangements (Dumas et al., 2009). This is elucidated further in a study conducted

on the role of the NCIP in intervening for indigenous peoples regarding utilisation arrangements on their ancestral domains. This case study revealed that the NCIP coerced one indigenous community in South Cotabato to give their consent to a mining company; or in another instance, the NCIP created a new organisation to facilitate a dialogue between the indigenous group and a mining company, disregarding the other members of the Mangyan indigenous community of Oriental Mindoro who are not members of the newly created organisation (Manuel, 2004, as cited in Dumas, et al., 2009).

Similarly, a case study examining the free and prior informed consent revealed some abuses against this preferential right of indigenous peoples (Cariño, 2005). This study concludes with three points which all related in undermining the right to free and prior informed consent of indigenous peoples. First, there is allegedly a “systematic failure” by mining companies to comply with the rule on prior consultation with indigenous communities (Carino, 2005, p. 5), where some NCIP staff acted in “collusion” with these companies (Colchester & Ferrari, 2007, p.12). Second, there is an absence of adequate information to guide the decision-making of indigenous peoples or the use of “tame alternatives” to seemingly comply with the rules, such as placing another indigenous community from a different area to file an ancestral domain claim where mining operations would be made. Thirdly, there has been use of bribery and coercion in the process (Cariño, 2005, p. 37). These documented experiences of indigenous peoples reveal the failings of the NCIP in its mandate to protect and enforce the rights of indigenous peoples over their ancestral domains. Still, such case studies did not indicate whether these indigenous communities have ancestral domains title, and if this title may serve to protect the land rights of these communities.

Another perspective holds that the issuance of a tenurial instrument does not guarantee that all aspects of indigenous resource assets or management will be recognised. Neither does it ensure indigenous knowledge systems and processes will be respected (Leonen, 2007). Moreover, it is said that the benefits derived from these land rights are not always shared equitably. Often, indigenous elites or influential members of the community have more access to these benefits (Dressler & McDermott, 2010; Leonen, 2007). As a corollary, there are instances



where tribal leaders have become “tribal dealers”, negotiating away some of the rights of the community in exchange for some personal gain (Castro, 2000, p.43). While the existence of the requirement of free and prior informed consent assumes that the rights of indigenous communities would be protected and would enable them to share in the benefits, however, the experiences of some of these communities would prove otherwise (Sanz, 2007; Castro, 2000). Thus, with the existence of the State policy on ancestral domains title and the rights under the title (formal institutions), enmeshed with the dynamics of the informal institutions of the community (tribal leadership’s role), the influence on each other of these formal and informal institutions is evident. Hence, to understand this influence, in so far that it relates to the optimisation of use of the ancestral domains of indigenous peoples, necessitates looking into the formal and informal institutions that regulate, facilitate and shape the rights to ancestral domains of indigenous communities, which this study seeks to examine.

Furthermore, the presence of non-indigenous settlers or private vested interests has contributed to one of the most serious problems for many indigenous communities in the Philippines (Wenk, 2007; Sanz, 2007). These private vested rights include private titles, government issued license/permit holders, State reservations and other property rights owners (Vidal, 2004). Vidal (2004) argues that IPRA tends to give protection to State and private interests’ control over the domains, thereby weakening the rights of indigenous communities to these domains. The same author delves further, stating that the Philippine land tenure and natural resource policy reveals an overlap of different and often competing interests (Vidal, 2004). For example, some protected areas or conservation sanctuaries are declared by the government on the ancestral domains of indigenous peoples. This thus impacts on the control and access by indigenous peoples over their domains (Novellino, 2000). Additionally, the literature did not make clear if these sanctuaries or protected areas are maintained by indigenous communities, since the IPRA requires that management of these areas be with the full participation of the concerned indigenous community.

Finally, regardless of the ancestral domains title, many indigenous peoples still lack access to economic and political resources to develop their lands



sustainably (Dressler & McDermott, 2010). Gatmaytan (2007) discusses this issue further, stating that IPRA did not take into account livelihood insecurity in most indigenous communities. The experiences of land tenure reform programs for other landless Filipinos reveal that livelihood issues are crucial in retaining the lands in the hands of its beneficiaries (Gatmaytan, 2007; Borras & Franco, 2005). For these challenges raised specifically after the issuance of the ancestral domains title, this research is therefore timely, to ascertain the reasons behind these challenges through the actual experiences of indigenous communities.

**Table 1. Summary of issues prior to and after titling of ancestral domains**

<u>Prior to titling</u>	<u>After titling</u>
<p><i>Bureaucratic and burdensome processes.</i> Titling processes prescribe Western methods and are difficult to follow.</p> <p><i>Non-contiguous areas.</i> Private titles exist inside ancestral domains, and the law requires that these areas be segregated from the title, causing non-contiguity of areas within ancestral domains. This also results in difficulties in the management and utilisation of the ancestral domains.</p> <p><i>Internal conflicts.</i> There may be disagreements between members of the indigenous community on areas to be covered by the title.</p> <p><i>Conflicts with private vested interests.</i> Holders of private titles or licenses sometimes oppose the titling of ancestral domains.</p> <p><i>Existing conservation sanctuaries or protected areas.</i> Indigenous communities do not fully participate in the management and utilisation of protected areas falling inside their ancestral domains.</p>	<p><i>Passive role of the implementing agency.</i> The NCIP often fails to create a follow-up policy that responds to the needs of indigenous communities after the CADT is awarded.</p> <p><i>Non-compliance on the requirement of free and prior informed consent.</i> Several examples can be cited: abusive role of the NCIP in its intervention to facilitate compliance on the FPIC process; tribal leaders becoming tribal dealers in agreeing on utilisation arrangements with outsiders; private companies circumventing the FPIC process.</p> <p><i>Lack of economic and political resources.</i> Most indigenous communities lack financial assets to make their lands productive. Most indigenous communities also have difficulties in asserting their authority over their ancestral domains against outsiders.</p> <p><i>Presence of private-vested interests.</i> Private rights inside ancestral domains hinder its full utilisation by indigenous peoples.</p> <p><i>Presence of conservation sanctuaries or protected areas.</i> Some indigenous communities are not granted an active part in the control and management of these protected areas.</p>

	<p><i>Non-recognition of indigenous knowledge systems/processes. Due to lack of resources, some indigenous communities are unable to implement their own systems/processes.</i></p> <p><i>Inequitable sharing of benefits/resources between members of the community. Influential members of the community sometimes have more access to benefits.</i></p>
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Source: Author

### 3.4. Conclusion

The Philippine indigenous people's pursuit for the full realisation of the rights over their ancestral domains continues to be embittered by the realities in practice and the restrictions and failings in the implementation of the law that sets forth these land rights. The Indigenous Peoples Rights Act has been acknowledged to have provided the means for the recognition of the rights of Filipino indigenous peoples. However, despite the significant ideals and intentions posited by the IPRA, the law suffers tremendous challenges in its implementation. Conflicts with government and private interests are considered as one of the pressing problems for some indigenous peoples. Moreover, the lack of a follow-up policy that addresses the needs of indigenous peoples after grant of title contributes to the concomitant failure to derive benefits from their ancestral domains. Unfortunately, the primary government agency tasked to enforce the provisions of the IPRA is regarded as maintaining a passive stance or acting in the interests of outside business organisations (Dumas, Vergara, & Carpentero, 2009; Colchester & Ferrari, 2007; Cariño, 2005).

As a consequence of the failure to meaningfully implement the IPRA, many Filipino indigenous people's aspirations to achieve optimum use of their lands remain an illusion not only within the realms of the government's agenda, but also within the lives of indigenous peoples, despite the issuance of a formal title evidencing their rights to their ancestral domains. The concerns raised above impact on the ability of Filipino indigenous peoples to maximise the use of their ancestral domains. Thus, this study seeks to find answers to the research question

“what are the factors that influence indigenous people’s optimisation of use of their traditional lands and resources?” With these aims, the research therefore endeavours to contribute to the body of existing knowledge that will further improve the utilisation of indigenous people’s lands within the Philippine context.

## **CHAPTER IV METHODS AND PROCEDURES**

*Qualitative inquiry cultivates the most useful of all human capacities—the capacity to learn from others.*

Michael Q. Patton, 2002, p. 1

### **4.1. Introduction**

In this Chapter, the methodology for this research is outlined. This study follows a qualitative case study approach, in light of the research gaps noted in the Philippine context regarding “how can indigenous peoples be supported after the grant of a formal tenure instrument?” To start with, the philosophical and motivating factors that moved me to carry out this research will be shared, presenting the context of this study and possible bias of the researcher. Detailed descriptions of the processes undertaken before, during, and after fieldwork are discussed. Field work elicited some reflective insights, and these will be disclosed as additional information for this research.

### **4.2. Researcher’s background**

*The good fight is the one we fight because our heart asks it of us. — Paulo Coelho*

This study is, admittedly driven by a personal interest that started in 2003. At that time, I was a legal officer assigned with the Presidential Task Force<sup>17</sup> to respond to emergency situations affecting indigenous peoples across the country. This Task Force was instituted on a temporary basis, as it was formed to assist the National Commission on Indigenous Peoples in the early stages of implementing the Indigenous Peoples Rights Act. Its work was later transferred to the NCIP’s strategic team quick response unit. It was during this period, from 2003 to 2006 that I witnessed the challenges faced by different indigenous communities all over the country and was touched by their life stories.

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<sup>17</sup> Task Force 63: inter-agency body established in 2001 and led by the Philippine President, with members from different government departments, i.e., National Commission on Indigenous Peoples, Department of Environment and Natural Resources, Department of Agrarian Reform, Department of National Defense, and Department of Justice.

The work entailed receiving reports regarding personal threats on the lives, or evictions from the ancestral domains, or the imminent or actual loss of the resources of indigenous communities. I had to meet with indigenous groups whose houses were demolished (in one case, an entire village) or who were forced to leave their lands because of threats of personal harm, or whose relatives' lives were taken because of conflict within their lands. The formal land title (CADT) was seen as a viable solution to such threats, by the government and the indigenous community affected. The title was meant to secure for them ownership of their lands and resources. The first step of securing the title has been achieved by most indigenous communities. Nonetheless, poverty incidence remains high for Filipino indigenous communities than the rest of the population (IFAD, n.d.).

In 2007, I moved to another government office, doing purely legal work representing the government, with some duties relating still to defending the rights of indigenous communities to their lands. For the past eight years and so, I have visited and lived with some indigenous communities and heard their stories. The Philippines' indigenous peoples want to make the most out of their ancestral lands, but, there seems to be more questions now about the impact of a formal title on their aspirations as a people. This research thus seeks to present the story of an indigenous community whom I have worked with before, in their application for a formal title. Through their voices, it is hoped that their stories would inform the broader environment of the rights of indigenous communities and their aspirations as people.

#### **4.3. Qualitative Case study Research Design**

The decision about method rests with the research question, which should guide the research method and not vice versa (Flick, 2007). Qualitative research which “draws on an interpretative orientation that focuses on the complex and nuanced process of creation and maintenance of meaning”, directed the course of this study (Liamputtong & Ezzy, 2005, p. 2). Since the subject of this study's inquiry relates to factors that influence the optimum use of indigenous lands, various empirical data were relied upon to gain an in-depth understanding of the focus of the study—personal experience, interview, observational, introspective,

and visual texts (Denzin and Lincoln, 1992). The flexible nature of this approach was vital for this study, as it allowed the research to be fluid, using different methods, depending on the fieldwork circumstances.

A qualitative case study was chosen, investigating the experiences of the Ayta indigenous community of Pastolan and their land tenure instrument. A case study approach is considered the “preferred strategy” when how or why questions are being raised, and was therefore suited for this study, as the subject of inquiry is to determine how indigenous peoples can be supported to gain maximum benefit from their traditional territories (Yin, 2003). Specifically, the holistic approach which is one of the strengths of a case study proved to be valuable for this research, considering the interconnectedness of the various aspects in the lives of indigenous peoples (Patton, 1990).

While a qualitative case study seeks to describe the subject in depth and in detail, it is considered to be limited in terms of generalising the findings. However, Stake (1980) has argued that rich information can be generated from this type of study, yielding “more valid portrayals, better bases for personal understanding of what is going on, and solid grounds for considering action” (Stake, 1980, p. 32; cited in Patton, 1990, p. 54). In view of the complex nature of indigenous land tenure, and the limited time allotted for this study, case study therefore was justified, allowing a more focused understanding of the issues surrounding the subject area. More importantly, the case selected provided exemplary characteristics that merited lessons that may be instructive on the plight of other indigenous communities which have been granted a land tenure instrument.

#### **4.4. Processes prior to fieldwork**

##### ***Case selection***

Case studies are selected on the basis of the characteristics of the case which could yield rich information regarding the focus of the inquiry (Patton, 1990). The Pastolan Ayta community was chosen for this research because of the unique nature of their ancestral domains. Portions of their ancestral domains overlap with several government undertakings—previously, with the American

military reservation under agreement with the Philippine government, and later, in 1992, with the Freeport Zone and the Watershed Reserve.

Since the Philippine government already enacted its indigenous law in 1997, and the Ayta community was given its land title in 2003, this research will inquire if the Ayta community has achieved the intended ends of a land tenure instrument. Given the nature of the domains of the Aytas, an evaluation of the government's indigenous land policy vis-à-vis the land rights of the Ayta community provides meaningful insights on the indigenous land title and the manner of the government's enforcement of this policy.

### ***Ethics requirements***

Prior to doing field work, Massey University requires that an ethical approval procedure be undertaken. The procedure is embodied in its Code of Ethical Conduct for Research involving human participants. The Code embodies the basic human rights of respect for persons, autonomy, privacy and justice. Its principles include the following: respect for persons; minimisation of risk of harm to researcher, participants, and to Massey University; informed and voluntary consent; respect for privacy and confidentiality; avoidance of unnecessary deception; avoidance of conflict of interest; social and cultural sensitivity; and justice.

As part of the ethics requirements, the Institute of Development Studies at Massey conducts an internal ethics review process. This required me to reflect on the ethical issues involved in conducting field work and in the research process, to fill in an ethics form, and to discuss these issues with the academic staff of the Department. The meeting was attended by Professor Regina Scheyvens (first supervisor), Senior Lecturer Janet Reid (second supervisor), and Associate Professor Glenn Banks. In the meeting, the staff shared their expertise and guided me through the ethical principles in doing field work. For instance, advice was given on how to request participation of the informants, avoiding coercion in this regard. In addition, specific concerns on ensuring the confidentiality of the information and non-disclosure of the identities of the participants without their

approval were emphasised; this confidentiality was stressed to be maintained throughout the research process. The importance of cultural sensitivity was also highlighted, in view of the fact that some of the participants are members of the Ayta indigenous community. The research assistant employed for the fieldwork was likewise informed of these ethical requirements, and was made to sign a confidentiality agreement.

The in-house ethics requirement was concluded by forwarding a low-risk notification form to the Massey University Human Ethics Committee (MUHEC). The low risk notification form was accepted and this research was given low-risk status on May 9, 2011. Awareness of the ethical principles embodied in Massey's Code of Ethical Conduct was maintained throughout the research process.

#### **4.4. Data collection/Fieldwork proper**

##### ***Setting up field visit: prior consultation with participants***

Fieldwork was done between May-July 2011 for a period of seven weeks. I first contacted the Pastolan Ayta community through its tribal chieftain and head of the community organisation in January 2011. The initial visit was to establish contact and see if it was possible to write about their experiences after land title (CADT) was awarded to them. As stated earlier, I have previous associations with the community, having been involved in the titling process of their ancestral domains, as the then regional legal officer for the National Commission on Indigenous Peoples.

Before implementing the fieldwork plan, a meeting was set with the research assistant, to discuss the plan. With the research assistant's immense background in facilitating group discussions with Filipino indigenous communities, suggestions were taken on board in tackling the fieldwork. Then, the fieldwork plan was implemented, consulting and coordinating first with the government office for indigenous peoples (its local office) of my research and giving out information sheets to my participants within the locality (Appendix Three [English]; and Four [Filipino]). A consultation meeting was then set with the Ayta community, to inform and seek their consent for the fieldwork and this study. Information sheets



written in Filipino were also given during the consultation meeting with the community and before personal interviews were undertaken with Ayta participants.

Assistance from two friends from the local NCIP office (one is an Ayta from a nearby municipality) facilitated coordination with the Ayta community in the course of the fieldwork. Their presence during the fieldwork has given the impression that the research was an NCIP activity, and that the researcher is still part of this government organisation. Hence, in the course of everyday interactions with the community, the researcher and the two NCIP staff informed Ayta participants and other residents that the author is currently a student in New Zealand and that the research is part of the requirements for the author to complete her studies. To secure the confidentiality of the research process, they were also made to sign confidentiality agreements. In addition, the role of the NCIP staff was limited to inviting the Ayta community for the focus groups. The two NCIP staff did not take part and stayed away during the conduct of personal and focus group interviews, to prevent any influence on the information to be given by the Ayta participants. As will be presented in the next Chapters, the presence of these two NCIP personnel did not constrain the Ayta participants from expressing their sentiments regarding this particular government organisation.

### ***Interviews***

For this research, in-depth semi-structured interviews were the main means used to gather primary data. It is considered in-depth, as the interviews were aimed to explore the complexities of the meanings and interpretations on the experiences of the Aytas regarding the influence of land tenure instrument on their property rights (Liamputtong & Ezzy, 2005). Interviewing was an effective way of gaining insights on the experiences of the key participants, including the perceptions of non-Ayta respondents regarding the formal land title given to the Aytas (Seidman, 2006).

Semi-structured interviews, in particular, are more like conversations, creating collaborations between the interviewer and the interviewee in terms of

allowing the course of the conversation to rely on the knowledge of the interviewee. But in this sense, the interviewer is a “co-participant in the discourse”, as typically, a set of question guides were prepared to ensure that the focus of the study is depicted in the course of the conversation (Mishler, 1986, p. 82, as cited in Liamputtong & Ezzy, 2005, p. 57). In this way, the strength of semi-structured interviews lie in their flexibility, giving the researcher freedom to bring up new issues that have not been preconceived prior to the interview (Axinn & Pearce, 2006; Kumar, 2005). While specific themes for the questions were prepared prior to fieldwork, the questions posed to the participants in the course of the fieldwork were mainly shaped by the answers that flowed from the interviews.

A total of thirty one individuals were interviewed, selected purposely to get a range of views (Table 2). Members chosen from the Ayta community included some leaders, and representatives from the different segments of the community: youth, women, men, including non-Aytas, one was a long-time resident, and two other individuals working at Pastolan Village on a regular basis. Government participants came from the national and local offices of the National Commission on Indigenous Peoples, the Subic Bay Metropolitan Authority, and the local government of Hermosa, Bataan. The business person interviewed owns a business situated within the ancestral domains of the community, while the non-government organisation enjoys current association with the community. In addition, a former government official who served on the National Commission on Indigenous Peoples and had previous engagements with the Ayta community was also tapped for the interviews.

**Table 2. Number of interview participants by sector.**

Position	Resident Aytas	Resident Non-Aytas	Government & Former Government Officials	NGO	Business
Code	Ayta	Other resident	Gov't.	NGO	Bus.
Total	12	3	14	1	1

The diverse background of the participants was held important for various reasons: one, it allowed the information obtained to reflect the different voices

within the community, and, two, it ensured that various perspectives were considered. Since the subject of the inquiry pertained to the life experiences of the Ayta community, in relation to the government's indigenous land policy, these two sides were presented, not merely for comparison, but rather, to provide a deeper understanding on the factors that influence the rights of the Aytas to their traditional lands and resources. This is also true with respect to the other sectors interviewed, such as the business and non-government respondents, as their views supplemented and clarified some of the information given by the other respondents.

### ***Focus groups***

Another method used for this research is the focus group interviews or group discussions. The group interviews enriched the information obtained from the personal interviews, as the discussion allowed the Ayta participants to assist each other in expressing and clarifying their views on a topic which was relevant at that time due to the current issues concerning benefits from their lands (Liamputtong & Ezzy, 2005; Berg, 2007). Axinn & Pearce (2006) suggest some research participants are more comfortable in group settings. This is true for the Ayta participants, as they seemed to be more encouraged to speak in a group setting than in one-on-one interviews, as they spoke freely in answering the questions. In addition, the Aytas instantly obtained feedback on their views and with that, focus group interviews provided some form of "indefinite triangulation" (Cicourel, 1974, as cited in Frey & Fontana, 1993, p. 24). The bouncing back of the information from amongst the group participants in a way gave credibility to the information revealed by the participants (Frey & Fontana, 1993). To illustrate, when one participant revealed a certain view, while another shared a different perspective, most especially, on sensitive issues, members of the group collaborated to present the information as acceptable to most participants in the group.

In essence, the group interviews were a source of validation, as information obtained from the group and even in one-on-one interviews was modified or explained in the process (Frey & Fontana, 1993). Focus groups, in this instance,

have also been empowering for the community, as they created avenues for them to reveal their knowledge, and most of all their sentiments regarding current issues which have been affecting the community. The group discussions created a venue to vent their frustrations, sometimes anger, and most of all, the questions they had on the benefits of their land title. The focus groups provided a forum for the community to disclose matters that they wanted to be heard within and outside the community.

For the focus groups, several themes for the questions were developed and some participatory techniques were used. The participants were asked to draw in map form the coverage of their ancestral domains, and to explain the extent of the uses of their domains. Problems encountered on their lands, including the experiences relative to life without and with a formal land title were also asked. The concern that the group participants may not respond truthfully (Dawson, 2006) was not sensed during the group conversations. To close the discussions, participants were asked what can be done to maximise the use of their lands for their benefit as a people.

A total of five focus groups were facilitated (Table 3). The participants identified for the focus groups have been pre-determined however, the turn-out of the participants was not as expected. Adjustments were thus made as members of the community came along and participated. Separate group discussions for men and women, and mixed group of both genders were held.

**Table 3. Number of group discussions and participants**

<b>Number of participants and gender</b>	<b>Code</b>
22*W	FG1
17*M	FG2
3*M, 2*W	FG3
11*W, 2*M	FG4
4*W, 1*M	FG5

(\*W=woman; M=Man)

The results of these discussions were summarised and the key findings were presented in a community assembly, for their validation (Figures 3 and 4). Some findings were explained further and later modified; at the same time additional information was gathered, but mostly, the community confirmed the information I had collected from the group interviews. The validation assembly would be better coded as 'Validation Group' in the succeeding chapters.



**Figure 3. Validation of the key findings taken from the focus groups**  
Source: Validation Group, June 18, 2011



**Figure 4. Presentation of findings (posted on the wall) during the validation meeting with some members of the Ayta community**  
Source: Validation Group, June 18, 2011



***Participant observation***

As claimed by several authors, participant observation methodology proved to be the “most comprehensive” amongst the research strategies utilised for this study (Becker & Geer, 1960; Lombard, 1991; Lincoln & Guba, 1985, all cited in Newman & Benz, 1998). In light of the subject of inquiry on the factors that influence the optimum use of traditional lands and resources of the Aytas, observing the daily activities occurring in the village and tracking down the different uses of the ancestral domains was very instructive and confirmed most of the findings related by the participants. In observing, I was able to “immerse in the community, culture or context” being examined, allowing me to witness and validate the information given by the participants (Dawson, 2006, p. 109).

Kumar (2005) raised some problems in conducting observation as an approach. These are 1) the possibility that those being observed may not show their normal behaviour; 2) the possibility of observer bias; 3) the interpretations generated may vary from one observer to another; and 4) the possibility of incomplete observation. However, these issues did not preclude the truthfulness of the events that transpired in the village. I was able to see the manner in which the Aytas have been utilising their lands and the restrictions or limitations which many participants have already disclosed during the personal and group interviews. Flick (2006) points out that reflections of the researcher on the observations in the field become data in their own right. Moreover, actual observation on the circumstances surrounding the case is considered as one form of triangulation (Yin, 2003). These observations, in fact, guided me in the process of analysing the findings. Discussion of these observations will be made in the succeeding section on research in practice.

***Secondary data***

To complement the primary data, secondary sources were solicited from government offices, pertaining to their official documents and reports. Studies regarding the Aytas of Pastolan and other indigenous communities relating to their land rights were also reviewed. Philippine journal articles assessing Filipino indigenous people’s land rights were considered also.

#### **4.5. Fieldwork Proper**

##### ***Research in practice***

Engagements in the field were not as smooth as I expected them to be. It is true that the words ‘flexibility’ and ‘adaptability’ come in handy in practice and are vital to taking on fieldwork tasks. Having known and worked with the Pastolan Aytas in 2003 had some advantages in asking the community to participate in the research. The initial consultation meeting with the Pastolan Aytas in June, 2010, was light, warm, and friendly, but with an unexpected sense of mistrust, accompanied by the confusion they perceived me to be both a researcher and a government lawyer. Reflections after fieldwork made me understand that I came at a crucial stage where the community was experiencing external pressures regarding benefits from the use of their domains, creating some misunderstandings within the community. This led some of them to have doubts about the intentions of outside people who came to the village, including me. But the sense of mistrust was gradually overcome in the process of daily conversations and interactions within the community, as these exchanges opened up understandings from both sides. It allowed community members to ask more about my personal background, details regarding the research, and the aims of this study. They felt and expressed that this study can help them and other indigenous communities.

