

Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.

**“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
Degree of Master of Philosophy in Development Studies
at Massey University, Palmerston North, New Zealand**

Melanie Pimentel

2012

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.

Acknowledgments

I wish to thank NZAID, for giving me this scholarship; to my superiors at the OSG (then OSG Chief Agnes DV and ASG Ellaine) for allowing me to pursue further studies, and the people at CHED for facilitating this scholarship. Heartfelt thanks to my mind-grinders for sharing their expertise and interest in the topic, and for always challenging my limited (and often legal!) mind: Professor Regina Scheyvens and Senior Lecturer Janet Reid. Special thanks to Janet who crossed over the Development Studies department to help me unravel the complexities of this thesis. Double thanks to Regina for her wisdom and encouragement through my two-year of studies; same gratitude extends to the rest of the Development Studies Faculty and Staff. Special thanks to the people at the International Support Office, who all live up to what their office stands for; Julia from the Student Learning Services; and the Library staff for their adept assistance.

Thank you for the great camaraderie in the Department: Gloria, Joy, One, and Roni, and to my other friends here at NZ, your friendship and support has lightened the load of this tough journey—you all have given me a sense of balance, allowing me to enjoy life here, amidst the difficulties of living away from home. To all my friends in the Philippines and elsewhere, thank you for your prayers and for cheering me from a distance, special mention goes to those who have helped me out in this thesis and coping with student life, Ms. Che and Melogen, your advice and guidance are part of my survival kits. To my co-Filipino scholars and other Filipinos here at NZ, *maraming salamat* for extending your support, Co, for being like my family here, Ola for being there, and to the Fergusons, for making me feel like I am home. To my colleagues at the OSG, thank you for taking over my work-load while I am here. Special thanks to Alan Moscoso for preparing the maps.

To all those who participated in this study, most especially, the Aytas-Arawok (means friend in Ayta language), *ang pagbabagbag ng inyong buhay at mga hangad ay nag-iwan ng marka sa aking puso, diang halamat kayung laa!* To Ka PS, thank you for being a source of inspiration and wisdom over the years. Sister Vic, your selflessness is a reminder that our life is not ours but His; thank you for your loving support over the years and for encouraging me to pursue my

sacred contract. To all the other indigenous communities in the Philippines, your struggles have given me both courage and hope.

Most importantly, thank you, Pa & Ma, you have been a source of strength and love throughout my life. My siblings, Chel, Ian & Mia, your belief in me has given me courage to pursue my dreams; and to our little angels, Gaby, Shawie, Lian, & Gelo, your smiles have made me endure the pangs of loneliness from being away from home.

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”

Abstract.....	ii
Acknowledgments	iii
Dedication.....	v
Figures	x
List of Tables.....	xi
Acronyms and Abbreviations.....	xii
CHAPTER I	1
INTRODUCTION	1
1.1. Introduction	1
1.2. Research aims, questions, and objectives	3
1.3. Significance and Rationale for the Study	3
1.4. Thesis Outline.....	5
CHAPTER II PROPERTY RIGHTS IN LANDS: AN OVERVIEW OF LAND AS PROPERTY AND THE INDIGENOUS PEOPLE’S LAND RIGHTS	8
2.1. Introduction	8
2.2. In the beginning: the struggle to claim rights to land.....	9
<i>Tracing the origins of property rights to land</i>	9
<i>The indigenous people’s land rights movement</i>	10
<i>Indigenous people’s land rights: a right or privilege</i>	12
2.3. From struggle to progress: internal and external factors that influence the use of indigenous people’s lands	13
<i>The theory of institutions</i>	13
<i>Institutional context: the political, economic and cultural institutions that impact on the rights of indigenous peoples to their traditional territories</i>	17
Political institutions.....	18
Economic institutions	25
Cultural institutions.....	30
2.4. Conceptual framework	34
CHAPTER III THE PHILIPPINE CONTEXT REGARDING LAND RIGHTS FOR INDIGENOUS PEOPLES	38
3.1. Introduction	38
3.2. The Philippine land mass and resources	38
<i>An overview of the Philippine land system</i>	39
3.3. The Philippine Indigenous People’s Land Rights	40
A. Understanding the Philippine Indigenous Law	41
<i>Indigenous Peoples Rights Act: its origins and salient features</i>	41

