

# Indigenous Peoples' Claim To Parts of Reservation\*

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\*\*\* The authors of this paper are members of the Katutubo unit of the Ateneo Human Rights Center. The methodology used shall proceed from a legal viewpoint. Data concerning reservations and ancestral domains claim consisted of interviews and focus-group discussions with indigenous community elders, *i.e.*, those of Brgy. Victoria in Mindoro (MCAT case) and in Tarlac (BSDA). Important data and information were sourced from the Malacanang Records Office, National Commission for Indigenous Peoples (NCIP), Tanggapang Panligal ng Katutubong Pilipino (PANLIPI), Ateneo Human Rights Center (AHR-C) and Legal Rights and Natural Resources Center, Inc. Kasama sa Kalikasan (LRC-KSK LUZON). Information gathering and research were also effected through library researches at the Ateneo Law Library, University of the Philippines Law Library and the University of the Philippines Main Library, the Library of Congress, Bureau of Lands and the Department of Environment and Natural Resources.

Data as regards military reservation sites were obtained from the Real Estate Office of the AFP in Camp Aguinaldo, Quezon City.

Interviews were conducted with Atty. Herman an NCIP Hearing Officer; Joey E. Austria, Chief of the Ancestral Domain Management Program Community Based Management Office of the DENR, and Major Pedro of AFP Real Estate Office, Camp Aguinaldo.

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## I. THE STATE AND THE CONSTITUTION

The present Constitution carries a number of provisions<sup>1</sup> that guarantee the rights of tribal Filipinos to preserve their way of life. It is the very first Constitution that has expressly recognized the rights of Indigenous Filipinos to their ancestral domains.<sup>2</sup> Direct references by the Constitution to indigenous peoples' rights are as follows:

Art. II, Sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

Art. VI, Sec. 5(2). The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

Art. XII, Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being

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

The State may resettle landless farmers and farm workers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Art. XIV, Sec. 17: The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

1. PHIL. CONST. art. II, § 22; art. VI, § 5 (2); art. XII, § 5; art. XIII, § 6; art. XIV, § 17; art. XVI, § 12.  
2. Cerilo Rico S. Abelardo, *Ancestral Domain Rights: Issues, Responses and Recommendations*, 38 ATENEO L.J. 85, 121 (1993) [hereinafter Abelardo].

Art. XVI, Sec. 12: The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

## II. *Jura Regalia* AND THE POWER OF THE STATE TO RESERVE LANDS

### A. *The Regalian Doctrine*

Despite these Constitutional provisions, the theory of *jura regalia* (*regalian doctrine*) appears to restrain the State in completely discharging its responsibility and role towards indigenous peoples.

The feudal theory, known as *jura regalia*, was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal *Cedulas*. The American colonizers through public land laws, and later on, the Judiciary, in administering the country, adopted this theory. Eventually, the doctrine became entrenched in the 1935, 1973 and 1987 Constitution.<sup>3</sup>

3. *Id.* For instance, Article XII, Sec. 2 states:

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons. The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The *regalian* doctrine mandates that all lands not covered by official documentary certificates of title are presumed to be owned by the Philippine Republic, which stands in the shoes of the colonial regimes which are its sovereign predecessors.<sup>4</sup>

The operation of the *regalian* doctrine in the national legal system gave the State the authority to classify public lands.<sup>5</sup>

The Philippine Bill of 1902<sup>6</sup> empowered the government of the Philippine Islands to classify, according to its agricultural character and productiveness, public lands other than timber or mineral lands. The power to classify lands of the public domain was shared by the Philippine Commission with the Supreme Court. Further, the same law had a Bill of Rights that guaranteed due process of law before any person may be deprived of life liberty and property. The power of the executive branch to classify lands is checked by the Judiciary so as not to violate the due process clause and hamper the recognition of existing private property rights.<sup>7</sup>

Corollary to the *regalian* doctrine is the power of the State to reserve lands.