On the other hand, engaging with government people was generally not bureaucratic at all (surprisingly), because some were former colleagues, some wanted exposure, and some probably had no viable reasons to say no. I am not certain at some points though if the participants (including the non-government respondent) expressed their answers truthfully, or conveyed only matters they deemed appropriate or those which they assumed I wanted to hear. The business person was reluctant to be interviewed, and at times, clarified his answers in the course of the interview. A former government official, including some government officials provided clarity to some sensitive issues relayed by most of the participants.

### *Reflections on fieldwork in practice*

In between personal interviews, I walked around the village and casually spoke with people I met on the road and those sitting outside their houses. Their statements revealed simple but very important information, e.g. that not everyone in the community knew about their land title which they had been granted in 2003. One person I spoke to noted:

We don't know anything about the title (CADT), please go to the Chieftain's house. *Wala kaming alam tungkol sa CADT, magtanung po kayo kay Chieftain.* (Journal, June 8, 2011).

Observing the daily activities of the members of the community allowed me to witness how the land was being utilised by the Aytas. Around 7 o'clock in the morning, I saw some Ayta women walking together (Figure 5). I followed these women and discovered they are reforestation workers paid by the Subic Bay Metropolitan Authority. Ironically, the areas where they work and get paid for are part of their communal land. These dealings disturbed me, as did a comment made by one tourism attendant in response to a query about the status of *Pamulaklakin* (tourism facility managed by the Subic Bay Metropolitan Authority) now being transferred to the Aytas of Pastolan. She said: “my people do not want it [*ayaw ng mga tao ko*]”, referring to the Aytas as if she owns them.



**Figure 5. Reforestation project of SBMA: Aytas hired as reforestation workers.**



The daily learnings, interviews, as well as the spontaneous conversations in the field brought frustrations and some tinge of sadness. There were moments of disbelief, awe, and helplessness, as I felt my hands were tied to merely noting down as I heard what people said. Though research is said to be about finding out, still, I felt and experienced empathy when hearing and observing the deprivations and disappointments of the community. In one instance, while taking a tour around the ancestral domains that overlap with the Subic Freeport Zone, I took pictures of an Ayta washing clothes at Boton River (Figure 6) for documentation, but when we were about to exit that area, I was stopped by a security guard at the gates. I was escorted by one employee from SBMA, and this employee told the guard that I was taking pictures to report the incident to their office so that the Aytas can again be informed that they are prohibited to go to the river. These, among other experiences of discrimination faced by the Aytas on their own land, led me to being livid at times during the fieldwork.



**Figure 6. An Ayta washes clothes at Boton river. This activity is prohibited, according to SBMA.**

The focus group interviews were very informative because of the openness and honesty I sensed from the participants. Having stayed within the community paved the way, I believe, to build a sense of trust with the Aytas, which thus facilitated the interactions during the focus groups. I was impressed with the community's knowledge of the boundaries of their ancestral domains, and the histories attached to these places. I was touched to see and hear the support and appreciation of what each member would say during their discussions. At times, when a differing opinion was raised during the discussion, the group participant first said "*arawok*", meaning friend, in Ayta language. The reference to the land as communally owned was an affirmation to me that they do not own the land, but rather it belongs to no one and that the land is an integral part of their lives. Yet I sensed that the community was at a crossroads and the factions within the community were quite glaring.

The validation of the key findings of the focus group discussions was disrupted by some occurrences. I witnessed, before the validation meeting started, that the tribal chieftain had sent a person to this meeting I had organised bringing with them a Joint Management Agreement between Subic Bay Metropolitan Authority and the Pastolan Aytas. This agreement was circulated for signature of the Aytas who were at the hall to attend the validation. I was surprised to see the Joint Management Agreement being signed by the Aytas without the terms of such agreement explained to them, having known from the interviews with several Aytas that their leaders were not disclosing matters that affect them as a community. Some of the community leaders were also not present to discuss this agreement, although these community leaders represented the community during the negotiations of this agreement with Subic Bay Metropolitan Authority.

Another incident was during the validation proceedings: a car intentionally swerved and almost hit some of the participants who were standing at the back. Fuming internally, carrying all the accumulated frustrations of the fieldwork, yet calmly, I excused myself to the participants and followed the driver. The driver was introduced to me by one of the elders as the lawyer of the NGO Welfare and Management Services for Indigenous Peoples (WAMSIP). He denied in the first instance what he did, but eventually apologised. He then came during the meeting

to make an apology to the community. We then proceeded and completed the validation process.

The events transpiring during the validation process were inter-related. I learned that the WAMSIP lawyer came to the village as he was advised that the management agreement was already being signed by members of the community. Further, I was told that his actions were meant as a disrespect to the validation meeting being held, as he thought that the meeting was organised by the Subic Bay Metropolitan Authority. The reasons held by the NGO in opposing the signing of the agreement were not articulated, but it seems apparent that they opposed the manner in which the consent of the community was being solicited, since they also have no participation in the signing of this agreement.<sup>18</sup>

Coming from the fieldwork with all these enriching experiences can either serve as an inspiration or deter the pace of finishing the thesis. I carried both, but I was moved more now towards presenting this research in such a way that it might open positive avenues for all the research participants, through the eyes of the Pastolan Ayta community.

#### **4.6. Data Analysis**

Trying to make sense of the data collected was aptly described as a “chaotic confusion”, as the amount of information gathered required me to intentionally immerse myself in the data (Lofland & Lofland, 1971, p. 69, as cited in Liamputtong & Ezzy, 2005). This was mainly due to the complexity of the data and the intricate process of exploring multiple interpretations from the information obtained (Liamputtong & Ezzy, 2005).

With permission, the group discussions and some of the personal interviews were taped and most were transcribed. Most of the transcriptions were retained in Filipino language, to retain its meaning. Data were analysed using content analysis (Flick, 2006), identifying and placing them in accordance with the key themes and ideas within constituency groupings (Ayta community-Leaders,

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<sup>18</sup> The NGO’s role in this agreement will be discussed further in Chapter 6.

Ayta & non-Ayta community residents; Government, Non-government, and Business). How the key findings were summarised for the validation held with the Ayta community was retained in the process of thematic analysis. Distinct themes for the Ayta participants and the other participants were made. The themes referred to experiences before and after the ancestral domains title was given to the community. Factors that influence the maximisation of use of the ancestral domains of the Ayta community was used as a framework for unpacking the government and non-government interviews.

#### **4.7. Summary**

This research was hugely influenced by my previous experience as a government lawyer working for Filipino indigenous communities, which can serve as both a limitation and strength—giving me prior knowledge and relationships and creating a favoured bias towards my case study, or, already carrying some assumptions on how indigenous peoples utilise their ancestral domains.

The choice of a selected and limited number of participants from the Ayta community for the personal interviews may not provide a comprehensive view and understanding of the research questions. Nonetheless, the richness and accuracy of the data collected was supported in the focus group discussions we conducted, as the participants in these discussions came from various segments of the Ayta population. The same is true with the validation meeting held with members of the community. Additionally, the personal interviews from government informants and the reports or studies conducted about the Pastolan Aytas, including other Filipino indigenous communities lend credibility to gaining deeper meanings to the information shared by the case study. Lastly, the participant observation method used confirmed most of the sentiments and perceptions of the Ayta community relating to their land rights.



## CHAPTER V

### CARETAKERS, VISITORS, OR OWNERS OF THE LAND?<sup>19</sup>

#### THE AYTA OF PASTOLAN

##### 5.1. Introduction

In this Chapter, the findings relating to the case study will be expounded, taken from the primary and secondary data gathered from the fieldwork. The historical and legal underpinnings of the ancestral domains, including the process in the titling of the ancestral domains of the Aytas will be outlined. A detailed description of Pastolan Village, illustrating its physical features and the socio-economic profile of the Pastolan community is presented. Since the ancestral domains intertwine with the lives of the community, the identity of the Aytas of Pastolan and their use of the ancestral domains will be reported. Lastly, the social and political organisations key to the Ayta community will be identified.

##### 5.2. Historical and legal underpinnings of the ancestral domains of the Pastolan Aytas<sup>20</sup>

###### *First, the Americans, then the Philippines' Subic Bay Metropolitan Authority*

Since the 1900s, the ancestral domains of the Pastolan Ayta community had been utilised by the government. First, in 1903<sup>21</sup>, Subic Bay was declared a US military reservation (SBMA, 1999). The naval base was essentially designed as a military seaport that served as a training facility for US Marine Corps for the Second World War and post-war era (SBMA, 2010). As a training facility, there are records showing that the Aytas have trained American soldiers on jungle survival techniques in the forests of Subic (Subic, 1999).

In 1961, as a result of the expansion of the military bases, the tribal chieftain at that time together with the then Mayor of Olongapo City, agreed to relocate the Aytas to New Cabalan, Olongapo City (ADSDPP, 2004). However, the

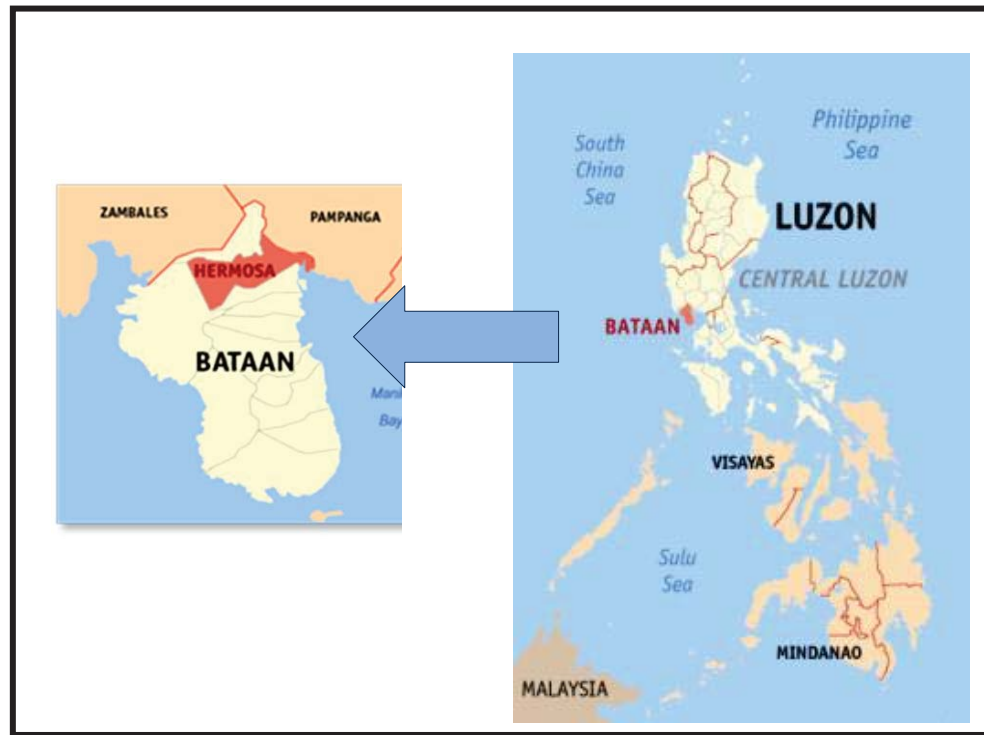
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<sup>19</sup> In Focus Group 2, one person commented: "They were like caretakers instead of owners of the land". Similarly, government respondent 5 said: "Aytas are treated as ordinary visitors by SBMA, not as owners."

<sup>20</sup> See Table 4, p. 72.

<sup>21</sup> In the same year, the Philippines lost the war and its independence to the United States; and, became its colony (Zaide, 2010).

Ayta longed for their natural environment in Subic, thus in the 1970s, the Aytas returned to the forests of Subic (ADSDPP, 2004). Pastolan was then to become the community's permanent residence, although they continue to retain their temporary dwellings in the forests, near the rivers, and other areas of the ancestral domains (ADSDPP, 2004). Pastolan Village is one of the villages of Barangay Tipo, situated in the municipality of Hermosa<sup>22</sup>, in the province of Bataan (see Figure 8).



**Figure 7. Philippine map highlighting the province of Bataan; and location of the Municipality of Hermosa in Bataan province**

Source:[http://pam.wikipedia.org/wiki/Hermosa,\\_Bataan](http://pam.wikipedia.org/wiki/Hermosa,_Bataan);  
<http://library.kiwix.org:4218/A/Bataan.html>

The Americans left Subic in 1991, as a result of the non-approval of the continued presence of the US Military Bases Agreement by the Philippine government. In the following year, the US Naval Base was converted into a Special Economic and Freeport Zone<sup>23</sup>, which will be referred to subsequently as the Freeport zone. To administer the Freeport zone, the Subic Bay Metropolitan Authority was created. The Freeport area was delineated in 1995, and included in

<sup>22</sup> Hermosa is a first class municipality. Municipalities in the Philippines are classified as 1<sup>st</sup>, 2<sup>nd</sup>, up to 6<sup>th</sup> class municipality depending on their average annual income (NCSB, 2011).

<sup>23</sup> Special Economic Zones may be characterised as a geographic area within a country where certain economic activities are promoted by a set of policy measures that are not generally applicable to the rest of the country (Ge, 1999, p. 7).

the area were some sections of the ancestral domains of the Aytas. In the same way, the Subic watershed forest reserve was established.

***The application for formal recognition of the Aytas' ancestral domains***

Even prior to the enactment of the Indigenous Peoples Rights Act in 1997, the Aytas sought recognition of their ownership of their traditional lands and resources. These initiatives started in the 1970s when some Aytas began to return to Subic from New Cabalan (ADSDPP, 2004). In 1994, the Aytas formally filed an application for recognition of their ancestral domains claim [CADC<sup>24</sup>]. The certificate of ancestral domains claim is the predecessor of the ancestral domains title, which simply recognises the land claims of an indigenous community, and does not constitute a real title.

In 1998, the World Bank Subic Freeport Project (Subic II) included an Indigenous People's Development Plan (IPDP) component. The IPDP supported the Aytas' pursuit to obtain security of tenure for their ancestral domains. The SBMA and other non-government organisations assisted in this objective (SBMA, 1999; Gov't. 9). On March 1999, the *Samahan ng Katutubong Aytas ng Pastolan* (SKAP), filed its application for ancestral domains title. The NCIP's field office validated the application and its supporting documents (NCIP, 2000; NCIP, 2003a). In 2001, the first Commissioners of the NCIP approved the ancestral domains title of the Aytas of Pastolan. Nonetheless, the certificate of title was not registered with the land registry office nor released to the community (NCIP, 2003b).

The second set of NCIP commissioners then required the review of the ancestral domains titles issued by the members of the First Commission. Consequently, the ancestral domains claim of the Ayta community was verified and a ground survey was conducted (Caballero, 2004). After complying with the review processes, the NCIP cancelled the original certificate of title issued by the first commissioners of the NCIP and issued a new one in the name of the Aytas of Pastolan, Hermosa, Bataan (Ayta 2; Ayta 9) [Appendix Five, for copy of the

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<sup>24</sup> Certificate of Ancestral Domain Claim is issued by the Department of Environment and Natural Resources, not the National Commission on Indigenous Peoples.

resolution of the NCIP]. Finally, the land title of the Pastolan Aytas was registered on March 27, 2009.

**Table 4. Historical and legal underpinnings of the ancestral domains of the Aytas of Pastolan**

Year	Key event
1903	Subic declared as a US Military Naval Base
1961	Relocation of Aytas to New Cabalan due to expansion of the US Naval Base
1970	Aytas Return to Subic from New Cabalan
1991	Closure of the US Military Bases
1992	Republic Act No. 7727 creating Subic Bay Metropolitan Authority (SBMA) and the Subic Special Economic and Freeport Zone
1992	Subic Forest Watershed Reserve (Presidential Proclamation No. 926) was established
1995	Territorial boundaries of the Freeport Zone were delineated pursuant to Presidential Proclamation No. 532
1994	Aytas filed a Certificate of Ancestral Domain Claim (CADC) with the DENR
1997	Indigenous Peoples Rights Act or Republic Act No. 8371 was passed into law
1998	Indigenous People's Development Plan-World Bank Subic Freeport Project II
1999	<i>Samahan ng Katutubong Ayta ng Pastolan</i> (SKAP) filed an application for a certificate of ancestral domains title (CADT) with the NCIP
2001	Signing of the CADT by 1 <sup>st</sup> Commissioners of the NCIP
2002	Review and verification of CADTs issued by the 1 <sup>st</sup> Commissioners of the NCIP, which included the CADT of the Pastolan Aytas
2003	Approval of the Certificate of Ancestral Domains Title of the Aytas of Pastolan
2004	Finalisation of the Ancestral Domains Sustainable Development and Protection Plan (ADSDPP) of the Aytas of Pastolan
2009	Registration of the CADT with the Register of Deeds

Source: Author



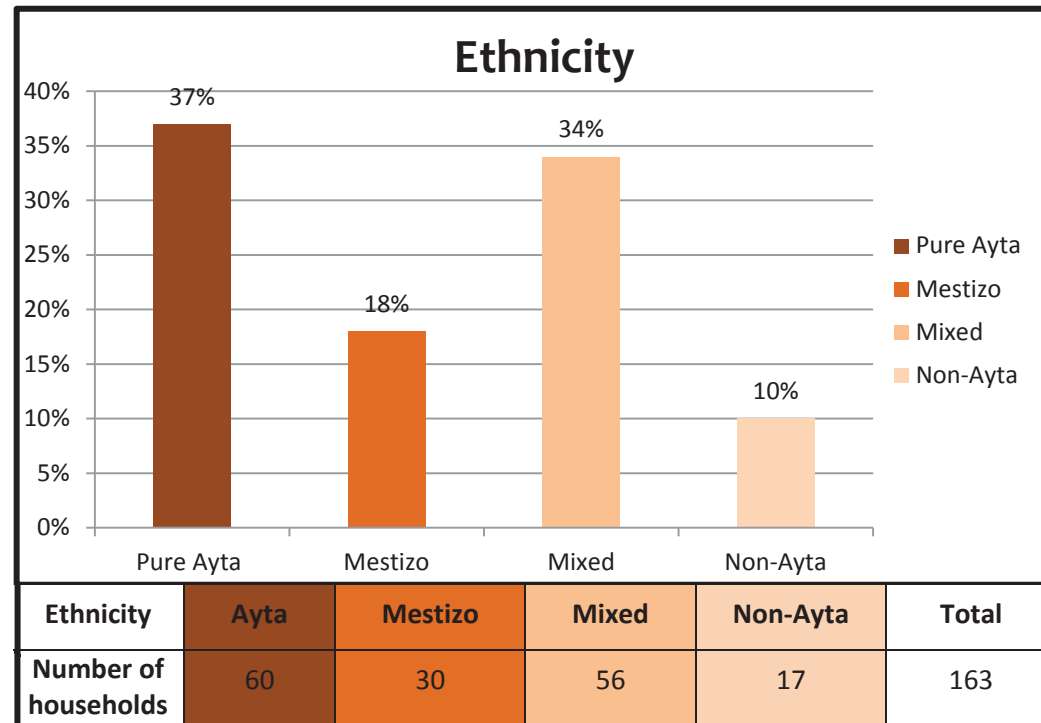
### 5.3. Profile of Pastolan Village

Pastolan village is geographically under the political jurisdiction of Barangay Tipo hence, the residents follow both a traditional and a formal political structure. The formal political structure represents the government's local units, comprising the barangay, municipality, and province. Both Ayta and non-Ayta residents of Pastolan village elect their government representatives at the barangay and municipal level, while only members of the Ayta community choose their traditional leaders.

An NCIP document notes that Pastolan village has an area of 23.59 hectares (2003a). However, in another document, the village is said to contain an area of 16.1487 hectares, and added the village's agricultural area of 117.21 hectares (ADSDPP, 2004, citing Agri-Communities Development Center, Inc., 2001). Pastolan village is accessible from the Subic Freeport Zone through the Pamulaklakin Forest Trails, and in Barangay Tipo, through a three kilometre partially paved road traversing through an entry gate approaching the village (NCIP, 2003a; see photo page 96).

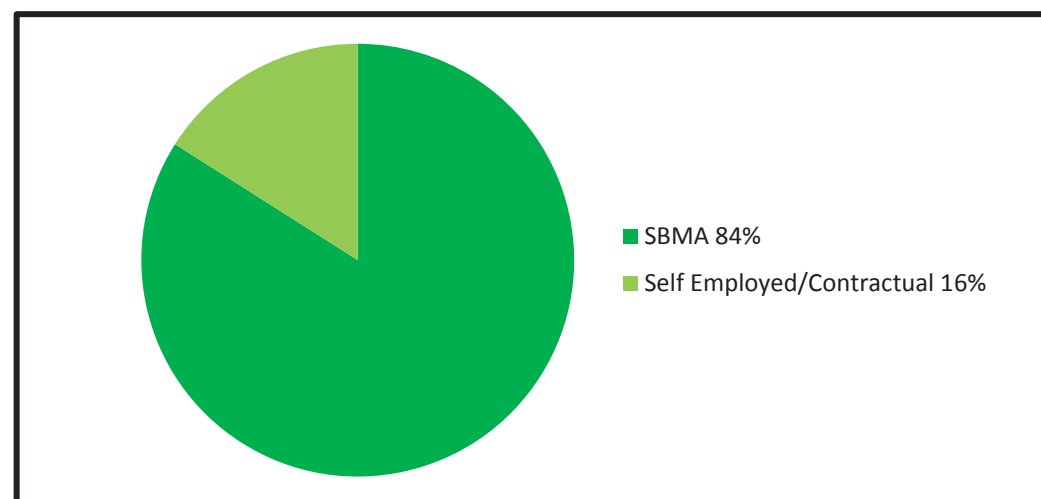
According to a 2001 baseline data, there are 163 households in the village (ADSDPP, 2004, citing Agri-Communities Development Center, Inc., 2001). The ethnicity of these households is distributed as follows: pure Ayta households, *mestizo* Aytas (mixed Ayta married to a pure or mixed Ayta), or mixed Aytas (Ayta married to a non-Ayta) and non-Ayta households (ADSDPP, 2004). The breakdown of the number of households and its percentage based on ethnicity is shown in Table 5. Sixty four percent of these households have an average per household of 1-5 members, thirty five percent, with 6-10 members, and one percent, with 10 or more members (ADSDPP, 2004).

**Table 5. Tally of Pastolan households based on ethnicity**



Source: ADSDPP, 2004

In terms of livelihood, 84% of the 163 households have one or two members who are employed by the Subic Bay Metropolitan Authority as ground maintenance workers (*taga-tabas*), forest rangers or security guards, and as tour guides; the remaining sixteen percent (16%) are self-employed or contractual labourers (ADSDPP, 2004) (see Figure 8).



**Figure 8. Source of employment of Pastolan households**

Source: ADSDPP, 2004

#### **5.4. The nexus between the Aytas of Pastolan and their ancestral domains**

##### ***The Ayta community of Pastolan***

The Aytas of Pastolan belong to the Ambala linguistic group residing in various locations in the provinces of Zambales, Pampanga, and Bataan (Ayta 1-2; Ayta 5; Ayta 8; Caballero, 2004). Within Bataan, the Pastolan Aytas come from the three tribes believed to have inhabited the areas of Boton, Binictican, and Kalayaan (Ayta 5; Ayta 7; Focus Group 4; SBMA, 1999). Based on the census conducted by the NCIP in 2003, the total number of beneficiaries for the ancestral domains title is 759 individuals, constituting 147 households (NCIP, 2003a, Appendix Five). It was not clear from the data whether the other sixteen<sup>25</sup> from the total 163 households earlier mentioned are also considered as beneficiaries of the Aytas' land title.

The primary social unit of the Aytas is the family. The traditional residence of the Aytas was not permanent, but rather they move from one place to another (ADSDPP, 2004). They used to set up semi-permanent settlements in those areas where they wander or toil on the land (ADSDPP, 2004). Since 1999, as a result of the earnings derived from regular employment, most Aytas have constructed their houses using more permanent structures (NCIP, 2000). Presently, in light of the issuance of the ancestral domains title, some Aytas have gained confidence to build permanent structures for their place of residence within the village (Validation Group). Yet, semi-permanent abodes are still constructed inside the forest or close to the rivers and many Aytas want to continue that tradition (Focus Groups 1 & 2; Focus Groups 4 & 5; Validation Group).

Traditionally, the Aytas respect their natural environment and rely seasonally on its bounty (ADSDPP, 2004; Validation Group; Ayta 2, Ayta 6-8; Gov't. 1; Gov't. 9). Hunting (except during the mating season), fishing, gathering and foraging for forest products, as well as using the fallow system are all carried out in a traditional way, that is, for consumption only and the rest was shared with the

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<sup>25</sup> 163 households minus 147 beneficiaries = 16 households [unknown if beneficiaries or not]

other members of the community (ADSDPP, 2004; Validation Group; Ayta 2, Ayta 6-8; Gov't. 1). The influence of the cash economy and the hardships experienced by the Aytas, on the other hand, has forced them to sell the resources they obtain from their land (Gov't. 3; Ayta 9). At present, these traditional economic practices are complemented with waged labour to augment the family's income (Validation Group; NCIP 2003a, citing SBMA, 1999). In the same way, the environment is also a source of herbal medicines for the community (ADSDPP, 2004; Validation Group; Ayta 6-7).