<i>Indigenous Peoples in the Philippines</i>	41
<i>The ancestral domains and the indigenous concept of ownership under the Indigenous Peoples Rights Act (IPRA)</i>	43
B. The Filipino indigenous people’s land rights: examining the law and realities in practice.....	44
C. Indigenous Peoples Rights Act: some issues and concerns <i>ex ante</i> and <i>post ante</i> to titling of indigenous lands	46
3.4. Conclusion	52
CHAPTER IV	54
METHODS AND PROCEDURES	54
4.1. Introduction	54
4.2. Researcher’s background.....	54
4.3. Qualitative Case study Research Design	55
4.4. Processes prior to fieldwork	56
<i>Case selection</i>	56
<i>Ethics requirements</i>	57
4.4. Data collection/Fieldwork proper	58
<i>Setting up field visit: prior consultation with participants</i>	58
<i>Interviews</i>	59
<i>Focus groups</i>	61
<i>Secondary data</i>	64
4.5. Fieldwork Proper	65
<i>Research in practice</i>	65
<i>Reflections on fieldwork in practice</i>	66
4.6. Data Analysis.....	69
4.7. Summary	70
CHAPTER V CARETAKERS, VISITORS, OR OWNERS OF THE LAND? THE AYTAS OF PASTOLAN	71
5.1. Introduction	71
5.2. Historical and legal underpinnings of the ancestral domains of the Pastolan Aytas	71
<i>First, the Americans, then the Philippines’ Subic Bay Metropolitan Authority</i>	71
<i>The application for formal recognition of the Aytas’ ancestral domains</i>	73
5.3. Profile of Pastolan Village.....	75
5.4. The nexus between the Aytas of Pastolan and their ancestral domains	77
<i>The Ayta community of Pastolan</i>	77

<i>The land: its identity, use, and connection with the Ayta community of Pastolan</i>	78
<i>“Without the land or forests, we will not live”</i>	82
<i>Social and political organisations key to the Ayta community</i>	84
5.5. Summary	85
CHAPTER VI RECOGNISING THE LAND RIGHTS OF THE AYTAS: THE ABSENT RIGHTS IN ACTION	87
6.1. Introduction	87
6.2. What influences the optimisation of use of the ancestral domains of the Aytas? 87	
A. Formal recognition of native title.....	88
B. Restricted access/use of the domains.....	94
C. Gaps in the implementation on the rights under the formal title	110
6.3. Conclusion	112
CHAPTER VII	115
DISCUSSION AND CONCLUSION	115
7.1. Introduction.....	115
7.2. Discussion of Key Question.....	115
A. Political factors	116
B. Economic factors	123
C. Cultural factors	126
7.3. Beyond the indigenous title: Conclusions and Recommendations	129
7.4. Recommendations for policy and future research	130
References	133
Appendices.....	148

Figures

Figure 1. Conceptual Framework.....	36
Figure 2. Map of the Philippines.....	39
Figure 3. Validation of the key findings taken from the focus groups.....	63
Figure 4. Presentation of findings (posted on the wall) during the validation meeting with some members of the Ayta community.....	63
Figure 5. Reforestation project of SBMA: Aytas hired as reforestation workers.....	66
Figure 6. An Ayta washes clothes at Boton river. This activity is prohibited, according to SBMA.....	67
Figure 7. Philippine map highlighting the province of Bataan; and location of the Municipality of Hermosa in Bataan province.....	72
Figure 8. Source of employment of Pastolan households.....	76
Figure 9. Map showing the overlap between the Freeport Zone, the Watershed reserve and the Aytas' ancestral domains.....	79
Figure 10. Showing the land use of the ancestral domains, as illustrated by some members of the Ayta community.....	80
Figure 11. Built-up and sea area.....	81
Figure 12. Mangrove area.....	81
Figure 13. Ancestral domains of the Aytas within the business district of the Freeport Zone.....	83
Figure 14. Illustration of the boundaries of the ancestral domains of the Ayta.....	89
Figure 15. Illustration of the boundaries of the ancestral domains of the Aytas.....	89
Figure 16. Map showing the Protected Area, the areas of the Freeport Zone and the ancestral domains of the Aytas.....	94
Figure 17. Gates leading to Pastolan Village.....	96
Figure 18. Aytas working as SBMA reforestation workers inside the cogonal section of the ancestral domains.....	107
Figure 19. Aytas are employed as tour guides inside the forests of the domains.....	107
Figure 20. Maximising the use of the Ancestral Domains of the Ayta community.....	114
Figure 21. The Indigenous Peoples Rights Act, its centrepiece and challenges.....	119

List of Tables

Table 1. Summary of issues prior to and after titling of ancestral domains	51
Table 2. Number of interview participants by sector.	60
Table 3. Number of group discussions and participants	62
Table 4. Historical and legal underpinnings of the ancestral domains of the Aytas of Pastolan.....	74
Table 5. Tally of Pastolan households based on ethnicity.....	76
Table 6. Physical characteristics of the ancestral domains of the Aytas of Pastolan...	80

Acronyms and Abbreviations

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