### B. *Concept of Reservation*

Reservation refers to any tract/s of the public domain proclaimed by the President of the Philippines for government use or any of its branches or instrumentalities or of the inhabitants thereof, for public or quasi-public uses or purposes. Reservations "*intended for common and public welfare and services*" are those made by the Government over lands of the public domain such as watershed reservations, forest reservations, military and naval reservations, townsite reservations, parksite reservations, highway reservations; hence, partaking the nature of police power measures.<sup>8</sup>

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

4. Joaquin G. Bernas, S.J., *The New Constitutional Law on Natural Resources: Sections 1 & 2 of Article XII*, LAWYERS REV., November 1987, at 2.
5. *Abelardo*, *supra* note 2.
6. AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF THE CIVIL GOVERNMENT OF THE PHILIPPINE ISLANDS AND FOR OTHER PURPOSES (1902).
7. A SITUATIONER OF THE PHILIPPINE INDIGENOUS PEOPLES WORKING WITH INDIGENOUS PHILIPPINES A PHILIPPINE SOURCEBOOK 14 (Leonardo N. Mercado ed., 1994).
8. LRC-KSK IPRA Manual 15 (undated and unpublished manuscript) (on file with the LRC, Quezon City).

The different reservations are as follows:

- a) Civil - refers to lands of public domain which have been proclaimed by the President of the Philippines for specific purpose such as town sites, resettlement areas, ancestral lands, etc.
- b) Forest - refers to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes.
- c) Military - refers to land of the public domain which has been proclaimed by the President of the Philippines for military purposes such as airbase, campsite, docks and harbors, firing ranges, naval base, target range, wharves, etc.
- d) Watershed - a forest land reservation established to protect or improve the condition of the water yield thereof or reduce sedimentation.<sup>9</sup>

A military reservation or part thereof, whether of the Philippine government or the United States, is not registrable. The reservation made segregates it from the public domain and no amount of time in whatever nature of possession could ripen such possession into private ownership.<sup>10</sup> Reservations for specific purposes *other than military reservations made by presidential or executive proclamation for a specific purpose are not subject to claims of private ownership.* In *Republic v. CA*,<sup>11</sup> a Presidential Proclamation reserved an area for the medical center site of the Mindanao Medical Center in Davao. On the effect of such reservation, the Supreme Court held,

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

National park, another kind of reservation, is defined in the Forestry Reform Code, Presidential Decree No. 705 dated 19 May 1975, as "a forest land reservation essentially of primitive or wilderness character which has been withdrawn from settlement or occupancy and set aside as such exclusively to preserve the scenery, the natural and historic objects and the wild animals or plants therein, and to provide enjoyment of these features in

9. *Reservations*, National Statistical Coordination Board Regional Unit XII Central Mindanao, available at <http://www.nscb.gov.ph/ru12/> (last visited May 10, 2002).
10. *Republic v. Marcos*, 52 SCRA 283 (1973); *Republic v. I.A.C.*, 155 SCRA 412 (1987); *Dir of Lands v. C.A.*, 179 SCRA 522 (1989), cited in AMADO D. AQUINO, *LAND REGISTRATION AND RELATED PROCEEDINGS* 42 (1997).
11. 73 SCRA 146, 156-57 (1976).

such a manner as will leave them unimpaired for future generations."<sup>12</sup> Forest Administrative Order No. 7 identifies the purpose of national parks as follows: to preserve panoramic, scenic or aesthetic interest; to provide for recreation; and to preserve flora and fauna, geological features, historic or prehistoric remains and any other feature of scientific or ethnological interest. However, neither a precise definition of national parks, nor specific criteria for selecting areas for national park status is given.