The Aytas have a traditional form of governance. Their political structure is composed of a tribal council consisting of a tribal chief, vice-chief, and seven councillors (ADSDPP, 2004; NCIP, 2000, citing SBMA, 1999). Customarily, the tribal council was selected by the elders of the community, but at present, elections are held to choose the members of the council (Ayta 1; Gov't. 9). In addition, there is a council of elders who serves as advisers, mediators in land issues, and implementers of customary law within the community (ADSDPP, 2004). In 1999, a community organisation called the *Samahan ng Katutubong Aytas ng Pastolan* (SKAP) was formed, and their role is to help in the implementation of community projects (ADSDPP, 2004; NCIP, 2003a). Decisions, on community concerns, are arrived at through the consensus of the community (Validation Group, SBMA, 1999 as cited in NCIP, 2003a).

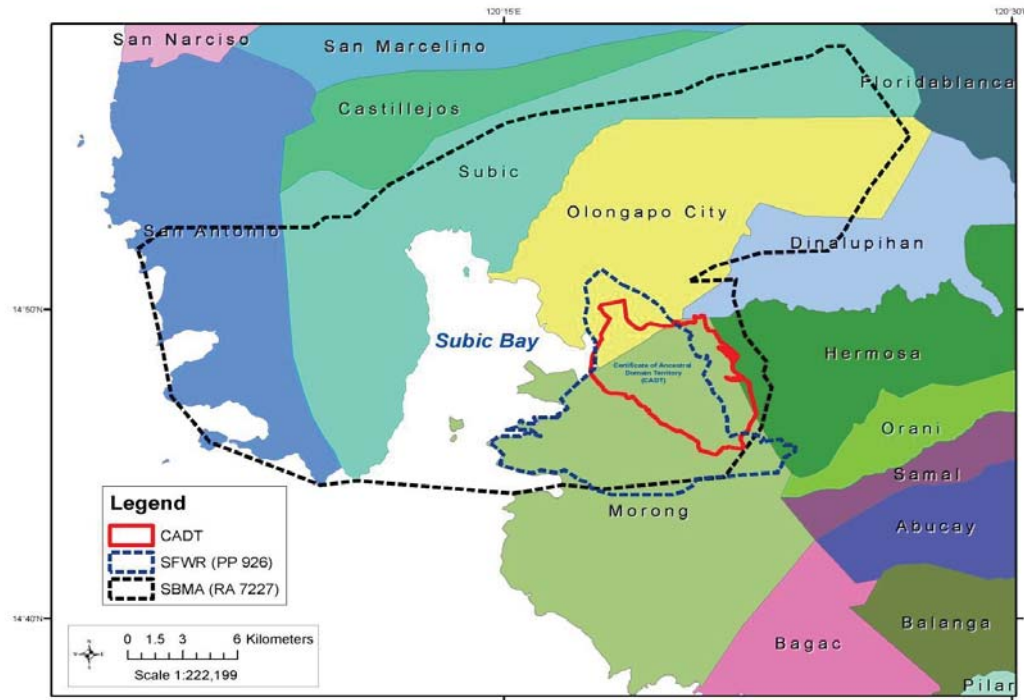
### ***The land: its identity, use, and connection with the Ayta community of Pastolan***

The ancestral domain of the Pastolan Aytas is located at Barangay Tipo, which is part of the Municipality of Hermosa, Province of Bataan (NCIP, 2003a). The lands and waters comprising the domains however straddle two municipalities (Morong and Hermosa) in the province of Bataan (Figure 9). It encompasses a land area of 4,284.1256 hectares and a water area of 13.7047 hectares, totalling 4,297.8303 hectares<sup>26</sup>. The ancestral domains are in part situated within the Freeport zone under the administration of the Subic Bay Metropolitan Authority (SBMA) (Figure 9). As noted earlier, the area was

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<sup>26</sup> The land area appearing in the registered Certificate of Ancestral Domains Title (Appendix 1) indicates only the land area of 4,284.1256 has.

previously an American Naval facility. The domains also overlap with the Subic Forest Watershed Reserve (Figure 9).



Note: SFWR - CADA - Certificate of Ancestral Domain Title; Subic Forest Watershed Reserve; SBMA – Subic Bay Metropolitan Authority

**Figure 9. Map showing the overlap between the Freeport Zone, the Watershed reserve and the Aytas' ancestral domains**

Source: Alan Moscoso, University of the Philippines-Visayas, 2011<sup>27</sup>

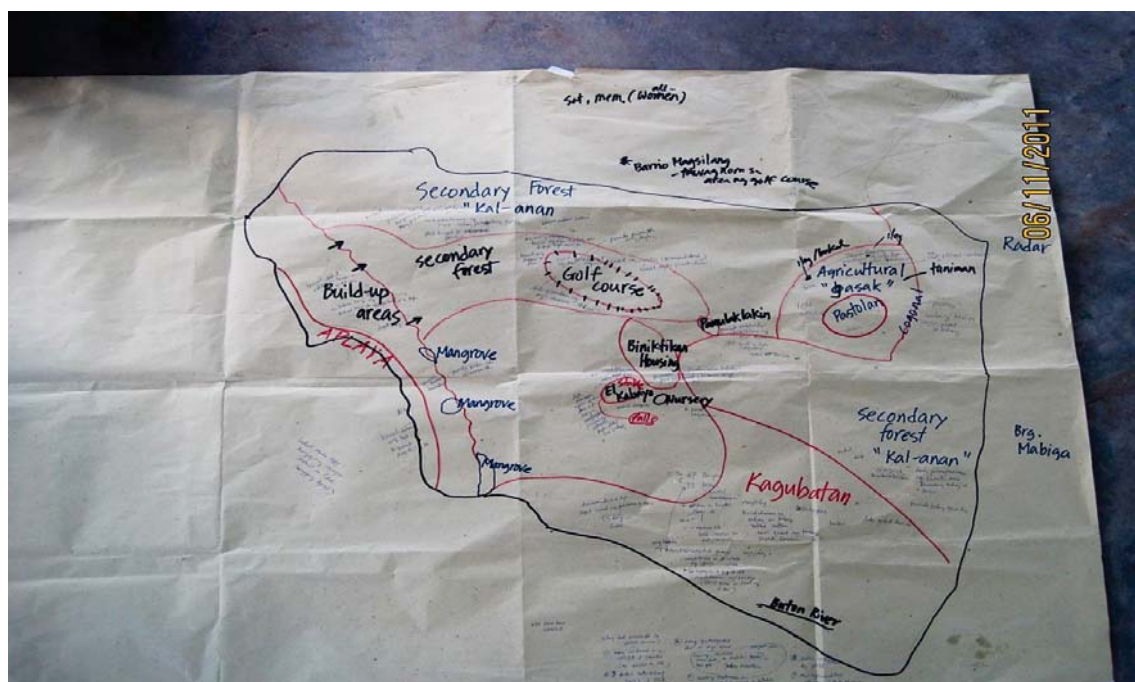
The peculiar characteristics of the ancestral domains of the Aytas are evident in its boundaries (Table 6). There was general agreement from the Ayta group discussions in terms of the different uses and the boundaries of the ancestral domains. These group discussions revealed the following classification of the domains (Figure 10) : secondary forest (*kal-anan*); forest (*kagubatan*); reforestation (*pagsasagubat*); cogonal (*kogonal*); agricultural (*agrikultural*); sea (*aplaya*); river (*ilog*); mangrove (*latian*); built-up areas

<sup>27</sup> Alan Moscoso drafted Figures 2 & 7 specifically for this thesis. He used data from the technical descriptions appearing on the land title of the Aytas of Pastolan (Appendix Two), and from Presidential Proclamations No. 532 (SBMA) and 926 (SFWR).

(build-up); Pastolan village (Focus Groups 1-2; Focus Groups 4-5; Validation Group).

**Table 6. Physical characteristics of the ancestral domains of the Aytas of Pastolan**

Boundaries	Coverage	Land-use
N – portions of Subic Watershed Forest Reservation and Freeport Zone	Land area - 4,284.1256 hectares	Forest, Reforestation
E – portion of Freeport Zone		Cogonal*
SW - Same watershed reservation	Water area - 13.7047 hectares	Agricultural
		Sea
		River
		Mangrove
		Built-up areas
		Pastolan Village
NW - China Sea and portions of the same watershed reservation	Total area - 4,297.8303 hectares	*Any area of several tall grasses



**Figure 10. Showing the land use of the ancestral domains, as illustrated by some members of the Ayta community**

Source: Focus Group 1, June 11, 2011

The forest area covers the largest portion of the domain and is traversed by the Boton, Binictican and Tinaligman rivers (NCIP, 2000). It is in the forests that



the Aytas move around in search for food, medicines, and building materials for their houses (Validation Group, July 18, 2011). It is also the site where the Aytas observe some of their cultural practices and reverence for their natural environment. They say that the forests provide a form of healing, as do the seas and rivers. In the so-called reforestation zones, the Aytas work as SBMA reforestation workers (Validation Group). The cogonal section of the domains is believed to be the place that provides a balance to their ecosystem and at the same time provides some resources needed for their dwellings, e.g. roofs for their houses (Validation Group). In addition, cogonal roots are sources of herbal medicines for the community (Focus Group 2). In the agricultural portions of the domains are found the rice-fields, swidden farms, locally known as *gasakan* [large scale production], or *tiaoen* [for family consumption] (NCIP, 2003a). Upland rice, bananas, taro, cassava and other crops are planted in these areas (NCIP, 2003a).

The built-up area [Figure 11] is located on the western side of the ancestral domains facing Subic Bay and where some industrial and commercial establishments of the Freeport zone are found (NCIP, 2000). The rivers, mangroves, and a portion of Subic Bay are the traditional fishing grounds of the Ayta community [Figure 12] (NCIP, 2000).



Figure 11. Built-up and sea area



Figure 12. Mangrove area

Several Aytas favour the autonomy they had when part of their ancestral domains was utilised as an American military reservation, compared to its present use as Freeport zone (Focus Groups 1 & 2; Ayta 4; Gov't. 6). With the Americans, most Aytas claim that they were able to wander freely and access the natural resources in their ancestral domains, i.e., forests, rivers, mangroves and the sea (Validation Group; Ayta 2; Ayta 4; Ayta 8). When the Subic Bay Metropolitan Authority assumed authority over the former US military reservation, the village [*pamayanan*], including the agricultural area situated inside and near the village, are the only areas the Aytas can freely use (Validation Group; Ayta 2; Ayta 4; Ayta 8). Restrictions are imposed on the use of the forests, rivers, and mangrove areas, as these areas are within the business district of the Freeport zone (Validation Group; Focus Groups 1 & 2; Focus Group 4 & 5). There are restrictions on access to the sea and built-up areas of the domains, except, if the Aytas are employed inside the built-up areas (Validation Group; Focus Groups 1 & 2; Focus Groups 4 & 5; Ayta 2; Ayta 4; Ayta 8).

***“Without the land or forests, we will not live”***

- Ayta 2, June 6, 2011

Based on historical accounts, the Aytas' long-time possession of their ancestral domains precedes the discovery of Subic Bay by the Spaniards in the year 1572 (SBMA, 1999). Thus, in 1903, when the Americans built their Naval Base in Subic, they found the Aytas in the Boton, Binictican and Kalayaan areas, known as the homelands of the Aytas (Focus Group 4). It is said that there is evidence that the American authorities “tacitly recognized the usufruct rights” of the Aytas to their homelands at Subic (SBMA, 1999, p.1; also narrated during Focus Group 4; and by Ayta 4). Oral and written accounts, including physical landmarks, confirm that the Aytas have occupied the areas of Boton, Binictican and Tinaligmaan (now Kalayaan). In fact, the names of the places, i.e., Boton, Binictican and Kalayaan [Figure 14], as well as the rivers and mountains within the ancestral domains and the Freeport zone were all said to be derived from the names given by the ascendants of the Aytas of Pastolan (ADSDPP, 2004).





**Figure 13. Ancestral domains of the Aytas within the business district of the Freeport Zone**

Customarily, the Aytas have deep reverence for their lands, including the bodies of water found in these lands (ADSDPP, 2004; Gov't 1; Validation Group). They believe that spirits dwell in the natural environment, and thus seek permission from these spirits when they make use of or access the resources (ADSDPP, 2004; Ayta 2; Gov't. 1). While the reverence given to the natural environment is customary, and no sanctions are imposed, the Aytas believe that nature can always take back what it has given them (Gov't. 1; Ayta 6; Ayta 11). As such, they place a premium on preserving and sustaining their natural environment. This is because land is not perceived merely as a source of livelihood, but the source of life, and once lost, the Aytas believe that they will lose also their identity as a people. These traits, however, are said to be eroding due to external factors, for instance, outsiders offering monetary compensation for use of the lands or to access the resources of the Aytas (Gov't. 9). Nevertheless, many Aytas believe and cling to these customary practices, and expressed that they wanted to strengthen and revive their culture. These last two statements will be further discussed in the next Chapter.

Lastly, participants described the connection of the Aytas' to the land. This connection is associated with the communal nature of the ancestral domains, where no one can claim that the domains belong to him or her personally. This

communal concept was elucidated by an Ayta youth who was not aware of the existence of the community's land title:

You cannot sell the land, or say that it is yours. The land is not private or for personal use, but rather the land is for everyone. So long as there are no structures or no one is tilling the land, you can make use of it.

*Hindi mo pwedeng ibenta, sabihin sakin yan. Hindi pang-sarili lang kung hindi para sa lahat ang lupa. Basta walang nakatayo, nagtatanim, pwedeng gamitin* (Ayta 3, June 6, 2011)

The communal characteristic of the domains is similarly inter-linked with several customary traits of the Aytas: 1) decisions affecting the community are arrived at through community consensus; 2) the practice of sharing harvest or labour with members of the community, first, with members of their family; and, 3) the tradition of sustaining the lands for future generations. The information that Aytas share their harvest is supported by the author's experience in the field, as there were several instances when some members of the community shared some of their harvest with the research team.

### ***Social and political organisations key to the Ayta community***

The Ayta community have three known organisations (p.78): the tribal council, the council of elders, and the organisation of the Aytas of Pastolan [*Samahan ng Katutubong Aytas ng Pastolan*] (ADSDPP, 2004; NCIP, 2003a). The Aytas have always relied on their elders and traditional leaders on matters concerning the community, and at times, seek the advice of these leaders on personal concerns (ADSDPP, 2004; NCIP, 2003a). In the validation meeting, the Aytas commented that they place a high regard for their traditional leaders (Validation Group, June 18, 2011). However, several controversies due to external factors have caused members of the community to doubt their leaders (Validation Group). These controversies affecting the community's leaders will be further discussed in Chapter 6.

Over the years, the Ayta community established linkages with government and non-government organisations. The roles of these organisations depend on their responsibilities based on the respective mandates of their office. The

National Commission on Indigenous Peoples, especially its two local offices in Bataan Province, are responsible for promoting and protecting the rights of indigenous communities in the province. Since Pastolan village is within the political jurisdiction of the municipality of Hermosa, activities requiring local permits pass through this municipality (Gov't. 4). As earlier stated, the ancestral domains are partly situated within the Freeport zone, under the administration of the Subic Bay Metropolitan Authority.

Additionally, non-government organisations were identified by the Ayta participants. The NGO Philippine Association for Intercultural Development (PAFID) had assisted the community in the application for ancestral domains title, and, together with the Institute of Philippine Culture-Ateneo University, facilitated the creation of the development plan of the Aytas (ADSDPP, 2004). The NGO Welfare and Management Services for Indigenous Peoples (WAMSIP) is a recent addition to the community's linkages, entering into an agreement with the Ayta community to support them in getting benefits from business investors doing business within their domains. This agreement, incidentally, was nullified by the National Commission on Indigenous Peoples. Two religious organisations have also established linkages with the community.

## **5.5. Summary**

The focus of this Chapter was to describe the context and characteristics of the case study, the Ayta community of Pastolan. The first section of this Chapter narrated the historical and legal underpinnings of the ancestral domains of the community. A huge portion of the ancestral domains of the Aytas became part of the American Naval Reservation in 1903, and later, in 1992, this military reservation was converted into a Freeport zone. Many Aytas perceived they had more freedom of movement and use of their domains when the area was occupied by the US military, than when it became part of the Philippine government's Freeport zone. In 2003, the Aytas' land title was approved and subsequently registered in 2009.

The physical features and composition of the ancestral domains disclose that the domains, including the community are an amalgam of traditional and non-traditional elements. The domains overlap with the Subic's Freeport zone and watershed reservation administered and established in 1992 by the Philippine government, through the Subic Bay Metropolitan Authority. The Pastolan community village include Ayta, mixed Ayta and purely non-Ayta households, due to the influx of migrants and inter-marriages between Aytas and non-Aytas. The political governance embraces both a customary and formal structure, since the lands, particularly where the community village is situated, falls within the political jurisdiction of the municipality of Hermosa. The economic regimes include reliance on the natural environment supplemented by regular or casual employment.

The Aytas' connection to the land was described as the community's reverence to their natural environment. Land is perceived as a source of life, not merely as a source of livelihood. Yet the attachment to the land is believed to have started to weaken due to external factors. The legal characteristics of the domains and the perceived changes in this relationship of the Aytas to their lands provide an important background to the results and discussion Chapters.

## **CHAPTER VI**

### **RECOGNISING THE LAND RIGHTS OF THE AYTAS: THE ABSENT RIGHTS IN ACTION**

#### **6.1. Introduction**

Following a description of the case study in the previous Chapter, this Chapter provides a discussion and analysis of the research findings. This is based around on the research question “what are the factors that influence indigenous people’s optimisation of use of their traditional lands and resources?” The impact of the formal recognition of the native title on the community will be discussed. Mainly, the formal title has freed the Aytas from the uncertainty of being displaced from their lands. However, restrictions on access to their ancestral domains have prevented the community from exercising their rights as owners of these domains. Internal and external factors that constitute these restrictions will be identified and examined. Finally, gaps in the implementation of the rights of the Aytas under the formal title will be explained.

#### **6.2. What influences the optimisation of use of the ancestral domains of the Aytas?**

The key factors that influence the optimisation of use of the ancestral domains of the Pastolan Aytas will be discussed in this section. The formal title given to the community has greatly influenced the recognition of their property rights over these domains. However, the enforcement of these rights on the ground has been restricted and shaped by external and internal factors. The external factors emanate from the overlap of policy regimes within the domains, as well as the incomplete implementation of the rights of the Aytas by the government. Similarly, the crucial role of community leadership, the limited capitals and disempowerment of the community have affected their ability to make full use of their domains. The absence of State support after the grant of title has also precluded the full exercise of their property rights.

## **A. Formal recognition of native title**

Without the ancestral domains title, the Ayta community had native title<sup>28</sup> over their ancestral domains. Yet even with this native title, an Ayta elder posited that “the government did not recognise our live title<sup>29</sup>” (Ayta 2, June 6, 2011). For this reason, the Aytas, led by their traditional leaders, applied for a formal land title or, as it is legally known, the Certificate of Ancestral Domains Title (CADT). As previously discussed, the formal title was approved in 2003, and registered in 2009.

### ***The strengths of the formal title***

Overall, the Aytas maintained that gaining their ancestral domains title resulted in a positive impact. “We were recognised by the government, including our rights to the ancestral domains”<sup>30</sup> (Focus Group 4, June 12, 2011; Validation Group, June 18, 2011). “It lifted [our] uncertainties of being removed from the lands”<sup>31</sup> (Focus Group 1, June 11, 2011; Validation Group, June 18, 2011). Prior to the title, the Aytas feared that they would again be relocated to New Cabalan<sup>32</sup>, as occurred in the 1960s or that the government would take their lands. The title thus gave the Aytas the right to stay and live permanently on their native lands. The fear of displacement was one of the key reasons that moved the community leaders to apply for the formal title.

With the formal title, the Aytas felt protected and secure on their native lands. The area of the domains was now known with certainty. During the group discussions with the Aytas, the depth of their knowledge of the boundaries of the domains was evident. Each group illustrated exactly the same boundaries and the current land-use of the domains, including the significance of the various sections of the domains (previously, Figure 10, and Figures 14 & 15). The titling process has allowed the identification and demarcation of the exact boundaries of the

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<sup>28</sup> Native title is described by the Indigenous Peoples Rights Act as pre-conquest rights of indigenous communities to their lands and domains which they held before the Spanish conquest.

<sup>29</sup> *Hindi kinikilala ng gobyerno ang aming buhay na titulo.*

<sup>30</sup> *Maganda dahil nakilala na kami ng gobyerno.*

<sup>31</sup> *Di na kami nag-aalinlangan na mapapaalis kami.*

<sup>32</sup> As discussed on page 71, Chapter 5.





In addition, many Aytas claim that “the title provided protection against outsiders”<sup>33</sup> (Validation Group, June 18, 2011, same view raised by Ayta 2; Ayta 8-9). As the community’s tribal chieftain categorically stated: “it is an advantage to have a title, it becomes our weapon, if anyone wants to enter the domains, we have something to prevent their entry”<sup>34</sup> (Ayta 8, June 08, 2011). Otherwise, the Aytas perceive that without the title, many outsiders will enter their domains and diminish their natural resource base. Moreover, this protection reinforces recognition by outsiders of their property rights to their ancestral domains.

Thus, the Aytas believe that “the title bolstered [our] rights to the ancestral domains”<sup>35</sup> (Focus Group 1, June 11, 2011). This has allowed them to enforce their various rights as owners of the land. For these reasons and more, the Aytas finally envision that the community can now live and flourish in these lands. This was revealed during one of the focus groups with the Aytas:

We have become established. This is where we will flourish, grow old, we are no longer afraid. It is as if we can stand now, and the next generations will thrive in these lands. We are no longer afraid that tomorrow we will be relocated to some other place. We will not be endangered, since we can now multiply.

*Naka-established na. Salinlahi, dito na kami tatanda, di na kami natatakot. Parang nakatayo ka na, salinlahi na, dito na kami magpaparami. Di na kami natatakot bukas makalawa dun kami ilalagay. Hindi na kami endangered...dadami na.* (Focus Group 2, June 11, 2011)

### ***The influence of the formal title on the property rights of the Aytas***

Having settled the fears of being displaced from their ancestral domains, the title has greatly influenced the community’s assertion of their property rights. One of these rights is the right to use the ancestral domains. With the formal title, the Aytas “felt more secure to build permanent settlements”<sup>36</sup> (Focus Group 1, June 11, 2011); “to cultivate more lands” (Focus Group 2, June 11, 2011); and “to plant

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<sup>33</sup> *Naprotektahan kami, kung walang CADT, marami ng papasok.*

<sup>34</sup> *May armas, may itak agad. Kahit walang titulo, ok lang ginagamit. Kung may pumapasok lang, may pangontra kami.*

<sup>35</sup> *Lumakas ang luob magtayo ng permanenteng bahay. Tumibay po ang aming karapatan, kaya’t masaya po kami.*

<sup>36</sup> *Lumakas ang luob na magtayo ng permanenteng bahay.*



more enduring trees within the domains”<sup>37</sup> (Focus Group 4, June 12, 2011). Life before the title was restrained, “[we] felt strangled, but now, [we] have wider lands to move around in the village.”<sup>38</sup> (Focus Group 2, June 11, 2011). In fact, some Ayta and government participants contend that because of the title, the domains can now be used for other purposes (i.e. business investors), and the community can obtain benefits from these other uses.

Since the title has made certain the extent of the ancestral domains, plans for the development of these domains can now be made. The Ayta community thus prepared its plans in 2004, with assistance from non-government organisations. These plans are incorporated in the Ancestral Domains and Sustainable Development Protection Plan (simply known as the ADSDPP) of the community. The ADSDPP is identified as an important tool to enable the community to maximise the use of their domains. This is because the ADSDPP is meant to serve as a “guide to the community and external entities who intend to use or develop the ancestral domains” of the Aytas (Gov’t. 1, July 5, 2001). Moreover, since sections of the ancestral domains overlap with the Freeport zone, the ADSDPP is perceived to play a “crucial role in the management agreement between the Subic Bay Metropolitan Authorities and the community” (Gov’t. 3, June 30, 2011).

Another right that springs from the Aytas’ title is the right to free and prior informed consent. This right is required to be obtained from an indigenous community before any undertaking is allowed to proceed within the ancestral domains (NCIP, 2006). However, while the title of the Aytas was formally given recognition in 2003, “external entities only began to observe the prior consent rights of the community in 2010” (Ayta 7, June 7, 2011; Ayta 8, June 08, 2011)<sup>39</sup>. A reason noted for such a belated compliance is that registration of the formal title with the Land Property Registry came only in 2009. Thus, a government participant believes that “when the title was registered, the Aytas were more empowered to fight for these areas” (Gov’t. 5, May 26, 2011). Prior to the

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<sup>37</sup> *Pwede na kaming magtanim ng mayora, malalaking puno, fruit-bearing trees.*

<sup>38</sup> *Nung walang CADT, para kaming nakasakal, ngayun pwede kaming makapag-gasak, malawak na ang aming magagalawan sa Pastolan.*

<sup>39</sup> Participant A8 stated that it was only observed in 2011, instead of 2010.

registration in 2009 or the approval of the formal title in 2003, both government and Ayta participants contend that the right to prior and informed consent of the community was not respected. There were even instances when the Aytas observed that vital sections of the domains were being destroyed or taken for use by other entities without their prior consent (Focus Groups 2 & 5; Validation Group).

The alleged violations of the right of prior consent of the Aytas were raised by several Ayta and government participants in particular reference to the Subic Bay Metropolitan Authority, whose authority over the ancestral domains section within the Freeport zone remained, despite the title. However, some Aytas pointed out that with the issuance of the title, “respect of their rights was now given more attention by SBMA” (Focus Group 2, June 11, 2011. “SBMA began to consider [our] rights, before any form of expansion or construction within the domains were made”<sup>40</sup> (Focus Group 2, June 11, 2011). Thus, since the title was granted, the Subic Bay Metropolitan Authority has undertaken steps to respect this right of the Aytas through a Joint Management Agreement.

The Joint Management Agreement is one among other agreements influenced by the existence of the title that recognises the rights of the Ayta community as owners of the domains. Being formally declared as owners has impacted on the right to benefit and exclude anybody from their domains. Specifically, the title has given the community the power to assert their rights and to demand benefits from outsiders for the use of these domains. A community member summed it up:

We can now say these are our rights, but without the title, we cannot assert these rights. Now that there is a title, we can stand and walk on an equal footing since there is a law that protects us and declares that we are the owners of the land. Recognition and respect are good, because that will bring about our benefits and privileges. Also, because of our title, they can no longer deceive or mislead us.

*At masasabi mo na ngayun ang karapatan mo, kung wala kang CADT, di mo masasabi karapatan mo..Ngayun may CADT na, kaya mo nang makipagsabayan dahil may batas na*

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<sup>40</sup> *Mas nararamdaman ngayun ng SBMA na may kailangan muna silang tignan, hindi yung palawak ng palawak o pagawa ng pagawa sila.*

*nangangalaga sayo, na may nagsasabi sayo na ikaw ang nagmamay-ari. Kilalanin at irespeto ka, ayos na, dahil pag kinikilala at nirespeto ka, dun na manggagaling yung benepisyo mo, pribilehiyo mo. Hindi na nila magawang linlangin kami kasi may CADT na.* (Focus Group 2, June 10, 2011)

Conversely, because of the title, external entities now view the domains as a potential source of money. In order to access the domains, these entities have attempted to deceive some Aytas. The participants did not fully elaborate on this issue but gave some illustrations. An Ayta participant explains, “because they have more knowledge, they reveal to us what is favourable to their interests”<sup>41</sup> (Focus Group 2, June 11, 2011). In some instances, “individuals pretend to be members of the Ayta community, to access and utilise the resources within the domains” (Validation Group; June 18, 2011). The title has altered the economic value of the domains, not only with respect to the external community but for the Aytas, also.

Even the non-government organisation Welfare and Management Services for Indigenous Peoples, was perceived “to attempt to get as much of the resources as the community” by entering into an agreement with the community in the guise of helping them obtain monetary benefits from the use of their domains (Gov’t. 4, June 30, 2011). One of the terms of this agreement was that the NGO will take thirty percent of the amount given to the community as payment for the use of their domains (NGO1, June 12, 2011). This NGO has also given financial amounts to several Aytas, as loan to them (NGO1, June 12, 2011), but this was not clear to the Aytas who received it. Some Aytas explained that the money was given to them when the agreement with this NGO was circulated for their signature.

Moreover, a government official was critical of the shift in attitude of the Ayta towards their land: “before, land is life, now, land has become a source of money for the Aytas” (Gov’t. 10, June 7, 2011). The title brought financial opportunities from external entities wanting to use their lands and/or resources. However, the Aytas are divided on issues concerning the monetary value of their domains, with one side wanting to ensure the preservation of the domains for the next

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<sup>41</sup> *Yung maling interpretasyon sa karapatan namin, dahil mas matalino sila, ang ipapakita samin yung pabor sa interes nila, hindi nila ipapakita yung interes namin*

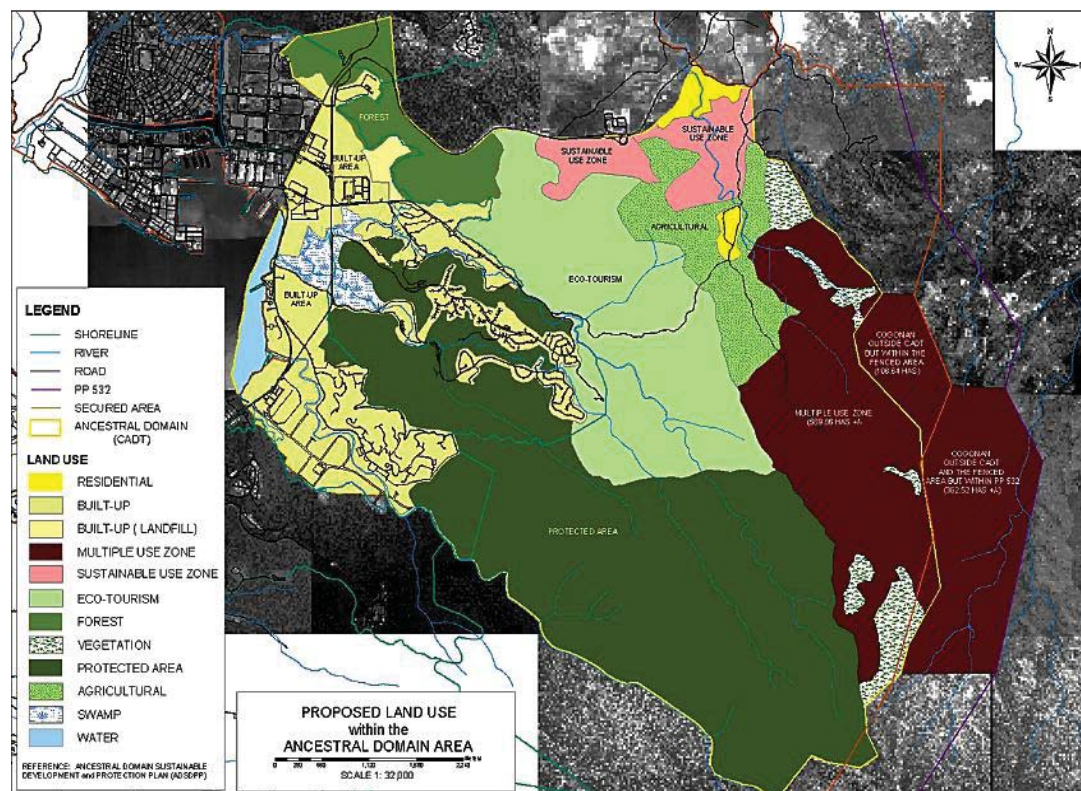
generations, whereas others are willing to receive economic benefits in exchange for the use of the domains.

## B. Restricted access/use of the domains

The following discussion evaluates the failings of the title as well as the factors that have influenced these failings. The failings are associated with the use and access of the domains by the Ayta community, and the manner in which the property rights of the community have been enforced and asserted.

### *The influence of overlap in policy regimes*

*"It is already our ancestral domains title, but we are still being restricted"*<sup>42</sup> (Focus Group 5, June 12, 2011).



**Figure 16. Map showing the Protected Area, the areas of the Freeport Zone and the ancestral domains of the Aytas.**

Source: Subic Bay Metropolitan Authority<sup>43</sup>, 2010

<sup>42</sup> *Yung sarili na naming CADT, kami pa ang hinihigpitan.*

<sup>43</sup> This map was taken from the final report of the Comprehensive Master Planning Project for the Freeport zone, which was contracted out by Subic Bay Metropolitan Authority. The list of sources of this map as indicated in the report includes government and private sector offices and representatives, but did not mention any Ayta participant from Pastolan.

The use and access by the Ayta community of their ancestral domains is greatly affected by the fact that a huge part of their domains are within the Freeport zone which is under the administration of the Subic Bay Metropolitan Authority (Figure 16, marked as Presidential Proclamation No. 532). In addition, the forest zone of the domains is also part of the Subic Watershed Forest Reserve (Figure 16, highlighted in green). The maps illustrated during the focus groups with members of the Ayta community indicated this overlap (Figures 10, 14 & 15). As stated in Chapter 5, the two Presidential proclamations were enacted in 1992. These proclamations designated specific uses for the land, one, as a commercial and financial district, and another, as a protected area withdrawn from any form of disposition and exploitation.

When the Aytas' formal title was approved in 2003, while it acknowledged them as owners of the domains, it also made more apparent the conflict between the Subic Bay Metropolitan Authority and the community. Despite the formal title, the Aytas still do not have full control over their ancestral domains, as movement within these domains is restricted. The Aytas are prohibited to access certain sections of the domains. At times, some Aytas commented: "it is already within our ancestral domains, yet we still ask permission from Subic Bay Metropolitan Authority"<sup>44</sup> (Focus Group 4, June 11, 2011); or "we get arrested for taking resources from our domains"<sup>45</sup> (Ayta 7, June 8, 2011), for instance, when Aytas cut trees for use to build their dwellings. A vast part of their forest zone where these resources are taken is within the protected area. However, the implementing rules for protected areas point out that indigenous peoples should not be restricted from pursuing traditional and sustainable means of livelihood within their ancestral domains (Department of Environment and Natural Resources, 1992). To illustrate further, SBMA prohibits the Aytas from using their traditional waters for livelihood and other customary purposes.<sup>46</sup>

Hence, although the Aytas claim that the Subic Bay Metropolitan Authority has started to consider their rights, SBMA still restrict the right to use some of their

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<sup>44</sup> *Sariling sinasakupan na natin, hinihingan pa natin ng permiso.*

<sup>45</sup> *Pwede pang huliin ang katutubo sa pagkuha ng likas na yaman.*

<sup>46</sup> The Aytas make use of the sea, rivers, and forests for healing and other spiritual purposes (p. 81).



lands and resources. “Even the gates to enter Pastolan Village are not controlled by the Aytas”<sup>47</sup>, but by the Subic Bay Metropolitan Authority, although there may be several Aytas employed as guards to watch over these gates (Focus Group 1, June 11, 2011; Validation Group; June 18, 2011) [Figure17]. The area of the Freeport zone is secured by fences and gates, and since the ancestral domains of the Aytas are within the Freeport, a gate is situated on the side of Barangay Tipu going to Pastolan to prevent the entry of unauthorised persons inside the zone.



**Figure 17. Gates leading to Pastolan Village.**

One Ayta informant shares the influence of the title on their rights as against the Subic Bay Metropolitan Authority:

During the time of the Americans, what was ours is ours. We were strangled when SBMA came. It is our custom to get resources from the forests and sea, now, we need to obtain a permit; the CADT [title] was a big help in order for us not to be evicted, but, our customary laws are not recognized and respected.

*(Panahon ng Kano, ang samin, amin. Sinakal na kami nuong panahon ng SBMA. Kaugalian na namin na kumuha ng yaman sa gubat, dagat, kailangan pang kumuha kami ng permit ngayun. Nakatulong ang CADT na hindi kami paalisin, pero hindi rin nasusunod ang batas na ginawa namin, hindi nirerespeto. (Ayta 4, June 7, 2011).*

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<sup>47</sup> Gate hindi kontrolado ng Ayta.

Since the ancestral domains of the Aytas are within the Freeport zone, business owners within this zone restrict the Aytas from accessing their ancestral domains. According to many Aytas, these business owners are not aware of the existence of their formal title. As discussed in Chapters 3 and 5, outsiders are required to obtain the prior consent of an indigenous community before gaining access to the lands or resources belonging to that community. A business investor from the Freeport zone declared in an interview that they are not aware of the title of the Aytas; and regarding whether he would apply for permits from the community, “obviously that’s not going to happen, because RA No. 7727<sup>48</sup> is the reason why we are here” (Bus. 1, June 22, 2011). As a corollary, the requirements to operate a business within the Freeport zone do not indicate that the Aytas own the lands in those areas covered by the ancestral domains title of the community (SBMA, 2009). This is despite the fact that the District Map of the Freeport shows that the ancestral domains of the Aytas is within the Freeport zone (Subic Bay Metropolitan Authority, 2010; Figure 16).

In summary, while the Aytas have been given formal title, many Aytas felt that “we have been given these lands, but there are still obstacles”<sup>49</sup> (Validation Group, July 18, 2011, and echoed in all the focus groups). The formal title of the community has been “curtailed” by other laws operating within the domains, specifically by the Subic Bay Metropolitan Authority law (Focus Group 5<sup>50</sup>: June 12, 2011). Several members of the community acknowledge that “SBMA’s law has been established before [our] title, hence, [our] rights are being overpowered by SBMA”<sup>51</sup> (Focus Group 2, June 11, 2011; Validation Group, July 18, 2011). In essence, these other laws obscure the true meaning of the community’s ancestral domains title.

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<sup>48</sup> RA No. 7727 is the law creating the Subic Special Economic and Freeport Zone.

<sup>49</sup> *May hadlang pa din. Binigay sana sayo yan, pero may hadlang pa din.*

<sup>50</sup> See footnote 49.

<sup>51</sup> *May batas ang SBMA, maaring hindi nila sinasabi na sa Ayta ito; hindi pinapakita na pantay ang Batas, 7227 at IPRA,*

### ***Joint Management Agreement***

The concerns discussed above are supposedly being addressed by the Subic Bay Metropolitan Authority through a Joint Management Agreement between the SBMA, the Aytas of Pastolan and the National Commission on Indigenous Peoples. This agreement explicates, among others, the need to secure the prior consent of the Ayta community before any business investor can operate within the ancestral domains section of the Freeport zone. However, questions surrounding the negotiations of the terms of the agreement as well as the equitable position between the parties to the agreement are being raised, by the Aytas, the government, and the NGO Welfare and Management Services for Indigenous Peoples (WAMSIP).

One of the concerns was that the terms of this joint agreement are not “culturally compatible with the Aytas” (Gov’t. 9, June 10, 2011), “since the agreement only made reference to commercial uses of the lands of the Aytas” (Gov’t. 2, June 30, 2011). Another government official admitted, “the JMA seems to be watering down the cultural rights of the Aytas” (Gov’t. 2, June 30, 2011). Since the JMA has not been implemented, the effects of this agreement cannot be fully explained.

What has been observed by both Ayta and government participants is that “the monetary share promised by Subic Bay Metropolitan Authority to the community has created confusion and division within the community”<sup>52</sup> (Ayta 1, June 6, 2011). While it was stated that some of the funds will be used for the benefit of the community, the “management of the funds by the Ayta community was not clarified”<sup>53</sup> (Focus Group 4, June 11, 2011). The lack of clarity as to how the funds would be managed created misunderstandings, causing factions within the community. Other reasons for the factions were also found, and will be discussed further in the section on the limitations of community leadership.

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<sup>52</sup> *Hindi kami nag-aaway, pero dahil sa SBMA nag-aaway kami dahil sa sinabi nilang magbibigay sila ng share.*

<sup>53</sup> *Walang malinaw; hindi alam kung san mapupunta ang pera, anong paggagamitan.*



### ***Incomplete enforcement of the property rights of the Aytas***

While the overlap in policy regimes has prevented the Aytas from having control over their domains, the incomplete implementation of their rights has also been a stumbling block towards achieving the full assertion of these rights by the Aytas. The responsibility of enforcing the rights of the title belongs to the National Commission on Indigenous Peoples [NCIP] (p. 41, Chapter 3). NCIP's dismal performance was cited as one of the reasons that led to the inability of the Aytas to gain optimum use of their lands and resources. The NCIP, for its failing, acknowledged the organisation's "lack of sufficient funds, the lack of capable human resources to handle the responsibilities of the office" (Gov't. 3, June 30, 2011); and "the non-compliance by some of its personnel on their own rules or policies due to personal interests" (Gov't. 7, May 31, 2011). Thus, several reasons were found pointing to the failings of this organisation to enforce the rights of the Ayta community.

First, non-compliance with NCIP rules or the irregular implementation of the functions of the office has been perceived by various sectors, from the organisation's own staff, to the Aytas, and to the non-government participants. In fact, some Aytas expressed a lack of trust in this organisation, and conveyed that they have more trust in non-government organisations. A leader of the community revealed, with deep frustration, "these non-government organisations, rather than the NCIP, made us more aware of our rights" (Ayta 2, June 6, 2011). As another example, when Ayta respondents were asked about organisations that assisted them in their land title, non-government organisations were mentioned first, and the NCIP was referred only when deeper prodding was done. Moreover, during the validation of the results of the focus groups, the community were in unison in relating that the NCIP "should help and be truly concerned"<sup>54</sup> for their plight (Validation Group, July 18, 2011).

A former government official shared his thoughts on this lack of trust of the Aytas. He recalled that he felt this lack of trust when he was still part of the NCIP.

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<sup>54</sup> *Tulungan ng NCIP, wag pabayaang, mahalín ng tunay.*

He explained “the trust of the community can only be strengthened if they see the concern of the NCIP for their welfare”<sup>55</sup> (Gov’t. 1, July 5, 2011). In another instance, “NCIP officials approached the leaders of the community asking [us] to convert [our] communal title into individual titles, which would have the effect of destroying the community”<sup>56</sup> (Ayta 8, June 08, 2011). Similarly, during the negotiations for the joint management agreement with Subic Bay Metropolitan Authority, the NCIP “requested ten percent from the funds to be given to the community, which led to a suspension of the negotiations of the agreement” (Gov’t. 5, May 26, 2011). The community leaders did not agree to give the ten percent, as they believe that the NCIP is not entitled to any share from payments made for the use of their lands or resources. Neither do the formal rules of this organisation specify that they should be receiving any share from payments for use of the ancestral domains of indigenous communities by external entities.

Second, the weak implementation of the rights of the Aytas is caused also by the inefficiencies of the same organisation. Most participants commented on the failure of the NCIP to inform the broader community of the rights of the Aytas to their ancestral domains. The responsibilities of this organisation were described by one of the participants:

It is the responsibility of the NCIP to raise the awareness of indigenous peoples and the external community on the rights of indigenous peoples. In addition, strengthening the traditional and new institutions of indigenous communities is within the mandate of this organisation. Strengthening the institutions of indigenous peoples is necessary in order to capacitate them to assert their rights. If the Ayta community can assert their rights, it will be impossible for the external community not to recognise these rights. Otherwise, the rights of the community will remain only on paper, unless there are strong organisations that can give full meaning to the rights of the Aytas<sup>57</sup> (Gov’t. 1, July 5, 2011).

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<sup>55</sup> *Mapapalakas mo ang tiwala ng komunidad kung makita nila na may malasakit ka sa kanila*

<sup>56</sup> *Pinulong ng dating Komisyon gustong ichop-chop ang lupa gusto ipa-CALT para magkaruon ng kanya-kanyang titulo ang Ayta. Kasama nila yung bumibili. Mawawasak ang komunidad.*

<sup>57</sup> This information was given partly in English, and partly in Filipino and the local dialect of the place, thus, unlike other quote, it is not translated to the original here.

According to several respondents, these responsibilities, although within the mandate of the NCIP, were not fulfilled.

Yet the NCIP also encounters difficulties in wielding its influence within the government structure. The organisation is not respected in its mandate by other government departments. Details of this were given by some NCIP officials. For instance, “the official request to the Subic Bay Metropolitan Authority regarding the list of investors within the ancestral domains area of the Ayta community has been ignored” (Gov’t. 3, June 30, 2011). In another illustration, government agencies also didn’t deliver on request from NCIP: “the Department of Environment and Natural Resources, Department of Agrarian Reform or the Land Registration Authority were requested to map the overlapping titles within the ancestral domains, but at times, these departments would refuse to issue the required clearance precisely because of these overlapping titles” (Gov’t. 7, May 31, 2011). As a consequence, “the NCIP cannot proceed with the titling processes, because it has to await the findings of these government entities” (Gov’t. 7, May 31, 2011). Thus, it cannot effectively perform its duties as it also lacks influence to assert its authority even with co-government entities.

Another failing of the NCIP was noted after the formal grant of title to the Ayta community. Official reports and personal accounts reveal that the NCIP created policies to protect and develop the ancestral domains. One of these is the Ancestral Domains and Sustainable and Protection Plan (ADSDPP) for indigenous communities, as mentioned in Chapter 5. However, the ADSDPP of the Aytas has not yet been implemented, and no support was given by the NCIP to effectuate this plan. In fact, in general, the ADSDPP guidelines do not cover the support needed for the implementation of the ADSDPP. Furthermore, it is also required by this policy that the plan must be integrated with the Comprehensive Land Use Plan of the local government unit (NCIP, 2004); but records from the local government unit show no integration between these two plans has occurred.

Similar to the non-implementation of the ADSDPP, another NCIP policy is the procedure of requiring the prior consent (FPIC) of indigenous communities for

specified activities to be conducted within their ancestral domains. The prior consent right of the Aytas was reported to have been breached but without any action on the part of the NCIP. Lack of coordination with external entities about this right, lack of appropriate rules that will hold responsible parties liable for its violation, or lack of political will to implement it were found to have inhibited this right. For instance, one Ayta asserts: “the mangrove section of the domains was partly destroyed without prior consent of the community”<sup>58</sup> (Validation Group, June 18, 2011). Moreover, irregularities of NCIP personnel regarding its implementation were even raised by some of its staff, observing that in most instances, some personnel would side with prior consent applicants instead of ensuring that the rights of the community were protected. “The guidance of the NCIP is essential, especially when the community is entering into agreements with outside entities, to guarantee that there is equal footing between them” (NGO 1, June 21, 2011). Moreover, arrangements for exploitation by outsiders within the domains are not covered by any rules, for instance, those pertaining to payment of royalties, violations for non-compliance with the terms of the agreement, protection of the natural habitat during the period of exploitation, among others (Gov’t 6; May 26, 2011; Gov’t. 7; May 31, 2011).

As a summary, the failure to fully implement the property rights of the Aytas has resulted in the continuous struggle of the community to assert these rights. Hence, the positive gains of the title are lessened by the incomplete implementation of their rights by the government.

### ***The limitations of community leadership***

The limitations of their traditional leaders have impacted negatively on the Aytas’ ability to gain optimum use of their lands and resources, as revealed in almost all the interviews with the Aytas. One focus group noted that, “the shortcomings of our leaders to defend our rights”<sup>59</sup>, was a major concern (Validation Group; June 18, 2011). As mentioned in Chapter 5, the Aytas regard their traditional leaders highly and expect these leaders to guide them in the right

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<sup>58</sup> *Giniba ang mangrove ng walang pahintulot sa komunidad.*

<sup>59</sup> *Pagkukulang ng pamunuan na igiit ang ating karapatan,*

direction. However, when external entities, (e.g. Subic Bay Metropolitan Authority or business investors) began to recognise the title of the community, some controversies were raised in the way these leaders have conducted themselves with respect to community interests.

The formal title has created additional responsibilities for these leaders, specifically in relation to benefits from the use of their lands and/or resources by external entities. These benefits have caused “misunderstandings and raised doubts against some of these leaders”<sup>60</sup>, relating to their honesty and integrity (Validation Group; June 18, 2011). By way of illustration, an Ayta captures the sentiments of the other Ayta participants: “there are projects to which the community did not agree, but the leaders agreed, and that prevailed”<sup>61</sup>, because of some personal gains for their concurrence (Ayta 6, June 7, 2011). The receipt of monetary payments for the use of the domains was not clear to many members of the community, hence, it has been a source of disagreement resulting from the lack of clear rules on how the money will be spent or distributed amongst them.

As a consequence, issues surrounding these benefits have divided the community. Many Aytas believe that this division is caused by the lack of good leadership, as the strong bond (communality) between the Aytas is influenced strongly by their leaders. In addition, “the miscommunication on community affairs, rooted in the failure of the leaders to discuss with the community or the lack of clarity or absence of a system that guides community decision-making processes”<sup>62</sup> has contributed to the factions that have divided the community (Validation Group; June 18, 2011)<sup>63</sup>.

Furthermore, during the validation meeting with the Aytas, they raised that the leaders have limited knowledge, which impedes their negotiations with outsiders. These limitations thus affected the insistence of their rights against the

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<sup>60</sup> *Nagkakatatampuhan dahil hindi maliwanag. Nasilaw sa pera, ipinagbibili ang kanila.*

<sup>61</sup> *Walang malinaw. Hindi alam kung san mapupunta ang pera, anong paggagamitan.*

<sup>62</sup> *Liders, sila-sila lang muna (walang regular na sesyon) di pinapaalam sa komunidad ang pinagmitingang nila (minsan naguusap, minsan hindi); Hindi pinaguusapan ang suliranin sa komunidad.*

<sup>63</sup> Although external organisations (Subic Bay Metropolitan Authority, the municipal government, or the non-government organisations) were also mentioned to have caused and aggravated these factions within the community.

Subic Bay Metropolitan Authority or against external organisations and forces, in general. In view of the communal affinity that pervades among the Aytas, the personal limitations of the community leaders were viewed as limitations of the community, as explained by an Ayta youth leader in one of the group discussions:

The respect for our elders is high, though sometimes that becomes a barrier, because if the elders have limitations, whatever his limitations are, the community can only go that far and cannot go beyond our leaders. But there are things that the community needs to know as a whole, thus, we cannot do it, we cannot make use of it, because of these limitations. For example, the implementation of our Ancestral Domain Sustainable Development and Protection Plan, how our land title can be recognised, or how we can improve the next generation.