However, an examination of the provisions of P.D. 1414, the Public Land Act, and the Revised Forestry Licensed Regulations, support the argument that Tribal Filipinos who have for thirty years or more occupied and/or cultivated public land — regardless of classification — have vested rights to indefinite possession. This position is bolstered by the fact that since 1931, every proclamation reserving lands of the public domain, for forest or other purposes, has contained the proviso "subject to private rights, if any there be."<sup>13</sup>

### III. THE INDIGENOUS PEOPLES' RIGHTS ACT

#### A. History

From House Bill No. 9125, authored by Cong. Gregorio Andolana and several other co-authors, up to Senate Bill No. 1728 authored by Sen. Juan Flavio, Republic Act No. 8371, entitled "An Act To Recognize, Protect And Promote The Rights Of Indigenous Cultural Communities, Creating A National Commission On Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefore, And For Other Purposes," was signed into law by then President Fidel Ramos on October 29, 1997. Popularly called "IPRA," the Indigenous Peoples' Rights Act is also referred to as the Ancestral Domain Law. This law recognizes, protects and promotes the rights of the indigenous peoples in the Philippines, who make up 18% of the national population.

The Act seeks to stop prejudices against tribal peoples through the recognition of certain rights over their ancestral domains, and including ancestral lands, and the right to live their lives in accordance with their indigenous traditions, religions and customs. With the enactment of this law, the Philippine indigenous peoples will now be able to eventually join the

12. NRMCA (1983). *An analysis of laws and enactments pertaining to national parks*. Volume 1. *Study on national park legislation*. Natural Resources Management Center, Ministry of Natural Resources. Quezon City, available at BUNDOK PHILIPPINES, <http://www.geocities.com/Yosemite/3712/main.html> (last visited May 12, 2002).
13. Owen James Lynch, Jr., *Native Title Private Rights and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 272 (1982) [hereinafter Lynch, *Native Title*].

mainstream of Philippine society in community development and nation building.

IPRA is designed to implement constitutional provisions to protect indigenous peoples. The law establishes a National Commission on Indigenous Peoples (NCIP)<sup>14</sup> staffed by tribal members empowered to award certificates of title to ancestral domains/lands claimed by indigenous peoples in the Philippines.<sup>15</sup> It awards certificates of titles on the basis of communal<sup>16</sup> rather than individual ownership, impeding unilateral sale of lands by tribal leaders.<sup>17</sup> The law also requires a process of "informed" consultation and written consent by the indigenous group to allow mining on tribal lands.<sup>18</sup> The law assigns the indigenous groups a responsibility to preserve forests, watersheds and biodiversity areas in their domains from inappropriate development.<sup>19</sup>

IPRA's definition of indigenous cultural communities<sup>20</sup> was heavily influenced by both the U.N. Draft Declaration on the Rights of Indigenous Peoples<sup>21</sup> and ILO Convention No. 169.<sup>22</sup>

The law provides for continued state support for autonomy arrangements in the Cordilleras and Muslim Mindanao, and the recognition by the state, of "the inherent right of ICCs/IPs to self-governance and self-determination," and thus "the right of ICCs/IPs to freely pursue their economic, social and cultural development" within the framework of the Constitution and national unity and development.<sup>23</sup>

The scope of ancestral domains, under IPRA, extends, not only to the physical environment, but also the total environment, *i.e.*, including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.<sup>24</sup>

14. R.A. 8371, §§ 38-50.

15. *See id.* §§ 51-54.

16. *Id.* § 55.

17. *Id.* § 53; § 8(a) (on the right to transfer ancestral land to/among members of the same ICCs/IPs).

18. *See id.* § 57.

19. *Id.* § 9.

20. *Id.* 3(h).

21. U.N. Doc.E/CN.4/Sub.2/1994/Add I (1994).

22. 72 ILO OFF. BULL. 59 (1991). *See* David Daoas, *The Rights of Cultural Communities in the Philippines*, in *INDIGENOUS PEOPLES IN ASIA* 97 (Copenhagen ed., 1997).