*Ang pag-galang sa matanda, mataas, pero minsan nagiging balakid yun. Kasi kung kulang sya, kung ano limitasyon nya hanggang dun lang kami, hindi kami pwedeng lumagpas sa kanya. Pero yung dapat malaman ng buo, hindi nagagawa, nagagamit, kagaya ng pagpapaimplementa ng ADSDPP, kung paano makilala ang CADT...yung pano mapaganda ang susunod na henerasyon. (Focus Group 2, June 11, 2011).*

Despite their limitations, the critical role of the leaders was still emphasised and ways to improve community leadership were likewise conveyed. The Aytas believe that together with the government, it is their leaders who can work towards achieving the aspirations of the community for their ancestral domains. Thus, a government official suggests, “after the issuance of the ancestral domains title, community leadership has to be strengthened and organised” (Gov’t. 2, June 30, 2011). This official delves further, positing that decision-making processes of the community, exercised through its leaders, have to be recognised, since they are knowledgeable in managing and caring for the domains.

In conclusion, the full utilisation of the ancestral domains hinges on the ability of the Aytas’ traditional leaders to move the community towards realising this aim. This was highlighted not only by the Aytas but also by the other participants, as aptly put by a traditional leader himself: “there must be strengthening of unity in one direction by the Ayta community, towards the

development of the ancestral domains, and this can only be led and effected by their traditional leaders” (Gov’t. 1, July 5, 2011).

### ***The inadequate capitals of the community***

The failure to fully utilise the ancestral domains of the Ayta community was evident based on actual observation and accounts of the participants in this study. I will refer here to various ‘capitals’, the lack of which has impeded the ability of the community to fully utilise their lands and resources. Using the sustainable livelihoods framework, capitals deemed to be lacking within the Ayta community include human capital (skills, education, health), financial capital (money), natural capital (water) and physical capital (tools, machines) (Ellis, 2000; Zoomers, 2008). An Ayta leader commented in this regard: “to enable us to maximise the use of our domains, give us machineries, irrigation, and farm inputs”<sup>64</sup> (Ayta 7, June 2, 2011). He suggested further that livelihood and medical provisions be given them. In the same vein, a former government official explains why livelihood is important after title is given to an indigenous community: “you cannot separate livelihood, since even if the land is titled, indigenous peoples might be constrained to sell or mortgage their lands, out of necessity” (Gov’t. 1, July 5, 2011). Other Aytas perceived their limitations in the area of human capital and seek “training”, for instance, training to manage their lands, and to learn more about their rights. (Validation Group; June 18, 2011).

### ***The disempowerment of the Aytas***

Although the lack of various capitals, including the lack of freedom to access and use the ancestral domains, are factors that influenced the failure to fully utilise the domains, the disempowerment of the Ayta community has contributed in part to this failure (Scheyvens, 1999; Friedmann, 1992). This is illustrated in cases of violation of their rights as owners of the domains, and the lack of respect on the customary practises of the Aytas, yet in these instances, the Aytas have remained

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<sup>64</sup> *Bigyan ng traktor, patubig, pananim, pwedeng magamit ng Ayta ng lubusan. Livelihood, medical, magagamit lupa.*



passive to assert their rights. A government official argued, “the fact that they can easily be swayed, it is an indicator that they are not empowered, though there are some members of the community who are empowered, can speak their minds, the community as a whole, they are not empowered” (Gov’t. 9, June 10, 2011). Moreover, some Aytas are not even aware of the existence of their title or their rights emanating from this title, as noted in Chapter 4.

In the same way, the fact that the Aytas are hired as employees on their own lands disempowers them from upholding their rights (Figures 18 & 19). An Ayta elucidates more on this:

Our rights are equal, but we can’t speak, we can’t complain.  
We can’t do anything, because we are salaried employees.  
They say we have the rights, but we don’t see it, we don’t feel it.  
The certificate of ancestral domains title is just an imagination, but in reality, we are nothing.  
*Pantay ang karapatan namin, pero di kami pwedeng magsalita, magreklamo. Wala kaming magagawa, dahil sumusweldo. Sasabihin na you have the right, pero hindi namin makita, hindi namin maramdaman. CADT is just imagination, but the reality, wala kami.* (Ayta 9, June 8, 2011)

In a similar vein, the reality that “some Aytas are content to be employed rather than work on their ancestral domains” was cited as a reason why the Aytas are no longer using their ancestral domains (Ayta 7, June 07, 2011). This, according to one of the respected Ayta leaders from another community, removes the Aytas from the realms of the ancestral domains. It weakens the connectedness of the community to their lands. This was affirmed during several focus groups, where members of the community commented that to rely on their environment is part of their cultural traditions, and that gaining employment elsewhere has diminished their attachment to their lands.





Figure 18. Aytas working as SBMA reforestation workers inside the cogonal section of the ancestral domains.

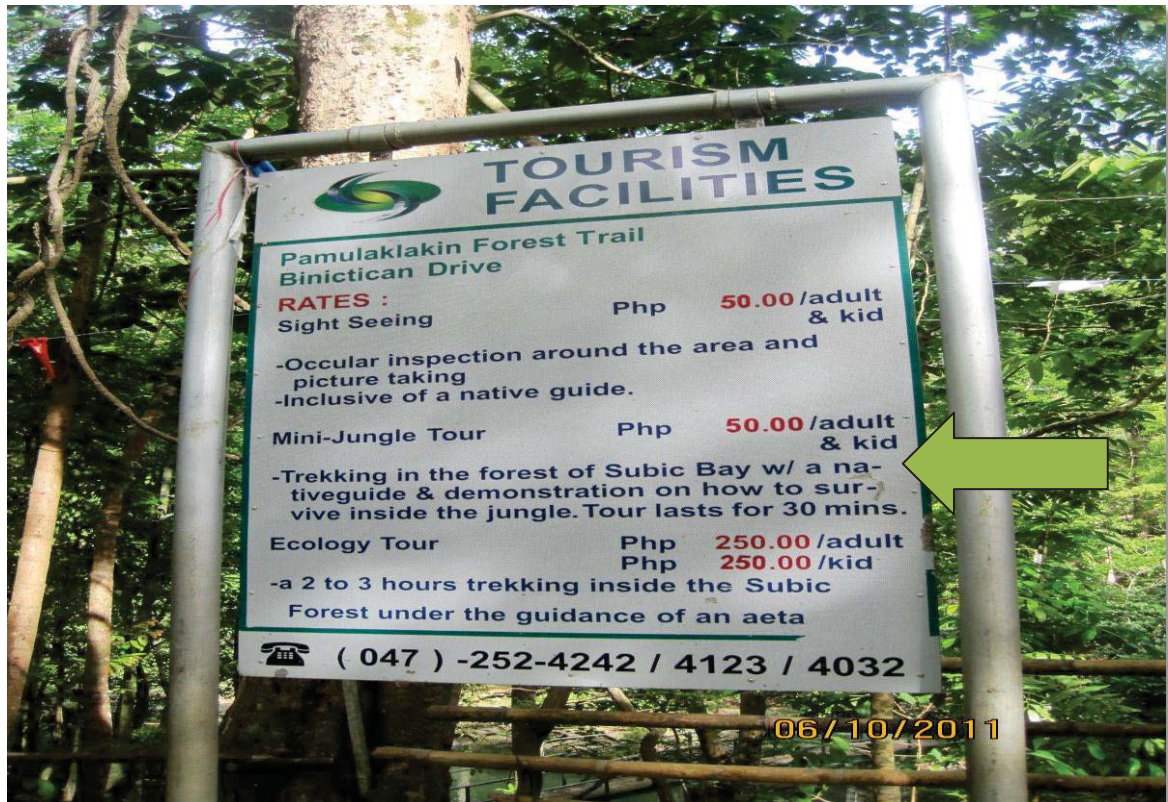


Figure 19. Aytas are employed as tour guides inside the forests of the domains.

Another form of disempowerment is the weakening of the Aytas' culture, which will be discussed in the next section.

### ***Eroding of the indigenous community's culture***

The perceived erosion of the culture of the Aytas was described in detail by one government official, encompassing the narrations of other participants:

They have very close affinity to the land, land is their source of life, now, how can we have money from these lands, not everybody, but in general, instead of caring for the lands, because this is where [we] live, now, how can we make money out of it. That is where they hunt, drink, live, eat. Not only their source of livelihood, but the source of their life, because it gives them their, food, water, clothing, medicines. They have a symbiotic relationship with the land. Land is life, not just a source of livelihood. Because of the shift in economic perspectives, which came with the sudden opportunities brought by their title, land is now the source of money.<sup>65</sup>

With this shift towards commercialisation of the land, the Aytas hinted that some of their community leaders or members have been “lured into accepting money in exchange for their rights<sup>66</sup>” (Validation Group, July 18, 2011). But then the community is divided on these issues surrounding the payments for the use of their ancestral domains. One faction adheres to and pushes for their culture, based on the Aytas’ rootedness to their lands. A non-Ayta participant and long-time resident of Pastolan observed that “the cause of the division is the aspiration of some Aytas to preserve the lands for their children”<sup>67</sup> (Other resident 1, June 8, 2011).

Thus, many Aytas long to “strengthen their cultural traditions”<sup>68</sup> as a means to reconnect back to their domains (Validation Group, July 18, 2011). They believe that their culture plays a crucial role in achieving optimum use of their domains. Consequently, with the Aytas’ strong affinity to their domains, “to have sovereignty in order to use [our] domains”<sup>69</sup> was a yearning heard from many Ayta

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<sup>65</sup> This information was given partly in English, and partly in Filipino, thus, unlike other quote, it is not translated to the original here.

<sup>66</sup> *Nasilaw sa pera, ipinagbibili ang kanila*

<sup>67</sup> *Nag-aaway ang komunidad, kasi yung iba, ayaw, yung iba gusto, kasi may pera. Kailangan ng anak, kaya ayaw nila.*

<sup>68</sup> *Palakasin/buhayin ang kultura ng Ayta*

<sup>69</sup> *Malayang makagalaw at magamit ang lupaing ninuno. Sovereignty or freedom within the domains has been echoed in all group discussions with the Ayta participants.*



participants (Validation Group; July 18, 2011). The longing for freedom within the domains was voiced strongly in all the group discussions with the Aytas, and the significance of this lies in the fact that “the forests give life to the Aytas”<sup>70</sup> (Ayta 11, June 17, 2011). Similarly, “the non-practice of their culture is construed to be a failing of the community”<sup>71</sup> that cuts them away from their relationship with their lands (Validation Group, July 18, 2011). Furthermore, the lack of control within the domains which they have customarily relied upon has been greatly detrimental to their pursuit to use their domains pursuant to their traditions. These sentiments are captured in the words of an Ayta:

We appeal that when we enter our domains, they (SBMA) give us freedom, especially in areas where we get our food and livelihood. These lands are within our title, but still we are being restricted. They will prohibit us from fishing in the mangroves, yet they will construct buildings. If we lose our mangroves, we will lose our source of food and livelihood. Hence, we seek for freedom in these areas.

*Hinihiling po namin: Gusto po sana namin, pag pumapasok kami sa sarili naming CADT, sana po lumuwag po kami, lalo na sa mga lugar na nagbibigay ng ulam, kabuhayan, bigyan kami ng kalayaan. Hindi yung sarili na naming CADT, kami pa ang hinihigpitan. Magbabawal silang mangisda sa may mangrove, tapos magpapatayo sila ng building. Kung mawawala ang mangrove, mawawalan kami ng pang-ulam, pangkabuhayan. Kaya sana bigyan kami ng luwag, kalayaan.* (Focus Group 5, June 12, 2011)

Therefore, the connectedness to the lands and communal nature of the domains are considered “positive factors that will enable the community to maximise their lands” (Gov’t. 9, June 10, 2011). “The attachment to the lands of the Aytas has been viewed to have sustained the ancestral domains to its present state”. (Gov’t. 5, May 26, 2011). Hence, to enable the community to freely use their ancestral domains based on their traditions, is to respect their culture which has allowed the preservation of their domains over the years.

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<sup>70</sup> *Ang kagubatan ang pusod ng Ayta.* Another participant stated: Without the lands or forests, we will not live (*Kung walang lupa, kabundukan, hindi kami mabubuhay*) (Ayta 2, June 6, 2011). The life of the Aytas is in the forest, we cannot live in the city, we long for our forests (*Ang buhay namin mga Ayta sa kagubatan, hindi kami pwedeng mabuhay sa syudad, hinahanap namin ang kagubatan*) (Focus Group 4, June 12, 2011).

<sup>71</sup> Negatibong karanasan/problema ng komunidad: Hindi na tinitignan/ginagamit ang kultura.

### **C. Gaps in the implementation on the rights under the formal title**

After the formal title was awarded to the Aytas, the community became owners of the ancestral domains comprising 4,284.1256 hectares of land and a water component of 13.7047 hectares. However, as discussed above, several factors have led to the inability of the Aytas to fully utilise their ancestral domains. Chiefly, the ancestral domain rights of the community have not been fully enforced. This section attempts to find the gaps in the implementation of the rights embraced under the Aytas' formal title.

#### ***Lack of policy that supports the development of the ancestral domains after the grant of formal title***

As noted earlier, part of the ancestral domains of the Ayta community overlaps with a government Freeport zone. The Freeport zone operates mainly as a tourism and investment centre. This overlap was considered by the NCIP when it decided to award the title of the Aytas in 2003 (NCIP, 2003b, Appendix Five). However, no measures from the government were found to address this overlap. Later in 2010, the Subic Bay Metropolitan Authority started negotiating for a management agreement with the Ayta community, to recognise the rights of the Aytas as owners of the lands in certain sections of the Freeport.<sup>72</sup> But according to an NCIP official, this agreement was said to be “favouring the rights of the Subic Bay Metropolitan Authorities rather than the rights of the Aytas” (Gov’t. 2, June 30, 2011). The terms of the agreement failed to also consider the “readiness of the Aytas to receive the monetary benefits to be given to them” (Gov’t. 9, June 10, 2011). No terms were written as to how the funds would be managed when transferred to the leaders of the Ayta community. Even the Aytas offer “no clarity with respect to where the funds will be used” (Focus Group 4, June 12, 2011).

After a title is granted to an indigenous community, an Ancestral Domains and Sustainable and Development Protection Plan (ADSDPP) is prepared to facilitate the development plans of the ancestral domains. For the Aytas, the

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<sup>72</sup> The management agreement was still undergoing negotiations at the time of the fieldwork, as of the first week of July, 2011.

ADSDPP is regarded as an important tool to map out the plans for the maximisation of use of the ancestral domains of the community. However, with the limited capitals of the community, “the ADSDPP cannot be implemented by them solely” (Gov’t. 6, May 26, 2011). Yet, “no support services for the implementation of the development plans of indigenous communities for their ancestral domains” is given by the NCIP (Gov’t. 3, June 30, 2011). For this reason and more, the development plans of the Ayta community for their ancestral domains remain on paper only and have never been implemented on the ground.

It has been noted above that not all members of the community are aware of the existence of the formal title or the rights represented under the title, which therefore raises the impossibility of asserting these rights fully. The external environment of the community has also not been informed of the ancestral domains title of the Pastolan Ayta community. “The NCIP has failed to explain the rights of the Aytas to the local community<sup>73</sup>”, thus the Aytas are not given due respect as owners of the ancestral domains (Ayta 7, June 7, 2011). In essence, they were given rights on paper, but in reality, they were still not enjoying their rights as owners of these domains.

#### ***Lack of rules governing the use of the ancestral domains by external entities***

According to an NCIP informant, “one way of maximising the ancestral domains of the Aytas is to allow outsiders to develop the lands” (Gov’t. 3, June 30, 2011). However, “there is no policy in terms of benefits” for the Aytas when the domains are used by outside entities (Gov’t. 6, May 26, 2011). Records from the NCIP also indicate that no rules to guide outsiders in their exploitation of ancestral domains have been established. The available rules on record pertain only to securing the prior consent of indigenous communities before any undertaking is allowed to proceed inside the domains.

At the same time, there are no guiding principles for outsiders established by the Ayta community. In addition, there is a lack of clarity or absence of rules to

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<sup>73</sup> *Sa panig ng NCIP hindi pinapaliwanag. Dapat gabayan/pinapaliwanag sa local na respetuhin at bigyan pahalaga.*

guide the community on matters concerning community dealings with external entities. These two points are critical, as it has been noted that they have been the major causes of conflict within the community.

### ***Lack of coordinating mechanisms with co-government entities***

As discussed in this chapter, other government entities (SBMA, LGU, DENR, DAR), including the primary agency for indigenous peoples, the National Commission on Indigenous Peoples (NCIP) are involved in the full realisation of the land rights of the Aytas. However, these organisations are said not to be harmoniously coordinating with one another in assisting the Aytas. Moreover, this lack of coordinating mechanism results in confusion on the ground which contributes in the inability of the Aytas to optimise their lands and resources. To quote a government official:

There are lots of times when the formal institutions don't have their acts together, thereby contributing to the confusion on ground. The NCIP, SBMA and LGU have good intentions, but we also have our own agendas, and they are not necessarily in sync with each other to a point that it contributes to the counter-productiveness of the Aytas having to maximise their ancestral domains. I think that is one big stumbling block. I don't think there is conflict with respect to their plans and programs, but only in their implementation, when the human dynamics come into the picture, I think that is when the germ of counter-productivity comes. There may be gaps in guidelines or rules pertaining to institutional partnership. If there were protocols/guidelines to be followed, it would not eliminate, but lessen the gaps. (Gov't. 9, June 10, 2011).

### **6.3. Conclusion**

The Aytas of Pastolan secured their rights to their native homelands through the formal recognition of their native title. The native title has been formalised into a Certificate of Ancestral Domains Title registered in the name of the Ayta community of Pastolan. However, a number of factors have prevented the full enjoyment of the rights under the title by the community. The complex nature of the domains, situated partly inside the Freeport zone, is one factor influencing the lack of sovereignty over the ancestral domains of the community.

Another reason is the lacklustre implementation of the rights under the title by the government. The limitations within the community setting, characterised by the inadequacies of the community leaders, the insufficient capitals and disempowerment of the community, have deterred the insistence of these rights which were supposed to have been formally transferred to them by their ancestral domains title. Finally, gaps have been identified after the issuance of the title which has hindered the full enforcement of the rights of the Aytas to their ancestral domains.

All the factors mentioned above have thus lead to the inability of the community to achieve optimum use of their ancestral domains. There is a great amount of lament from the Aytas about the obstacles that impede their various rights to the domains. The true meaning of their formal title is blurred by the realities on the ground, and hinders its supposed intent for the Aytas as owners of the domains. Sadly, the grant of the title has also attracted external entities which tend to deceive the community into giving up their rights or interpret them in a way that is contrary to the essence of the communal title for the Aytas. The domains have been perceived, in addition to their traditional essence for the Aytas, as possessing a significant economic value bringing conflicts within and outside the community.

With all these entanglements, every attempt to assert the property rights of the community faces challenges not only for the Ayta community, but also for the government. These challenges will be explored as the findings in the final Chapter are merged within the literature, whilst looking into possible ways that will inform policy to support indigenous communities after the grant of formal title to their traditional lands and resources.

In Figure 20, the key factors found to be influencing the ability of the Aytas to maximise the use of their ancestral domains are shown, illustrating a contradiction on the effects of the land title on the rights of the Aytas. While the land title has brought positive impacts for the Aytas, these impacts were also weakened by external and internal factors.



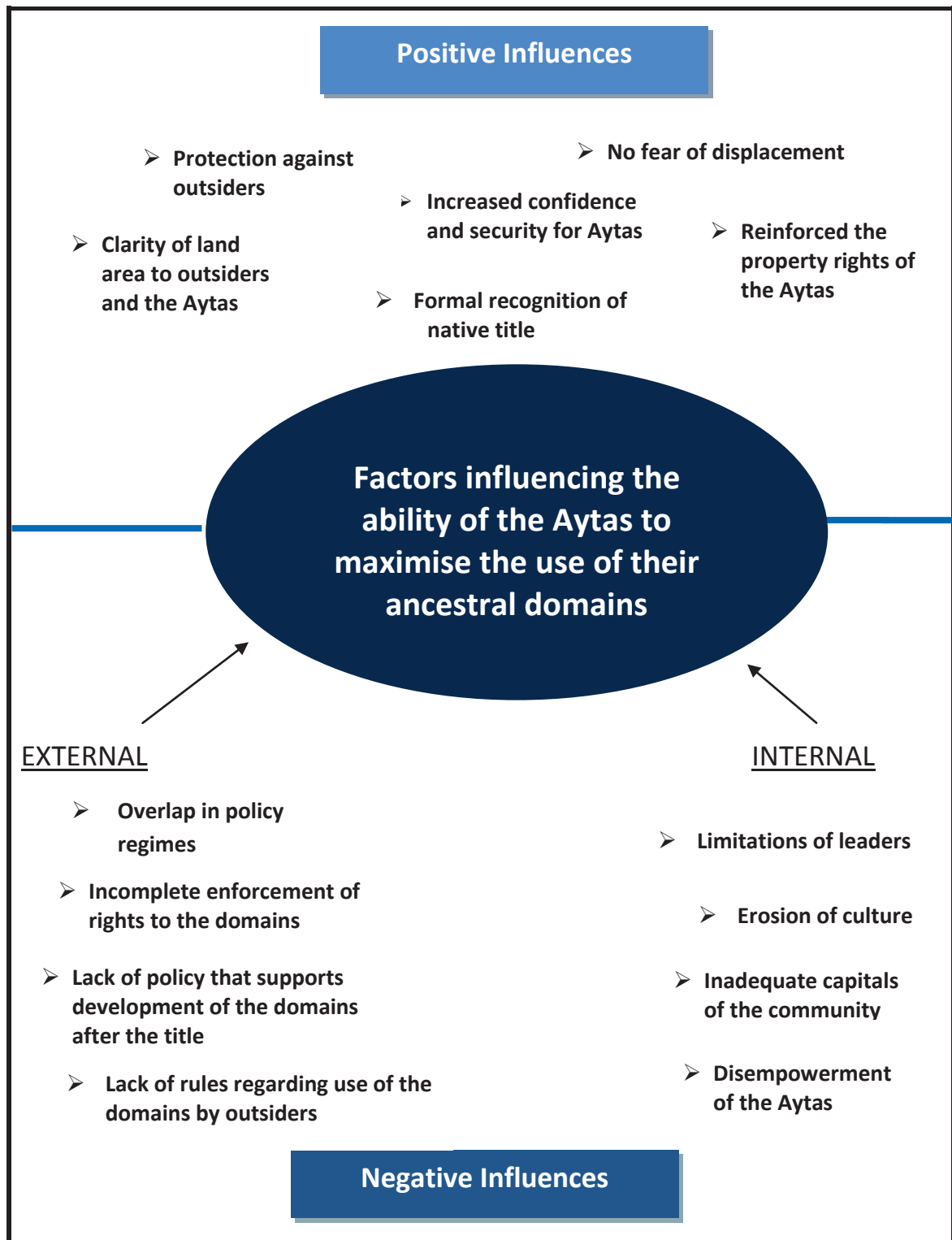


Figure 20. Maximising the use of the Ancestral Domains of the Ayta community

## CHAPTER VII

### DISCUSSION AND CONCLUSION

#### 7.1. Introduction

This thesis has examined the factors that influence the optimisation of use of indigenous people's traditional territories. As outlined in Chapter 1, this thesis focuses on one key aim:

**To inform policy that will support indigenous peoples to attain full rights to their traditional lands and resources after the grant of formal tenure.**

This thesis investigated the experiences of the Ayta community of Pastolan, Hermosa, Bataan, in the Philippines. One key question guided this research:

- 1) What are the institutional factors that influence indigenous people's optimisation of use of their traditional lands and resources?

This Chapter attempts to answer this question, placing the findings in Chapters 5 and 6 within the context of the international and Philippine literature discussed in earlier Chapters.

#### 7.2. Discussion of Key Question

***What are the institutional factors that influence Indigenous Peoples optimum use of their traditional lands and resources?***

The framework presented in Chapter 2 (Figure 1) emphasises that political, economic and cultural institutions of indigenous communities are interdependent. It is not argued that the suggested framework is an over-all dictum applicable to every indigenous community. It is meant to be guided by the strengths and weaknesses, and the particular circumstances existing in each indigenous community. Importantly, as explicated in Chapter 2, for indigenous peoples, land is not merely property, but has a "material and spiritual element" which embodies their cultural legacy that they feel they must pass on to the next generations (Wiessner, 2011, p. 136).

## **A. Political factors**

### ***State policy recognising the land rights of Indigenous Peoples***

The results support evidence on the importance of State policies formally recognising the rights of indigenous peoples to their traditional territories (Velez, 2011; Capistrano, 2010; Indian and Northern Affairs Canada, 2008; Altmann, 2004; Schwartzmann & Zimmerman, 2005; Stocks, 2005; Colchester, MacKay, Griffiths & Nelson, 2001). The case study suggests the importance of a formal land title as a tenure instrument for indigenous people's traditional territories, distinguishing it from other State policies recognising merely the rights of possession or rights to use the traditional lands and resources of indigenous peoples. The impact of formal tenure on the property rights of an indigenous community is substantiated in this study, asserting various reasons regarding why formal recognition of the lands rights of indigenous communities is legally tenable.

This study extended evidence on this security resulting from the grant of formal tenure to the indigenous community. The formal title has freed the Ayta community from several uncertainties they had concerning their traditional territories, that is, the uncertainty of being displaced, and the uncertainty regarding the extent of the area comprising their territories. In this study, the title gave the indigenous community self-confidence, believing that they now can stand on an equal footing with outsiders. This may find application to other Filipino indigenous communities in view of the nature of the Philippine land system which acknowledges as owners of the land, those with formal titles. Importantly, not all members of the Ayta community are aware of the title, hence, the security and other benefits may be of value only to those with knowledge of the title.

Despite the positive gains derived from the formal title, this study also presents a contrasting perspective. Government policies other than the indigenous land policy have restricted the rights to access and use the traditional lands and resources of the Ayta community. Complementing the findings of Vidal (2004), overlapping policy regimes result in competing interests over the actual use of lands and resources. Thus, even with the issuance of the formal title, another government policy prevailed over the land rights of the Aytas. In this light, the

findings thus substantiate the arguments of Capistrano (2010), Novellino (2000), and Altman (2004), that there is a need for governments to reconcile other existing policies that may counter the rights of indigenous communities to their traditional territories. Moreover, by implication, the suggestion of Gatmaytan (2007) to evaluate the Philippine indigenous people's land policy is partly supported by this study, as established in this research, overlapping policies have curtailed the enforcement of the indigenous land policy. Gatmaytan's assertion is based on the generalised notions of indigenous communities and ancestral domains property pushed by the indigenous people's land law, which in this study allowed the preservation of the lands and resources of the Ayta. Nevertheless, problems concerning communality do exist, as will be discussed under the cultural factors section.

As a corollary, it is posited that Philippine indigenous communities may similarly face conflict of interests in property rights to land in view of the general land system prevailing in the Philippines (p. 39-40), and this research may be instructive. As reported in Chapter 3, the Philippine land system has been in place prior to the country's indigenous land policy; and, this land system has allowed the private titling of public lands including the establishment of government reservations. As such, it is most likely that overlapping property regimes may exist on the lands of many indigenous communities across the country. While the Philippine indigenous land policy has formally recognised the rights of indigenous peoples to their lands and resources, the law has also acknowledged existing property rights or interests within indigenous lands (Section 56, RA No. 8371, 1997). Therefore, clashes between indigenous interests and established land regimes occur because of these "murky concepts of property and ambiguities in legal regimes" (Altman, 2004, p. 518). This is true for this research as the ambiguity of the land rights of the Ayta community was evident because of the existence of other legal regimes<sup>74</sup> within the ancestral domains. As aptly stated by an Ayta youth leader:

Even prior to our certificate of ancestral domains title, the power of Subic Bay Metropolitan Authority already took

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<sup>74</sup> Subic Freeport and Economic Zone and Watershed Reserve.

effect. Hence, they have the power over the area, and we are not recognised. Instead of making known our rights, our benefits, they do not give it.<sup>75</sup> (Focus Group 2, June 11, 2011).

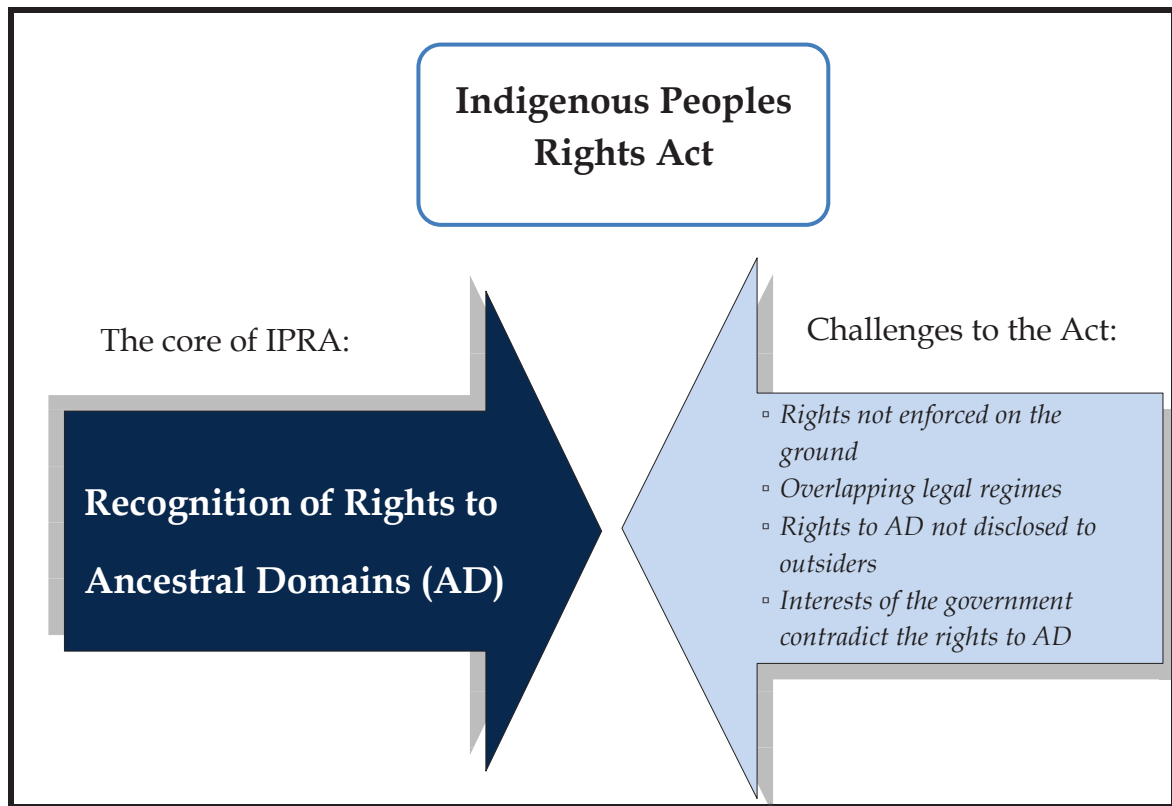
Notwithstanding the controversies affecting the formal title for indigenous communities, data from this research has established the importance of this instrument for the Ayta community. This study therefore does not add to the antagonism raised against the Philippine indigenous land policy. As found in this research, without the indigenous law and the formal title, the Aytas believed that their lands could easily be taken by the government or that they could easily be removed from these lands. Despite this assertion, the findings substantiate the argument of Gatmaytan (2007, in the Philippine context) that recognition of ownership is empty unless it acknowledged the other conditions in the community, such as livelihood insecurity, overlap in legal regimes, lack of rules pertaining to use and benefits on the lands, among others.

***Strong State implementation of policy  
on land rights for indigenous peoples***

Even with the Philippines' Indigenous Peoples Rights Act that explicitly recognises and protects the rights of indigenous peoples to their traditional lands and resources, serious obstacles in the assertion of these rights were still experienced by the Ayta community (Figure 21). This law was construed by an Ayta leader to be "weak", explaining that in actual practise, their rights as owners of the land are still not recognised and respected (Ayta 7, June 7, 2011). This study confirms however that fault is not strictly with the Philippine indigenous people's policy, but with the inadequacies of the organisation tasked to implement it (Gutierrez & Borrás, 2004; Colchester, MacKay, Griffiths & Nelson, 2001). It thus concurs with the findings of some authors that government organisations "lack resources and capacity to protect" indigenous titled lands (Colchester, MacKay, Griffiths & Nelson, 2001, p. 76). This research also supplements the literature by showing that government intervention was negligible, if not totally wanting in facilitating the assertion and enjoyment of the various land rights of the Aytas.

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<sup>75</sup> *Bago pa dumating ang CADT, nag-take effect na ang power ng SBMA, kaya sila ang may power sa lugar. Walang pagkilala samin. Imbes na ipakilala ang tamang karapatan, ipakilala ang tamang benepisyo, hindi naibibigay. Pilit nilang hindi kinikilala.*



**Figure 21. The Indigenous Peoples Rights Act, its centrepiece and challenges**

Source: Author

In addition this study's findings provide weight to the argument of some institutional economists that the framework of institutions needs to consider that individuals can be motivated by self-interest and alter these institutions (North, 1995; Adkisson, 2009). As mentioned in the previous Chapter "non-compliance by some of NCIP's personnel on their own rules or policies due to personal interests" has contributed to the failings of their organisation to meaningfully implement the rights of the Aytas (Gov't. 7, May 31, 2011). Similarly, data from this research provides insights to the assertion of another institutional economist (Toye, 1995), that in the process of achieving the purpose of the institutions, conflict may arise with the interests of the organisation which implements these institutions or the interests of the individuals who compose these organisations. In this research, several organisations (National Commission on Indigenous Peoples, Subic Bay Metropolitan Authority, Municipal government of Hermosa) were reported to have interactions with the community, and the manner in which these organisations have implemented their programs for the community was seen as a factor in disempowering the Aytas.

In another vein, findings of this study illustrate the argument that weak institutions established by the State to implement the Philippine indigenous people's land policy had inhibited its enforcement and held back the law's aims (Gutierrez & Borras, 2004). Inadequacies in resources and the limitations as well as the irregularities of government personnel tasked to implement these rights, including the lack of a policy that implements the land rights of Filipino indigenous communities, specifically, after the grant of a formal title, had led to the inability on the part of the Ayta community to enjoy their rights under the formal tile. An Ayta leader comments in this regard, "the law is different in actual, different on paper, since in the local setting, the rights of indigenous peoples are not recognised"<sup>76</sup> (Ayta 7, June 7, 2011). In sum, this study substantiates the claims of several authors that laws about indigenous rights differ in theory and practise, since the law is seldom enforced on the ground (Gatmaytan, 2007, 2006; Stocks, 2005; Colchester, MacKay, Griffiths & Nelson, 2001).

Thus, the incomplete or irregular implementation of the IPRA has derailed its purpose in effecting the rights, not only of the Aytas, but of many Filipino indigenous communities. This supports Pacheco's (2009) findings that grant of ownership or rights to use indigenous lands would be meaningless without strong State institutions and external support to implement indigenous people's land rights. Although the need for strong State policies and organisations that enforce indigenous land rights has been regarded as important in this research, community governance also plays a key factor in the optimisation of the lands and resources of the Aytas, which will be discussed in the next section.

### ***The significant role of community governance***

Consistent with the propositions of several authors that the role of community governance is crucial in indigenous development, this is true for the Ayta indigenous community (Bräutigam and Knack 2004; Cornell and Kalt 1995, 1997a; Evans 1997; M. Jorgensen 2000; Knack and Keefer 1995; La Porta et al. 1999; North 1990; Ostrom 1992 – all cited in Begay, Cornell, Jorgensen & Kalt,

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<sup>76</sup> *Iba sa actual, iba sa papel. Pagdating sa local hindi kinikilala karapatan ng katutubo.*



2007). The Ayta leaders were said to be the ones that moved and believed in the necessity of the formal land title, however, their limitations were raised as one of the factors that has influenced the community's inability to assert their rights under the title. Many Aytas have expressed disappointment and doubted their leaders in the performance of their duties, as one Ayta laments: "the leaders pull us in the wrong direction"<sup>77</sup> (Validation Group, June 18, 2011). More importantly, they regard the failings of their leaders as the failings of the community as a whole, which thus impacted on their capacity to achieve optimum use of their lands and resources.

The findings thus highlight the importance of community governance towards achieving the optimum use of the lands and resources of indigenous peoples. This supports the findings of Cornell & Kalt (2001), that if indigenous governance is weak, the community can face difficulties in carrying out the kind of development which is acceptable and beneficial to the community. More importantly, the years of deprivation from their lands, and the undermining of the Ayta's own governance structure and institutions by external entities, have weakened the capabilities of the community from now asserting their land rights, even with the existence of the land title. This research thus supplements and provides evidence to the assertions of some authors that many indigenous governing organisations and capabilities are weak, as a consequence of external factors (Altman, 2002b; Stocks, 2005). These external factors, among others, relate to opportunities that came after the title. This is one of the key findings of this research — that the title brought new responsibilities to these traditional leaders, specifically, on the actual and expected benefits from their lands and resources. Faced with these new and different responsibilities, this study contends there is a need for strengthening of the traditional leadership and governing institutions of indigenous communities, concurring in part with the findings in the studies conducted from across the globe (Colchester, MacKay, Griffiths, Nelson, 2002; Cornell & Kalt, 2001, 2003, 2006; Stocks, 2005). As stated by a government official from the National Commission on Indigenous Peoples, "once there is a

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<sup>77</sup> *Lider, humahatak sa mali.*

certificate of ancestral domains title, the leaders must be strengthened and organised, otherwise the title would be meaningless”<sup>78</sup> (Gov’t. 2, June 30, 2011).

Further, this study puts forward the need to examine the traditional governing institutions of the Ayta community. While this study did not delve deeper into the traditional governing institutions of the community, the results show the absence of clear rules concerning utilisation of the traditional lands and resources by outsiders has sown controversies within the community and affected the way the Aytas regard their leaders. At the same time, this gave way to a disregard of the customary rules, not only by outsiders but also by some of the leaders of the community. The formal tenure instrument given to the Aytas has changed the way the community and its external environment regard their lands and resources, and as a consequence, the situations faced by the leaders and the community has also changed. In studies conducted with some American Indian Nations, the key elements to the successes on economic development of these communities were reforms in their traditional/tribal governing institutions, complemented with formal governing institutions. As described in Chapter 2, tribal governing institutions of indigenous peoples refer not only to laws or rules, but also to the government organisation of an indigenous community (p. 23).

In this regard, suggestions for further research are posited in order to understand the existing traditional governing institutions of the indigenous community and whether it can still respond to present circumstances after the grant of formal title, as put forward by one government respondent (Gov’t. 2, June 30, 2011). The argument by some authors that traditional governing institutions should be complemented by formal governing institutions require further examination, especially in the Philippine context, as the experiences of the Ayta community show that their traditional institutions are weak to face the new circumstances brought by their land title. Moreover, as discussed in Chapter 6, one of the gaps found after the issuance of the indigenous community’s land title is the lack of formal and informal rules that govern the use of lands and resources by external entities (p. 111-112).

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<sup>78</sup> *Pag may CADT na kailangan ayusin ang leadership. Pag hindi maayos/mamanage ng lidars, wala din saysay ang CADT.*

Autonomy in indigenous governance has been found in several studies as key to the economic successes of some American Indian communities (Cornell & Kalt, 2002, 2003). However, data from this research shows that the Ayta community is still not capacitated to solely carry out the responsibilities of protecting and enforcing the rights under the formal land title. Interference in the decisions of the community leaders has been established, thus, most Aytas felt the need for support from other entities, especially on matters regarding their land rights. In fact, indigenous leadership has been eroded (as has occurred elsewhere — see Stocks, 2005), as members of the community attribute most of their failings to the failure of their leaders to provide good leadership. The important role of the community's leaders will be further discussed under the cultural factors.

## **B. Economic factors**

### ***Institutions that support indigenous communities after the grant of formal title or ownership to their lands***

As several authors explain, security of tenure over indigenous lands does not guarantee that economic benefits from their lands will be generated automatically and distributed equitably amongst the community (Velez, 2011; Schwartzman & Zimmerman, 2005; Lund, Odgaard & Sjaastad, 2006; Rynard, 2000; Anderson, 1997). The results of this study attest that the formal land title was not sufficient to enable the Aytas to fully utilise or benefit from their traditional lands and resources. In terms of the factors that influence the development of indigenous lands, several propositions are found in the literature. The findings of this research concur partly with the literature commending external arrangements to facilitate the development plans and strategies of indigenous communities (Altman, 2002; Indian and Northern Affairs Canada, 2009; Sullivan & Margaritis, 2000). The limited capitals of the Ayta community, and the overlapping property regimes within their traditional territories, among other factors, would require the need for implementing mechanisms to support the development of these territories, and, to enforce the land rights of the Aytas. The research results complement evidence on this, providing reasons why support is crucial to develop and manage indigenous lands so that this will be beneficial to the community.

Ancestral domains in the Philippines cover vast tracts of lands, inland waters and natural resources found inside these lands (NCIP, 2010). Indigenous communities often lack economic and political resources, as in the case of the Aytas, to develop their lands and resources (Dressler & McDermott, 2010). Hence, this study argues that formally recognising the rights of indigenous communities to their traditional territories would be incomplete if not accompanied with appropriate and adequate mechanisms that would enable indigenous peoples to realise the kind of development or types of uses they want for their territories (Colchester, MacKay, Griffiths & Nelson, 2001). This is especially true after the grant of formal tenure, as the identity of the lands have now been clearly defined.

***Optimisation based on indigenous community's cultural practices and aspirations***

As elucidated in Chapter 6, this study has established that the restrictions on the right to access the traditional lands and resources of the Aytas have greatly impeded their efforts to achieve optimum use of these resources. However, I argue that the term optimisation or maximisation needs further inquiry, as utilisation of indigenous lands by the community transcends the “maximisation of economic benefits” from their domains (Wiesnner, 2011, p.139). The results show that the Aytas have varying uses for their territories, and this is not translated solely in the way outsiders regard the economic value of these territories, supporting therefore the findings of Lasimbang (2008) that indigenous people's lands represent more than the economic base for these peoples. Many Aytas regard that the use of their lands as based in their culture, as succinctly put by a woman Ayta: “it is customary for us to access the resources from the forests or from the sea”<sup>79</sup> (Ayta 4, June 7, 2011). Yet many changes have occurred, as a consequence of their land title, which brought challenges and opportunities for the community. The land title has altered the way the Aytas now value the community's lands and resources.

Despite these changes, many Aytas still want to retain the cultural essence of these territories. Thus, the lack of freedom to move around their lands and use them based on their customary practices was raised as a serious concern and a

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<sup>79</sup> *Kaugalian namin na kumuha ng yaman sa gubat, dagat*

plea to government authorities. Hence, more than the economic gains anticipated from the use of the lands by outsiders, freedom within their territories was the yearning of all the Ayta participants, as aptly put by an Ayta youth leader:

We *simply* want the freedom to move in our ancestral domains. To fish, to build huts, but we are being dissuaded by security. Security will call someone, and then prohibit us, because we are an eyesore to the investors.<sup>80</sup> (Focus Group 2, June 11, 2011)

This research thus supports and adds evidence to the point raised by Wiessner (2011) that for indigenous communities, “relations to land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, to preserve their cultural legacy and transmit it to future generations” (Wiessner, 2011, p. 136 citing the Inter-American Commission on Human Rights, 2002). For many Aytas, optimisation also signifies the freedom to use their traditional territories based on their customary practices and traditions.

In another perspective, it is not clear from this study that assertions advocating entrepreneurship and business approaches on indigenous lands (Trosper, Nelson, Hoberg, Smith & Nikolakis, 2008; Anderson, Dana & Dana, 2006 and others) would work for the Ayta community, mainly because previous interventions using the entrepreneurship approach were said to have failed. The circumstances revealed in those studies, for instance, strong leadership and effective governing (formal and informal/traditional) institutions have not yet been achieved by the Aytas. As discussed above, the changes brought by the title have created new responsibilities which made apparent the limitations of the traditional leaders of the community. The traditional governing institutions of the Ayta community have also been observed to be inadequate hence, this created confusion and division within the community, especially on matters affecting benefits from their lands and resources. Moreover, it is possible that other causes include the failure of these business approaches, which is not covered by the subject of inquiry for this study. Thus, further study in the Philippine context could

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<sup>80</sup> *Malaya lang makakilos dyan, pwedeng mangisda, magtayo ng kubo-kubo..pero binabawalan ng security, itatawag, pagbabawalan, dahil sakit sa mata ng investor.*

be undertaken as regards economic interventions suited for indigenous people's lands, based on the other factors cited here.

The research findings conveyed different views concerning the preferred use of the lands by the Ayta community. While there is openness for other economic options (such as allowing business investors to access and use the lands/resources) on the one hand, there is likewise a negative response to allow these non-traditional uses as it is believed that this may impact on the future generations' resource base, on the other hand. As pointed out by a government official:

For their livelihood, there should be research on the community's indigenous knowledge or customary practices, so that this would be the basis for the support to be given, which represents what the community chooses to achieve. Otherwise, if the support is not based on their culture, this would be meaningless, based on my experience with other indigenous communities.<sup>81</sup> (Gov't. 2, June 30, 2011)

In a way, the findings relate to the conclusion of Booth & Skelton (2011) on the need to further evaluate the effects of industrial development upon indigenous cultures. In this case, since the traditional territories of the Aytas have been partly devoted for economic uses as a Freeport zone, and some Aytas have intimated that they do not want the expansion of the business areas as it would affect their lands for future generations, an examination of issues surrounding the non-traditional use of the lands of indigenous peoples is likewise timely. The formal recognition of the land rights of an indigenous community is given to them as a community hence, their rights must take into account the rights of future generations to these lands.

### **C. Cultural factors**

#### ***Strong relationship with traditional lands and resources***

As elucidated in the previous Chapter, "the Aytas have very close affinity to the land" (Gov't. 9, June 10, 2011). This close relationship with the lands, and the

<sup>81</sup> *Research ang kanilang indigenous knowledge about kanilang livelihood, para yun ang kanilang suportahan at yun ang gusto nilang mangyari. Iresearch kung ano ang customary nila, at dun magbase ang tulong. Kasi kung hindi rin base sa kanilang kultura, nawawala ring saysay, base sa aking experience sa ibang community.*

communal and inalienability characteristics of their traditional territories are viewed as significant factors that has preserved the lands and resources of the Aytas to its present state. The interpretation therefore that these exclusive attributes of the lands of indigenous peoples are mere incentives as posited by Altman (2004) is inaccurate, as these attributes are more than incentives, as they specifically relate to the lives and cultural integrity of these peoples (Daes, 2001).

This study's findings substantiate the views that the use of the traditional territories of indigenous peoples, extends beyond its material or productive purposes (Wiessner, 2011). As stated above, for almost all members of the Ayta community, optimisation includes their ability to freely exercise the cultural uses of their territories. Indigenous people's relationship to their traditional territories has been cited mostly in the literature in relation to sustainability (for example, Altman, 2004; Inter-Commission Task Force on Indigenous Peoples, 1997). Information in terms of optimising the use of these territories for indigenous peoples still needs further inquiry, in view of the many transformations occurring on indigenous lands, including the needs of indigenous communities. These transformations were established by the case study, and considered one of the research's key findings. The nature and use of the traditional lands of the Aytas is no longer narrowly looked at in terms of the customary uses and its value for the Aytas. The economic lifestyle of the community is also no longer restricted nor based solely on their reliance to their natural environment.

Finally, this study's findings confirm that the communal nature of indigenous lands had its share of problems, complementing studies of some authors. The communal nature of the lands of the Aytas also reflects the way decisions are arrived at on matters concerning community interests. Thus, the lack of clarity in decision-making processes permitted the manipulation by outsiders and created conflicts within the community (Colchester, MacKay, Griffiths & Nelson, 2001). However, this does not mean that the Aytas have no established governance structure and decision-making processes, contrary to the findings of some authors (Colchester et al., 2001). But rather, the findings indicate the weakening of the Aytas' communality leading to personal interests compromising community interests; and rules being disregarded to serve those personal interests.



Thus, as discussed above, the results support the need to strengthen indigenous leadership and the governing (traditional and formal) institutions of indigenous communities.

### ***High regard for the traditional leaders***

The results of this research indicate the high regard given to the Aytas' traditional leaders in many facets of their daily lives, particularly in matters pertaining to their traditional territories. Thus, despite the issues confronting their leaders, the findings stressed the crucial role of these leaders, in terms of developing, managing, and preserving the traditional lands and resources of the Aytas. In fact, the leaders were blamed for the inability of the community to assert their land rights and to achieve their aspiration from their lands. This is in line with the view therefore that "re-organisation of tribal administration" needs to be considered in light of the limitations and failings of the current indigenous leadership (Cornell, 2001, p. 92). In the words of a known Ayta leader from another locality:

There must be strengthening of unity in one direction by the Ayta community, towards the development of the ancestral domains, and this can only be led and effected by strong traditional leaders (Gov't. 1, July 3, 2011).

To illustrate further the significant role of community leaders, the political institutions instituted by the State require a cultural element, for instance, the titling process requires that it is to be led by the traditional leaders and other members of the community, based on the principle of self-delineation under the Indigenous Peoples Rights Act<sup>82</sup>. Also, the government guidelines for the preparation of the Ancestral Domains Sustainable and Development Protection Plan of indigenous communities entail that the plans should be culturally appropriate and responsive with the values and institutions (among others) of

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<sup>82</sup> **SEC. 51, Indigenous Peoples Rights Act states that: Delineation and Recognition of Ancestral Domains.** Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. As such, the indigenous peoples concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the scope of the territories and agreements/pacts made with neighbouring indigenous peoples, if any, will be essential to the determination of these traditional territories (RA No. 8371, 1997).

indigenous communities<sup>83</sup>. In these two instances, the role of the indigenous community's leaders is vital. Moreover, data from this study noted the decisive action of the traditional leaders in pushing for the issuance of the formal title of the Aytas, despite the reluctance of some members of the community. In other words, the role of the traditional leaders of indigenous communities is not only critical but central, in that, if the leadership is good, then it is possible to also lead the community in a direction which will be beneficial for all.

### **7.3. Beyond the indigenous title: Conclusions and Recommendations**

This study affirms the value of the indigenous land title, despite the antagonism and many issues affecting it. While it is acknowledged that problems have emerged as a consequence of the title, its value cannot be dismissed, as the title serves as a useful instrument to protect indigenous communities and their traditional territories. Yet the title does not guarantee optimisation of use of these territories; nor are the bundle of rights under the title fully realised by indigenous communities. The case study established that the biggest failing of the title is the continued denial of the exercise of the rights (spiritual, political, economic and cultural) to their traditional territories, even with the existence of the title.

This research therefore concludes that after the grant of formal title, enforcement of the rights under the title was not seen, in the Philippine context, but deemed to be necessary. Further, it was ascertained that institutional and organisational support is key to enable Filipino indigenous communities to fully realise their rights as owners of their traditional territories. This is true in view of the absence of government mechanisms that facilitate the implementation of their rights under the formal title. Moreover, there is also absent in the Philippine context, the necessary support that will enable indigenous communities to achieve optimum use of their traditional lands and resources after the grant of formal title.

To achieve optimum use of lands of indigenous peoples, this study recommends that political, economic and cultural institutions that implement,

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<sup>83</sup> **Culture Sensitive.** The ADSDPP shall be culturally appropriate and responsive with the customs, traditions, values, beliefs, interests and institutions of indigenous peoples. The ADSDPP shall be used as a tool to preserve and protect such culture, traditions and institutions (NCIP, 2004).

support, and capacitate indigenous communities to achieve optimum use of their traditional lands and resources. These institutions and other influencing factors can allow the land rights of indigenous communities to be felt by them, and not merely seen on paper. This study has illustrated the interconnectedness of these institutions, in that the weakness of any of the institution clearly affects the full enforcement of the land rights of indigenous communities. Furthermore, each of the institutional elements may present contradictions in its enforcement, and the circumstances existing in each indigenous community may require different approaches. Finally, this study adds that the indigenous land title is not the only means towards the end of fully realising the land rights of indigenous communities to their traditional territories. More challenges are to be faced by indigenous communities after the title, as opportunities and obstacles may surface in the assertion of their various rights under the title. Hence, these challenges demand institutional support, and this study joins other studies that argue a follow-up policy must be instituted. This policy is sought to address the void after the issuance of the title, which would therefore make meaningful the land rights of indigenous communities.

#### **7.4. Recommendations for policy and future research**

The recommendations posited here are not intended to create a fixed tool, as situations on the ground are likewise not fixed and may vary from time to time. Neither do they mean that they do not carry enormous challenges from all sectors. The greatest challenge lies with the indigenous community, as the formal institutions may not be responsive or adequate at all times, and the indigenous community will be left to fend for themselves and their lands. The political (State policies that recognise and enforce indigenous land rights) and economic institutions (institutional mechanisms that facilitate the development of indigenous lands) identified in this study provide examples that can be considered in formulating policies that will support indigenous peoples after the grant of formal tenure. The impediments in the implementation of the rights of indigenous peoples under the formal title have to be taken into account in resolving these concerns. Collectively, the positive (the usefulness of the title to protect indigenous communities and their lands) and negative (obstacles to the full

realisation of the rights of indigenous communities) findings in this research lead to some recommendations to improve indigenous land tenure and to help facilitate the optimisation of use of indigenous lands, based on its significant and chosen uses by the indigenous community.

This research posits that policy on indigenous land tenure must seriously consider the support to be given after the grant of formal tenure to an indigenous community. At first, government must ensure that rights held under the formal title are enforced. This is likely to be done by dealing with each indigenous community distinctively. One of the options raised here is that the indigenous title should be accompanied with implementation plans that consider the conditions availing on indigenous lands, for instance, property regimes in conflict with indigenous title; and those held by the indigenous community, such as, inadequate capitals, strong or weak indigenous leadership, among others. These recommendations are put forward to help address the void after the grant of formal title. Moreover, suggestions for further research on the term “optimisation or maximisation of use of indigenous lands” may be undertaken to ascertain the uses regarded as valuable by the indigenous community. As noted from the case study, the community is divided with respect to the preferred uses for their territories.

For the indigenous community, its leaders have to assess their current situation and governing institutions. In light of the responsibilities and challenges brought by their formal title, the governing institutions needs to be critically evaluated to determine if they can still respond to the demands of the present circumstances prevailing on indigenous lands. In this regard, future research on indigenous governance institutions would be timely, in view of the need to ascertain if the traditional institutions of the community are still applicable and if there is a necessity to establish new institutions that will govern indigenous lands

While the role of non-government organisations in this study was not fully explored, this study recommends that they can contribute in assisting indigenous communities and the government in varying aspects of the strategies that can be adopted to support indigenous people’s optimum use of their lands and resources

or the full realisation of their property rights. Generally, the lack of trust of indigenous communities in government organisations thus necessitates a place for non-government organisations to help these communities to achieve these ends.

In closing, I share this statement that resonated throughout discussions and talks I had with the Aytas. This is their hope:

***“To be given the freedom to move around and use our ancestral domains,  
without being arrested.”***

***“Haykanyan labay hay mag pagitaw gitaw ha kanyan lutang aw apo yan boy  
kanyan gamitin hay lutang kaw ka apoan yan. Ayukami diyakpon.”***

***“Hangad namin na malayang makagalaw at  
magamit ang Lupaing Ninuno,  
wag kaming huhuliin.”***

**(Validation Group, June 18, 2011)**

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## Appendices

### Appendix One. Guide questions for the fieldwork

For the Ayta community:

- 1) What is the history of your land? How was Pastolan created? Who were the first settlers of the land? What was the original use of the land?
- 2) What is your understanding of the issues surrounding your lands?
- 3) What are your experiences on the land before the title was issued?
- 4) Do you know the land title? Why did you apply for the land title? What were the processes the community undertook, in applying for the land title? Who assisted you in the titling of your lands, and what did the community contribute in these processes?
- 5) What can you say about the organisations that assisted you in the titling process?
- 6) After the title was granted, have you seen any changes in the use of these lands? What brought those changes?
- 7) What is the effect of the land title to the community? Did the land title enable you to maximise the use of the lands?
- 8) What are the benefits that you expected from the land title? Were they achieved?
- 9) What do you think should be done in order to achieve the benefits you want from your lands and resources? How would this happen, and who should facilitate the realisation of these ends?
- 10) Is there a distinction between your life circumstances when you didn't have the land title and when you have been given the land title?

General questions:

- 1) Are you aware of the existence of the land title of the Aytas? What was your role or participation in the titling of the lands of the Aytas?
- 2) What are the institutional factors that influence the maximisation of use of the lands and resources of the Aytas? What is the role of your office in these institutions? What can you say about the enforcement of these institutions?
- 3) Do you think the Aytas have maximised the use of their lands and resources?
- 4) Is the land title sufficient in order for the community to be able to maximise the use of their ancestral domains?
- 5) What problems do you perceive with the Ayta community and Pastolan, in general?
- 6) What are the programs of your office that impact on the lands and resources of the Aytas? Did these programs enhanced the well-being of the Aytas?
- 7) How do you think can the Aytas achieve the benefits of their land title? What could be your organisation's role in this?
- 8) Is there a distinction between an indigenous community with and without a land title?



## Appendix Two. Certificate of Ancestral Domains Title

Judicial Form No. 45 - D  
NCIP ADT Form

Book No. I  
Page 01

SN No. 000111	REPUBLIC OF THE PHILIPPINES DEPARTMENT OF JUSTICE LAND REGISTRATION AUTHORITY REGISTRY OF DEEDS OF PROVINCE OF BATAAN
Original Certificate of Title	
No. 0-1	
Entered in accordance with Republic Act No. 8371, dated 29 October 1997, pursuant to a Certificate of Ancestral Domain Title issued by the National Commission on Indigenous Peoples at Quezon City and spread in the records of the said Commission, as follows:	
"Republic of the Philippines OFFICE OF THE PRESIDENT NATIONAL COMMISSION ON INDIGENOUS PEOPLES Quezon City, Philippines CERTIFICATE OF ANCESTRAL DOMAIN TITLE No. R03-HER-0703-0008 -A	
KNOW ALL MEN BY THESE PRESENTS:	
WHEREAS, pursuant to the mandates of the 1987 Philippine Constitution to protect the rights of Indigenous Cultural Communities to their ancestral lands and domains, respect and preserve their culture and ensure their economic, social and cultural well being, and in accordance with the provisions of R.A. 8371, 'AN ACT TO RECOGNIZE AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES,' the members of the Indigenous Cultural Communities belonging to the <u>AETA***</u> indigenous peoples, located at <u>Hermosa, Bataan</u> and comprising the communities of <u>Puruk Six (6), Barangay Tupo</u> having continuously occupied, possessed and utilized, since time immemorial, under a claim of ownership certain ancestral domain situated in <u>Municipality of Hermosa, Province of Bataan, Island of Luzon, Philippines</u> containing an area of <u>Four Thousand Two Hundred Eighty Four and 1256/10000 (4,284.1256)</u> hectares more or less, more particularly bounded and described on Page 2 hereof are hereby recognized of their rights thereto.	
NOW THEREFORE, said Indigenous Cultural Community of <u>AETA***</u> Indigenous Peoples, whose members at the time of this issuance appear hereunder as Annex A, is hereby issued this Certificate of Ancestral Domain Title:	
TO HAVE AND TO HOLD IN OWNERSHIP, the above described ancestral domain as their private but community property, which belongs to all generations of the said Indigenous Cultural Community/Indigenous Peoples.	
TO DEVELOP, CONTROL, MANAGE and UTILIZE COLLECTIVELY the said ANCESTRAL DOMAIN with all the rights, privileges and responsibilities appurtenant thereto, subject to the condition that the said ancestral domain shall NOT be SOLD, DISPOSED, nor DESTROYED.	
IN TESTIMONY WHEREOF, and by authority of R.A. 8371, the National Commission on Indigenous Peoples hereby causes these letters to be made patent and the seal of the National Commission on Indigenous Peoples to be hereunto affixed.	
Issued in Quezon City, Philippines on this <u>27th</u> day of <u>March</u> , 20 <u>09</u>	
	 <b>ATTY. EUGENIO A. INSIGNE</b> Chairman
	 <b>ROGADOR M. RIVERA</b> Commissioner
	 <b>ATTY. NOEL M. FELONGCO</b> Commissioner
	 <b>FELEGRITO L. MASAGNAY</b> Commissioner
	 <b>RIVALINO G. SEGUNDO</b> Commissioner
	 <b>JANNETTE SERRANO-REISLAND</b> Commissioner
	 <b>MIGUEL IMBING-GIA APOSTOL</b> Commissioner
Entered in the Registry of Deeds of <u>BATAAN</u> pursuant to Sec. 52.8 of R.A. 8371 on the <u>12th</u> day of <u>May</u> , 20 <u>09</u> at <u>3:00</u> AM/PM.	
 <b>ATTY. MANUEL M. AQUINO</b> REGISTER OF DEEDS	
<u>Hermosa, Bataan</u> (POSTAL ADDRESS OF IC/IP COMMUNITY)	

(TECHNICAL DESCRIPTION)

LOT 1  
ADs-03-000006-Gni (Amd)  
Aeta Indigenous Cultural Community

An ancestral domain, portion of ADs-03-000006-Gni (Amd) situated at Purok Six (6), Barangay of Tipo, Municipality of Hermosa, Province of Bataan, Island of Luzon.

Bounded on the North by portions of Presidential Proclamation 926 (PP 926) dated June 25, 1992 known as Subic Watershed Forest Reserve (amended by PP No. 353 dated March 31, 2003) and Presidential Proclamation No. 532 (PP 532) dated February 1, 1995 known as "Subic Special Economic and Freeport Zone"; on the East by portion of PP 532; on the Southwest by portion of PP 353 and on the Northwest by Lot 2, ADs-03-000006-Gni (Amd) (water portion of the ancestral domain covering Subic Bay) and portion of PP 353.

Beginning at a point marked "1" on the plan being N. 79 deg. 37' E., 6,653.17 m. from ZBS-23, PRS-92 (NAMRIA), Rivera Pt. (SBMA), Olongapo City, thence;

S. 40 deg. 22' E.,	266.25 m.	to point 2;
S. 74 deg. 52' E.,	211.74 m.	to point 3;
S. 35 deg. 51' E.,	205.72 m.	to point 4;
S. 27 deg. 03' E.,	169.38 m.	to point 5;
S. 25 deg. 19' E.,	328.82 m.	to point 6;
S. 53 deg. 39' E.,	326.06 m.	to point 7;
S. 39 deg. 37' E.,	237.34 m.	to point 8;
S. 41 deg. 38' E.,	375.63 m.	to point 9;
S. 43 deg. 10' E.,	349.47 m.	to point 10;
S. 47 deg. 45' W.,	607.16 m.	to point 11;
S. 25 deg. 02' W.,	407.30 m.	to point 12;
S. 62 deg. 34' E.,	588.17 m.	to point 13;
S. 45 deg. 55' E.,	627.51 m.	to point 14;
S. 02 deg. 56' E.,	412.67 m.	to point 15;
S. 07 deg. 31' E.,	896.69 m.	to point 16;
S. 09 deg. 59' E.,	434.97 m.	to point 17;
S. 16 deg. 41' W.,	588.79 m.	to point 18;
S. 37 deg. 12' W.,	1,104.81 m.	to point 19;
S. 04 deg. 45' E.,	709.69 m.	to point 20;
N. 88 deg. 50' W.,	278.65 m.	to point 21;
N. 66 deg. 55' W.,	70.06 m.	to point 22;
N. 79 deg. 05' W.,	260.16 m.	to point 23;
N. 48 deg. 43' W.,	231.74 m.	to point 24;
N. 67 deg. 31' W.,	368.57 m.	to point 25;
S. 42 deg. 18' W.,	276.60 m.	to point 26;
S. 25 deg. 15' E.,	503.94 m.	to point 27;
S. 63 deg. 47' W.,	138.74 m.	to point 28;

(Continued on Additional Sheet \_\_\_\_\_, Page A ATT: EMANUEL M. AQUINO)  
Register of Deeds



Continued from Page..... 2 .....

N. 60 deg. 21' W.	380.59 m.	to point 29;
N. 74 deg. 57' W.	92.06 m.	to point 30;
N. 49 deg. 55' W.	399.33 m.	to point 31;
N. 31 deg. 35' W.	576.69 m.	to point 32;
N. 61 deg. 39' W.	397.37 m.	to point 33;
N. 70 deg. 04' W.	349.84 m.	to point 34;
N. 48 deg. 47' W.	409.36 m.	to point 35;
N. 65 deg. 08' W.	452.23 m.	to point 36;
N. 52 deg. 24' W.	333.46 m.	to point 37;
N. 01 deg. 60' E.	139.30 m.	to point 38;
N. 68 deg. 41' W.	94.14 m.	to point 39;
N. 43 deg. 05' W.	159.17 m.	to point 40;
N. 48 deg. 29' W.	352.44 m.	to point 41;
N. 03 deg. 22' W.	141.51 m.	to point 42;
S. 71 deg. 20' W.	59.95 m.	to point 43;
S. 54 deg. 24' W.	72.30 m.	to point 44;
S. 77 deg. 11' W.	149.94 m.	to point 45;
N. 24 deg. 16' W.	190.45 m.	to point 46;
N. 76 deg. 43' W.	180.94 m.	to point 47;
N. 38 deg. 50' W.	766.45 m.	to point 48;
S. 71 deg. 43' W.	226.77 m.	to point 49;
N. 36 deg. 10' W.	284.01 m.	to point 50;
N. 87 deg. 14' W.	626.22 m.	to point 51;
N. 85 deg. 19' W.	289.35 m.	to point 52;
N. 57 deg. 40' W.	295.16 m.	to point 53;
N. 31 deg. 31' W.	175.02 m.	to point 54;
N. 07 deg. 34' W.	24.77 m.	to point 55;
N. 37 deg. 05' W.	961.94 m.	to point 56;
N. 46 deg. 50' E.	231.29 m.	to point 57;
N. 64 deg. 34' E.	105.99 m.	to point 58;
N. 47 deg. 13' E.	249.16 m.	to point 59;
N. 17 deg. 41' W.	71.02 m.	to point 60;
N. 12 deg. 53' W.	564.69 m.	to point 61;
N. 47 deg. 38' E.	75.88 m.	to point 62;
N. 08 deg. 00' W.	303.47 m.	to point 63;
N. 79 deg. 42' E.	79.43 m.	to point 64;
N. 29 deg. 34' E.	84.13 m.	to point 65;
N. 36 deg. 18' W.	45.39 m.	to point 66;
N. 27 deg. 48' E.	104.77 m.	to point 67;
N. 16 deg. 41' E.	593.94 m.	to point 68;
N. 18 deg. 20' E.	1,311.06 m.	to point 69;
N. 45 deg. 52' W.	637.62 m.	to point 70;
N. 68 deg. 40' E.	56.66 m.	to point 71;
N. 17 deg. 35' E.	270.60 m.	to point 72;
N. 82 deg. 55' E.	392.29 m.	to point 73;
S. 59 deg. 24' E.	333.64 m.	to point 74;
N. 76 deg. 32' E.	310.11 m.	to point 75;

(Continued on Page..... B .....

ATTY. MANUEL M. AQUINO  
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Continued from Page..... A .....

S. 26 deg. 00' E.,	454.67 m.	to point 76;
S. 22 deg. 52' W.,	39.25 m.	to point 77;
S. 11 deg. 41' E.,	304.99 m.	to point 78;
S. 35 deg. 36' E.,	234.18 m.	to point 79;
S. 49 deg. 29' E.,	472.94 m.	to point 80;
S. 71 deg. 08' E.,	213.88 m.	to point 81;
N. 66 deg. 58' E.,	195.04 m.	to point 82;
N. 50 deg. 13' E.,	292.50 m.	to point 83;
N. 68 deg. 42' E.,	110.39 m.	to point 84;
S. 87 deg. 20' E.,	210.53 m.	to point 85;
S. 73 deg. 41' E.,	272.49 m.	to point 86;
S. 78 deg. 33' E.,	223.10 m.	to point 87;
N. 88 deg. 58' E.,	830.97 m.	to point 88;
N. 47 deg. 59' E.,	361.66 m.	to point 89;
N. 26 deg. 31' E.,	300.35 m.	to point 90;
N. 42 deg. 09' E.,	93.74 m.	to point 91;
N. 48 deg. 48' E.,	431.24 m.	to point 92;
S. 47 deg. 01' E.,	199.20 m.	to point 93;
S. 61 deg. 51' E.,	176.01 m.	to point 94;
S. 81 deg. 45' E.,	353.13 m.	to point 95;
S. 02 deg. 18' W.,	563.65 m.	to point 96;
S. 43 deg. 02' E.,	89.63 m.	to point of beginning;

Containing an area of FOUR THOUSAND TWO HUNDRED EIGHTY FOUR and 1256/10000 (4,284.1256) hectares more or less. All corners referred to are indicated on the plan and marked on the ground as follows: corners 20, 27, 28, 30 and 32 are "X" on rock, points 57 to 67 are stakes, points 21, 26, 48, 49, 70, 71, 73, 74, and 76 are "X" on tree and the rest are AD-NCIP equal concrete monuments. Bearing is "PSS-92" Grid. Original Survey was executed by the NCIP Geodetic Engineers Genaro A. Fayloga and Guiller Benlingan on August to December 2002. Approved on March 27, 2003 by OIC-ADO Director.

Note: The amendment of plan ADs-03-000006-Gni was made in accordance to existing LRA-NCIP Memorandum of Agreement dated August 28, 2002 and the consequent supplemental guidelines thereof relative to the registration of CADT/CALT. The amended plan and technical description was prepared by Engr. Bernardo Canao on March 27, 2009 per Special Order No. 01-003-09, s. 2009 dated January 12, 2009 issued by the NCIP Secretary/Chairman. Approved on March 31, 2009 by ADO Director.

This Title is subject to Section 56 of Republic Act No. 8371: "SECTION 56. Existing Property Rights Regimes. - Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected."

(Continued on Page.....)

\_\_\_\_\_  
ATTY. EMANUEL R. AQUINO  
Register of Deeds



Page .....-3

# MEMORANDUM OF ENCUMBRANCES

Entry No. \_\_\_\_\_

(Continued on Page.....-4)

Register of Deeds

## Appendix Three. Information Sheet (English version)

### **“Maximisation of use of ancestral domains: A case study on formal land tenure rights of Philippines’ indigenous peoples”**

#### Information Sheet

#### **Researcher Introduction**

*Magandang araw po!* I am Melanie Pimentel, a New Zealand Ministry of Foreign Affairs & Trade-NZAID scholar and currently a student for a Masters of Philosophy in Development Studies degree at Massey University, New Zealand. The scholarship grant was given to me as a government employee, which has allowed me to go on study leave from my official position as State Solicitor II at the Office of the Solicitor General, Makati City, Philippines.

The aim of this research is to determine how Filipino indigenous peoples/indigenous cultural communities can be supported to maximize their use of ancestral lands after being given title.

#### **Project description and invitation**

The research seeks to identify the role and significance of formal (rules, laws, policies, orders) and informal (traditions and practices, norms) institutions that facilitate or influence Filipino indigenous peoples to maximise the use of their ancestral domains. Special focus is given to the linkages between the Certificate of Ancestral Domain Title (CADT) on the indigenous community’s ability to utilize their ancestral domains. For this research, a case study is used, investigating the experiences of the Aeta indigenous community of Pastolan, Hermosa, Bataan, Philippines after being awarded their CADT in 2003.

**I am seeking your agreement to participate in this research to assist me to achieve this research aim.**

#### **Participants’ identification and recruitment**

Participants have been selected because they are a member of the Aeta community, or hold a position or fulfil a role associated with the Aeta community’s use of their ancestral domain and have knowledge and information that will be of use to the research. Semi-structured interviews with traditional and elected leaders, key members of the management or development committees (*if any*) of the Aeta ancestral domain as well as focus group discussions with the members of the Aeta indigenous community (i.e. from the youth, women, and other sectors within the Aeta community) will be effected. In addition, semi-structured interviews with national (National Commission on Indigenous Peoples-NCIP) and local officials (Local NCIP office, Local Government of Hermosa, Bataan, and from the Subic Freeport Zone), members of support groups who are currently assisting the Aeta community in developing or managing their ancestral domains will be carried out. Similarly, officials of private business developers within the ancestral domains will be tapped as participants for this project.

#### **Project procedures**

- With the agreement of participants, interviews and focus group discussions will be recorded and later transcribed for analysis. Oral consent will be requested from the Aeta community before the fieldwork, while government officials will be requested to sign a consent form, to indicate participation in this research. Information obtained from audio tapes will be organized into specific themes, to determine which institutions influence on indigenous peoples ability to maximize the use of their ancestral domains. Participant observation to examine the day to day activities within the ancestral domain of the Aeta community will also be conducted.

- Personal information of the participants will be confidential to the researcher, and their names nor their community/organizational role will not be revealed or identified, without their consent.
- Audio tapes, transcript of the interviews and other records involving the participants will be securely stored to protect the participants' privacy and anonymity.
- Results of the discussions with the Aeta community will be presented in a community meeting, to enable the community to validate the results or key findings.

### Participant's Rights

You are under no obligation to accept this invitation. If you decide to participate, you have the right to:

- decline to answer any particular question;
- withdraw from the study (specify timeframe);
- ask any questions about the study at any time during participation;
- provide information on the understanding that your name will not be used unless you give permission to the researcher;
- be given access to a summary of the project findings when it is concluded.
- ask for the recorder to be turned off at any time during the interview.

"This project has been evaluated by peer review and judged to be low risk. Consequently, it has not been reviewed by one of the University's Human Ethics Committees. The researcher named above is responsible for the ethical conduct of this research.

If you have any concerns about the conduct of this research that you wish to raise with someone other than the researcher, please contact Professor John O'Neill, Director (Research Ethics), telephone 06 350 5249, e-mail [humanethics@massey.ac.nz](mailto:humanethics@massey.ac.nz)".

### Project Contacts

If there is any question for this project, please do not hesitate to contact the following:

#### Researcher

Contact Address in New Zealand:  
**Melanie Pimentel**  
 10 Jensen Street, Hokowhitu  
 Palmerston North 4410, New Zealand  
 Cell phone: (64) (22) 6209799  
 Email: [mppimentel@gmail.com](mailto:mppimentel@gmail.com)

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**Melanie Pimentel**  
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 Legaspi Village, Makati City  
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#### Supervisors:

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*Thank you very much for your time, interest and support of this research. Mabuhay!*



## Appendix Four. Information Sheet (Filipino)

### “Isang pag-aaral sa impluwensiya ng pormal na titulo na ginawad sa katutubong Pilipino sa kanilang kapasidad na magamit ng lubusan ang kanilang lupaing ninuno”

“Pahina ng Impormasyon”

#### Pagpapakilala sa tagapag-sulat

*Magandang araw po!* Ako po si Melanie Pimentel, kasalukuyang estudyante sa kurso ng ‘Masters of Philosophy major in Development Studies’ sa Massey University, New Zealand, sa ilalim ng tulong ng Ministry of Foreign Affairs and Trade-NZAID skolarship. Ang pag-aaral na ito ay ibinahagi sa akin bilang empleyado ng gobyerno, datapwat ako ngayun ay kasalukuyang naka ‘study-leave’ bilang State Solicitor II sa ‘Office of the Solicitor General, Makati City, Philippines’.

#### Hangad ng proyekto

Suriin ang mga pamamaraan na makakatulong upong suportahan ang kapabilidad ng Katutubong Pilipino na lubusang magamit ang kanilang lupaing ninuno.

#### Ang proyekto at imbitasyon sa paglahok

Ang pagsusuri na ito ay para alamin ang halaga ng pormal (kautusan, polisiya, batas institusyons) at impormal (tradisyon, kultura, nakagawian) na institusyon na nagtutulak sa karapatan sa lupa ng katutubong komunidad. Partikular na titignan kung ang pormal na titulo ay may koneksyon sa kapabilidad ng katutubong Pilipino upang palaguin ang kanilang lupaing ninuno. Upang maatim ang hangad ng pag-aaral na ito, ang karanasan ng komunidad na Aeta ng Pastolan, Hermosa, Bataan, Pilipinas, pagkatapos naigawad sa kanila ang kanilang titulo ay susuriin.

Ang partisipasyon ng Aeta komunidad at ibang participante ay mahalaga at hinihiling para maatim ang hangad ng pag-aaral na ito.

#### Pagpili ng mga participante

Bukas na kapanayam ay gagawin kasama ang tradisyonal at inihalal na lider ng komunidad na Aeta, mga opisyal ng mga komite na itinalaga para sa pag-alaga ng lupaing ninuno. Pagpupulong kasama ang komunidad na Aeta ay gaganapin. Sa karagdagan, bukas na panayam ay hihingin mula sa nasyonal (National Commission on Indigenous Peoples-NCIP) at lokal na opisyaes (Local NCIP office, Local Government of Hermosa, Bataan, and from the Subic Freeport Zone), miyembro ng grupong sumusuporta sa komunidad ng Aeta ng Pastolan sa pagaruga sa kanilang lupaing ninuno. Ang mga opisyaes ng mga pribadong negosyo sa luob ng lupaing ninuno ay kakausapin din para sa proyektong ito.

#### Pamamaraan ng proyekto

- Kung papayagan ng mga participante, ang mga panayam at paguusap ay ire-rekord, at isusulat para i-analisa. Hihilingin ang partisipasyon ng mga Aeta sa pamamagitan ng isang pagpupulong, at ang mga opisyal ng gobyerno ay hihilingin pumirma ng kasulatan bilang pagsang-ayon sa pagbabahagi sa pananaliksik na ito. Impormasyon mula sa ‘audio tapes’ ay aayusin para malaman ang mga institusyonal na kadahilanan na umiimpluwensya sa kapasidad ng Katutubong Pilipino sa kanilang lubusang paggamit sa kanilang lupaing ninuno. Isang pagsusuri rin sa pang-araw-araw na pangyayari sa luob ng lupaing ninuno ng Aeta ng Pastolan ay gagawin.

- Lahat ng personal na impormasyon hinggil sa mga partisipante ay kompidensyal lamang sa tagapagsuri/manunulat, ang impormasyon hinggil sa pangalan o ang kanilang posisyon sa komunidad/opisina ay hindi ilalahad ng walang kapahintulutan galing sa impormante.
- ‘Audio tapes’, mga isinaling impormasyon mula sa ‘audio tapes’ at iba pang dokumento na naglalaman ng personal na impormasyon ng mga kalahok sa pagaaral na ito ay itatago ng maayos at ihihiwalay sa ibang mga records upang pangalagaan at hindi maisiwalat ang pagkakakilanlan sa mga impormante.
- Ang resulta ng panayam at diskusyon kasama ang komunidad na Aeta ay ibabahagi sa buong komunidad para sa pag-balida ng buod ng pag-aaral.

#### **Karapatan ng lalahok sa proyekto**

Ang mga lalahok sa proyekto ay hindi pipilitin upang maging bahagi ng pag-aaral na ito. Kung sakaling, ang miyembro ng komunidad ay magiging bahagi, sila ay may karapatan:

- Hindi sagutin ang ano mang tanong, kung di nila nais;
- Umurong sa ano mang oras;
- Magtanong tungkol sa pag-aaral na ito;
- Magbahagi ng impormasyon sa kaalaman na hindi ilalahad ang kanilang pangalan ng walang permiso sa kanila;
- Mabigyan ng pagkakataon makakuha ng kabuuan ng pag-aaral na ito pagkatapos itong nabuo;
- Hilingin na wag gamitin ang ‘tape recorder’ habang siya/sila ay nagbabahagi.

“Ang proyektong ito ay dumaan sa departamentong pagsusuri at ginawaran na mababa ang panganib, kung kaya’t hindi ito sinuri ng Komite ng Unibersidad para sa Pang-taong kapakanan. Ang estudyante na nakapangalan dito ang siyang responsable sa pag-aaral na ito.

Kung may mga problema ukol sa pagsusuring ito at nais ninyong idulog sa isang tao maliban sa estudyanteng nabanggit, dumulog kay Professor John O’Neill, Director (Research Ethics), sa telepono 06 350 5249, e-mail [humanethics@massey.ac.nz](mailto:humanethics@massey.ac.nz)”

Kung sakaling may katanungan ukol sa proyektong ito, wag mag-atubili kausapin ang mga sumusunod:

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***Maraming Salamat po sa inyong pagbabahagi, interes, at suporta sa pag-aaral na ito.  
Mabuhay!***

# Appendix Five. NCIP Resolution approving the land title of the Aytas of Pastolan

 <p>Republic of the Philippines  <b>OFFICE OF THE PRESIDENT</b>  <b>NATIONAL COMMISSION ON INDIGENOUS PEOPLES</b>          2nd Flr. N. dela Merced Bldg., Corner West &amp; Quezon Aves., Quezon City          Tel. Nos. 373-9534 • 373-9578 Tel. Fax: 373-9765</p>	
<b>EN BANC</b>	
CERTIFIED PHOTOCOPY Date: <u>12-03-04</u> Time: <u>1:32 pm</u> By: <u>[Signature]</u>	
<p>IN RE: APPLICATION FOR THE          ISSUANCE OF A CERTIFICATE OF          ANCESTRAL DOMAIN TITLE          (CADT) PURSUANT TO SEC.52 (1)          R.A. 8371 OVER THE ANCESTRAL          DOMAIN OF THE AETA          INDIGENOUS CULTURAL          COMMUNITY OF PASTOLAN,          HERMOSA, BATAAN, SITUATED IN          PUROK SIX (6), BARANGAY TIPO,          ALL IN THE MUNICIPALITY OF          HERMOSA, BATAAN, COVERING          AN AREA OF 4,355.9312 HECTARES.</p> <p><b>AETA CULTURAL COMMUNITY</b>          Applicant</p>	<p>PRESENT:</p> <p><b>HON. REUBEN D.A. LINGATING</b>          Chairperson  <b>HON. PABLO SANTOS,</b>          Commissioner  <b>*HON. EDTAMI P. MANSAYAGAN,</b>          Commissioner  <b>HON. EVELYN S. DUNUAN,</b>          Commissioner  <b>HON. NORMA M. GONOS,</b>          Commissioner  <b>HON. CORAZON M. ESPINO,</b>          Commissioner  <b>HON. LAGTUM A. PASAG,</b>          Commissioner</p> <p>ABSENT: NONE</p> <p>PROMULGATED: <u>July 22, 2003</u>          * Term ended May 31, 2003</p>

## **RESOLUTION** **NO. 07-2003-AD**

This is a review and verification of the Certificate of Ancestral Domain Title (CADT) of the Aetas of Pastolan, Hermosa, Bataan. This CADT was among the ten (10) Certificates of Ancestral Domain Title (CADT) and six hundred five (605) Certificates of Ancestral Land Title (CALT) approved by the members of the First Commission of the National Commission on Indigenous Peoples (NCIP) but were neither registered with the Register of Deeds nor released to the claimants-owners.

Records show that the solicitations for the formal recognition of the ancestral domain of the Aeta tribe of Pastolan, Hermosa, Bataan were embodied in "Resolusyon Bilang 05, serye 1998" by the members of the Aeta tribe, and an application letter dated September 20, 2000. Further NCIP form ALD-1 was also filed. Attached thereto are the *resolusyon na nagbibigay karapatan bilang kinatawan kina Chieftain Bonifacio Florentino at Chairman Leonardo Abraham, sinumpaang salaysay of Jose Liwanag at Leonardo Abraham, certificate of accreditation to Pastolan Village Negrito Reservation Tribal Council, pictures of improvements introduced by the Aeta tribe, pictures showing the Aetas' sacred places, certificate of registration issued by the SEC to the Samahang Katutubo ng Aeta sa Pastolan (SKAP), and a Sketch plan/indicative map of the ancestral domain.* The applications as well as the



attachments were filed with the First Commission through then Office of the Chairman of the National Commission on Indigenous Peoples. More importantly, the claim was also published at Bataan Today on November 27 to December 3, 2000.

After going through the process embodied in Sec. 52 of the IPRA, a Certificate of Ancestral Domain Title was issued in favor of the Aetas of Pastolan but the same was not registered nor released to the applicant-claimants.

Thus, Administrative Order No. 1, Series of 2002 was issued by the Second Commission of the NCIP to review and verify the documents which were made as the bases for the preparation and signing of the CADTs by the members of the First Commission. The process of review and verification involves the verification of documents submitted in support of the claim of ownership of the ancestral land, determination of the identity of the ancestral domain and inquiring into the traditional connection of the IP beneficiaries with the land subject of application. These tasks are carried out by a Field Validation Team and the Special Committee on Review and Verification.

The Field Validation Team from Bataan Provincial Office as well as the Special Committee on Review and Verification have subjected to rigorous examination the documents submitted in support of the ancestral domains claim by the Aeta Indigenous Cultural Community and also sought the confirmation of factual allegations relative to said ancestral domain claim by way of site inspection and interviews. The findings of these teams on the identity of the ancestral domain claimants, identity and metes and bounds of the ancestral domains, and authenticity of documents are contained in their respective reports.

Anent the identity of the claimants, historically, the AETA/AYTAS are the earliest inhabitants in the Philippines. The Aeta Indigenous group is one of the 110 tribes scattered around the Philippines. Its members number about 140,591 individuals. Those found in Central Luzon dwell in the pockets of mountains in the provinces of Zambales, Pampanga, Tarlac, Bataan and Nueva Ecija. They are tribal in character, thus they confine themselves to a very limited world of their own<sup>1</sup>.

The total number of beneficiaries, in a census conducted by the NCIP Bataan Provincial Office, yielded a total number of SEVEN HUNDRED AND FIFTY NINE (759) INDIVIDUALS noted and verified by their Tribal Council and Elders. Such number would also include their wives or husbands, not a beneficiary but noted as a migrant of the place. To the contrary, stipulations appearing on the validation report conducted by the NCIP Validation Team during the initial application on September 25, 2000 reveals to have ONE HUNDRED AND FORTY SEVEN HOUSEHOLDS, individual listings noted equivalent to six hundred seventy nine individuals. Thus, the total number of individuals increased to EIGHTY, which can be attributed to birth, inter-marriage and re-location of the children of the beneficiaries back to the domain.

As to the identity of the land, the claim rests within the former Subic Naval Reservation Area and nestled at the southeastern portion of Mt. Sta. Rita.

<sup>1</sup> Page 52, Indigenous Peoples of the Philippines, Phil. Copyright 2000 by Rex Bookstore in collaboration with the NCIP.

It is also within the Northwestern boundary of the Subic Bay Metropolitan Authority Watershed Reservation Area<sup>2</sup>.

Originally, the claim, as awarded, covered 4,387.4 hectares of forests, cogonal areas and agricultural lands that straddle portions of Morong and Hermosa towns in Bataan.

Ground survey verification by the Survey Team of the NCIP assisted by the Elders of the Community revealed a new technical description and the area was reduced to 4,355.9312 hectares. This is explained by a report prepared by the Survey Team. Monumentation of the boundary marks was also established in eighty-nine points.

Corollary hereto, a portion of the claim is within the Subic Bay Freeport Zone based on the metes and bounds established by Presidential Proclamation 532. RA 7227 vests upon the Subic Bay Metropolitan Authority the responsibility and authority of administering, managing and developing the Freeport Zone<sup>3</sup>. This law also mandated the SBMA to maintain and preserve the forested areas as national park and to protect, maintain, and develop the virgin forests within the baselands which will be proclaimed as a national park and subject to a permanent total log ban; for this purpose the rules and regulations of the DENR and other government agencies directly involved in such functions shall be implemented<sup>4</sup>. The Commission En Banc finds that by the issuance of the Certificate of Ancestral Domain Title (CADT), the purpose for which RA 7227 was promulgated will not in any way be defeated. While ownership of the land covered by the Ancestral Domain will now be vested upon by operation of law with the Aetas of Pastolan, SBMA can still proceed with its mandate to administer, develop and manage the Freeport Zone provided that in the exercise of such mandate, the rights of the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) under the IPRA must be observed in order to bring a balance between the interests of the State on the one hand and the ICCs on the other hand, in the management, utilization, administration of resources found within the Ancestral Domain.

On the documents reviewed and verified, the Special Committee on Review and Verification in its report concluded, thus: "After an extensive evaluation of the records, the following conclusions are in place: a) The applicant community are all members of the Aeta Tribe; b) The applicant community and their predecessors-in-interest are in open, continuous, peaceful and adverse possession of the land subject hereof since time immemorial in the concept of owner; c) The applicant community and their predecessors-in-interest have established their residential homes and continually introduced improvements of economic value in the area of the claim; d) That the application of the claimant community was processed in accordance with Section 52 of the IPRA and the corresponding guidelines prescribed by the National Commission on Indigenous Peoples; and finally e) That the documents evaluated by the Special Committee on Review and Verification are all authentic and valid in all respects." The Committee "strongly recommends" the issuance by this Commission of the Certificate of Ancestral Domain Title covering the ancestral

<sup>2</sup> Indigenous People's Development Plan (February 1999) published by the Social Development Division of SBMA.

<sup>3</sup> Section 13, par. b(1), RA 7227.

<sup>4</sup> Section 13(7), RA 7227.



domain of the Aetas of Pastolan described in the technical description validated by the representatives of the applicant community last March 22, 2003.

The ancestral domain of the Aetas of Pastolan is supported by events in the history of the place. Prior to the discovery of the Subic Bay by Juan Salcedo in 1572 in the name of the King of Spain, and the declaration of American President Theodore Roosevelt which converted Subic as an American Military Reservation in 1903, the Aetas of Pastolan had long occupied areas in Boton, Kalayaan and Binictican<sup>5</sup>. This was revealed also in the findings of the Subcom/U.S. Facility Encroachment Study, June 1989, prepared for the Metes and Bounds Committee of the Philippine-United States Mutual Defense Board that before and during the occupancy of the Subic Naval Base by the Americans, Subic was an *ancestral land* of Negrito Aetas composed of the tribes of Binictican, Boton, and Kalayaan under tribal "Chieftains"<sup>6</sup>. In the period 1946 to 1959 wherein intensive development of Subic Base took place, there is evidence that the American authorities tacitly recognized the de facto existence of the Aytas and further recognized their usufruct rights over the land. The Americans even provided essential services, such as full medical benefits at the Naval Hospital, and allowed Native Aytas to work in the base. During the Vietnam War, the U.S. Navy recruited Aytas from Botolan, as well as local Subic Aytas, as instructors of the Jungle Environmental Survival Training (JEST) School for American soldiers going to Vietnam<sup>7</sup>.

The claimants complied with all the requisite legal matters prescribed by the Government for the formal identification, recognition and delineation of their Ancestral Domain. The Ancestral Domain claim has undergone the processes required by the provisions of the Indigenous Peoples Rights Act of 1997 and its implementing rules and regulations. For a community characterized by the "absence of written memorials . . . where everything, the native law itself included, depends on oral tradition"<sup>8</sup>, the basic evidence to support the ancestral land claim of any applicant is not the bulk of documentary proof or "preponderance of evidence" under the Civil Code but those which have been orally transmitted from one generation to the next. Other than the improvements and physical evidences that can be seen on the ground, the evidences for the applicant consist of what is known as traditional or historical evidence. It is evidence "as to rights existing beyond living memory which may be admitted to prove title"<sup>9</sup> and it may "comprise evidence of history, legend and mythology, customs, territory"<sup>10</sup>, among others. The claimants who now lay claim to this ancestral land can only trace their ancestry up to the extent of what has been told them by their forebears. However, the number of generations in their family which they accurately traced is enough proof of continuity of possession, utilization and occupation of the said ancestral land. As Justice

<sup>5</sup> Indigenous People's Development Plan (February 1999) published by the Social Development Division of SBMA.

<sup>6</sup> Subcom/U.S. Facility Encroachment Study, June 1989 – Prepared for: Metes and Bounds Committee Philippine-United States Mutual Defense Board.

<sup>7</sup> Indigenous People's Development Plan (February 1999) published by the Social Development Division of SBMA.

<sup>8</sup> Keon-Kohen, B.A., Some Problems of Proof: The Admissibility of Traditional Evidence, University of Queensland Law Journal, University of Queensland Press, 1993, p. 194, citing Hayes-Redwar, Comments on Gold Coast Ordinances at p. 86.

<sup>9</sup> Ibid., p. 193, citing Stool of Abinabina v. Chief Kojo Enyimadu (1953) 2 W.L.R. 261.

<sup>10</sup> Ibid., citing Delgamuukw v. R in Right of British Columbia (1987) 40 D.L.R. (4<sup>th</sup>) 685.

Reynato Puno explains, *"The moral import of ancestral domain, native land or being native is 'belongingness' to the land, being people of the land – by sheer force of having sprung from the land since time beyond recall, and the faithful nurture of the land by the sweat of one's brow. This is fidelity of usufructuary relation to the land – the possession of stewardship through perjurying, intimate tillage, and the mutuality of blessings between man and land; from man, care for land; from the land, sustenance for man."*<sup>11</sup>

**WHEREFORE**, having reviewed and verified the documents made as bases for the issuance of a Certificate of Ancestral Domain Title (CADT) corresponding to the ancestral domain of the Aetas of Pastolan, located at Purok Six (6), Barangay Tipo, in the Municipality of Hermosa, Bataan and finding no cause to doubt the validity and authenticity thereof and there being no question on the ownership by the Aetas of Pastolan of the ancestral domain subject hereof since time immemorial which was passed on to their descendants and/or successors-in-interest in accordance with the tradition of the Aeta tribe, the issuance of a Certificate of Ancestral Domain Title (CADT) corresponding such ancestral domain, all located at the Municipality of Hermosa, Bataan and its registration with the Register of Deeds of Bataan is hereby ordered, subject to existing property rights covered with land titles previously issued, if any;

**RESOLVED FURTHER** that the Original Certificate of Ancestral Domain Title (CADT) in the name of the Pastolan Aeta Ethnolinguistic Group prepared by the First Commission be cancelled and a NEW ONE issued;

**RESOLVED FINALLY** that the Certificate of Ancestral Domain Title shall be issued in the name of the AETAS OF PASTOLAN, HERMOSA, BATAAN, over their ancestral domain, particularly described as follows:

Ads-03-000006Gni  
AETA Indigenous Cultural Communities  
Pastolan, Tipo, Hermosa, Bataan

An ancestral domain Ads-03-000006Gni situated at Purok Six (6), Barangay of Tipo, Municipality of Hermosa, Province of Bataan, Island of Luzon. Bounded on the North by portions of Presidential Proclamation 926 known as Subic Watershed Forest Reservation and Presidential Proclamation no. 532 known as "Subic Special Economic and Freeport Zone". Bounded; on the east by -----Presidential Proclamation no. 532 known as "Subic Special Economic and Freeport Zone". Southwest by Presidential Proclamation 926 known as "Subic Watershed Forest Reservation" and on the North West by China Sea and portions of Proclamation 926. Beginning at a point mark "1" being N. 79deg.37' E., 6653.17 m., thence;


S. 40deg. 22' E. 266.25 M. to 2;  
S. 74deg. 52' E. 211.74 M. to 3;  
S. 35deg. 51' E. 205.72 M. to 4;  
S. 27deg. 03' E. 169.38 M. to 5;  
S. 25deg. 19' E. 328.82 M. to 6;  
S. 53deg. 39' E. 326.06 M. to 7;


<sup>11</sup> Cruz and Europa vs. DENR & Chairman and Commissioners of NCIP, G.R. No. 135385, Puno, J. Separate Opinion., p. 72, citing Pagarusa, M.P., *The Kalinga Ili: Cultural-Ecological Reflections on Indigenous Theory and Praxis of Man-Nature Relationship*, Dakami Ya Nan Dagami, p. 36.



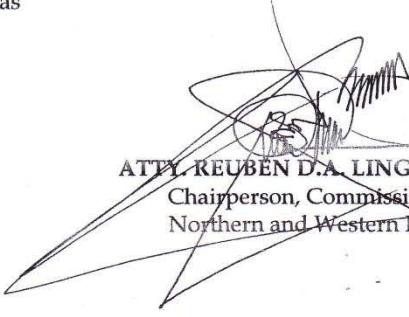
S. 39deg. 37' E. 237.34 M. to 8;  
 S. 41deg. 38' E. 375.63 M. to 9;  
 S. 43deg. 10' E. 349.47 M. to 10;  
 S. 47deg. 45' W. 607.16 M. to 11;  
 S. 25deg. 02' W. 407.30 M. to 12;  
 S. 62deg. 34' E. 588.17 M. to 13;  
 S. 45deg. 55' E. 627.51 M. to 14;  
 S. 02deg. 56' E. 412.67 M. to 15;  
 S. 07deg. 31' E. 896.69 M. to 16;  
 S. 09deg. 59' E. 434.97 M. to 17;  
 S. 16deg. 41' W. 588.79 M. to 18;  
 S. 37deg. 12' W. 1104.81 M. to 19;  
 S. 04deg. 45' E. 709.69 M. to 20;  
 N. 88deg. 50' W. 278.65 M. to 21;  
 N. 66deg. 55' W. 70.06 M. to 22;  
 N. 79deg. 05' W. 260.16 M. to 23;  
 N. 48deg. 43' W. 231.74 M. to 24;  
 N. 67deg. 31' W. 368.57 M. to 25;  
 S. 42deg. 18' W. 276.60 M. to 26;  
 S. 25deg. 15' E. 503.94 M. to 27;  
 S. 63deg. 47' W. 138.74 M. to 28;  
 N. 60deg. 21' W. 380.59 M. to 29;  
 N. 74deg. 57' W. 92.06 M. to 30;  
 N. 49deg. 55' W. 399.33 M. to 31;  
 N. 31deg. 35' W. 576.69 M. to 32;  
 N. 61deg. 39' W. 397.37 M. to 33;  
 N. 70deg. 04' W. 349.84 M. to 34;  
 N. 48deg. 47' W. 409.36 M. to 35;  
 N. 65deg. 08' W. 452.23 M. to 36;  
 N. 52deg. 24' W. 333.46 M. to 37;  
 N. 02deg. 00' E. 139.30 M. to 38;  
 N. 68deg. 41' W. 94.14 M. to 39;  
 N. 43deg. 05' W. 159.17 M. to 40;  
 N. 48deg. 29' W. 352.45 M. to 41;  
 N. 03deg. 22' W. 141.50 M. to 42;  
 S. 71deg. 20' W. 59.95 M. to 43;  
 S. 54deg. 24' W. 72.30 M. to 44;  
 S. 77deg. 11' W. 149.94 M. to 45;  
 N. 24deg. 16' W. 190.45 M. to 46;  
 N. 76deg. 48' W. 180.94 M. to 47;  
 N. 38deg. 50' W. 766.45 M. to 48;  
 S. 71deg. 43' W. 226.77 M. to 49;  
 N. 36deg. 10' W. 284.01 M. to 50;  
 N. 87deg. 14' W. 626.22 M. to 51;  
 N. 85deg. 19' W. 289.35 M. to 52;  
 N. 57deg. 40' W. 259.16 M. to 53;  
 N. 31deg. 31' W. 175.02 M. to 54;  
 N. 07deg. 34' W. 24.77 M. to 55;  
 N. 37deg. 05' W. 961.94 M. to 56;  
 N. 11deg. 21' W. 644.13 M. to 57;  
 N. 09deg. 33' E. 800.14 M. to 58;  
 N. 40deg. 18' E. 380.43 M. to 59;  
 N. 31deg. 46' E. 499.99 M. to 60;

  
**NORMA M. GONOS**  
 Commissioner for Southern and  
 Eastern Mindanao

  
**ATTY. EVELYN S. DUNUAN**  
 Commissioner for Region I and CAR

  
**LAGTUM A. PASAG**  
 Commissioner for Island Groups  
 And Visayas

  
**CORAZON M. ESPINO**  
 Commissioner for Region II

  
**ATTY. REUBEN D.A. LINGATING**  
 Chairperson, Commissioner for  
 Northern and Western Mindanao

\*Participated in the deliberations for Pastolan CADT prior to his end of term.

National Commission on Indigenous Peoples  
 Ancestral Domains Office

CERTIFIED PHOTOCOPY

Date: 03-13-04

Time: 1:58 PM

By: 