23. R.A. 8371, §§ 13-17.

24. *Id.* § 4.

IPRA recognizes, among others, the right of ownership over land and bodies of water traditionally occupied by the international cultural communities (ICCs).<sup>25</sup> They have the right to develop lands and natural resources<sup>26</sup> and stay in said territories.<sup>27</sup> IPRA provides for legal recognition of ancestral domain rights pursuant to indigenous concepts of ownership.

On September 25, 1998, the constitutionality of IPRA was questioned by Isagani Cruz, a former Supreme Court Justice, and Cesar Europa, on the grounds that the state, not indigenous peoples, should have sole ownership and control of mineral wealth<sup>28</sup>. The government put a freeze on all ancestral land claims until the matter could be resolved by the Philippine Supreme Court.<sup>29</sup> The core of the Cruz and Europa petition is the right of ownership of the indigenous peoples over natural resources as part of the ancestral domains. Cruz and Europa argued that the Constitution absolutely prohibits private ownership of natural resources, which the IPRA allows.<sup>30</sup>

The petition was anchored primarily on the *regalian* doctrine, a well-entrenched and widely accepted principle, which affirms the State's dominion over the public domain.

On December 6, 2000, the Supreme Court dismissed the petition, on a divided vote, (7 votes to dismiss and 7 votes to approve the petition), thereby affirming the constitutionality of the IPRA law. Petitioner's motion for reconsideration was subsequently denied on September 21, 2001. The decision should pave the way for the processing of claims of indigenous cultural communities. However, recognition of indigenous peoples' rights, even if legal and constitutional, will still have to overcome several obstacles.<sup>31</sup>

25. *Id.* § 7(a).

26. *Id.* § 7(b).

27. *Id.* § 7(c).

28. Cruz v. DENR, 347 SCRA 128 (2000).

29. Joji Carino, *Environmental Crisis in the Philippines*, available at <http://www.cs.org/conference/joji.html> (last visited May 10, 2002) [hereinafter *Carino*].

30. Philippine Summary of Land Rights, available at [http://www.firstpeoples.org/land\\_rights/Philippines/summary.html](http://www.firstpeoples.org/land_rights/Philippines/summary.html) (last visited May 22, 2002).

31. *Cariño*, *supra* note 28.

### B. *The Indigenous Peoples' Right to Claim Parts of Reservation*

Interestingly, the IPRA provides that indigenous peoples *have the right to claim parts of reservation, which falls under their ancestral domain, except those that are reserved and intended for common and public welfare and service.*<sup>32</sup> The exclusion of those reservation sites that are intended for public welfare and service limits the indigenous peoples' right to fully enjoy the imminent benefits of the law. Hence, it is important to examine what constitutes common and public welfare.

Accordingly, it is necessary to understand the words 'public use' and 'vested rights.'

#### I. Common and Public Welfare: Public Use

Lands of the public domain are intended to be utilized for public use. Private lands may also be utilized for public use. Limitations for public interest may be imposed on private ownership such as: (1) expropriation for public use; (2) military requisitions; (3) zonification laws and regulations; (4) public and government monopolies; (5) laws on waters and mines; (6) laws on public services; (7) public health and safety; and (8) public easements, etc.<sup>33</sup>

Public use has traditionally been identified with beneficial use for the community. Public use is one which confers some benefit or advantage to the public.<sup>34</sup> It is not necessary that the benefit extend to the whole public or a considerable portion of it, or that each individual member of the community has the same degree of interest in such use.

The fact that use or benefit is limited to the residents of a small locality or that the number of persons expected to avail themselves of it is small, is immaterial.<sup>35</sup>

Public use is measured in terms of the right of the public to use the proposed facilities for which condemnation is sought and so long as the public has the right to use, whether exercised by one or many members of the public, a public advantage or benefit accrues sufficient to constitute public purpose.<sup>36</sup>

32. R.A. 8371, § 7 (g).

33. 2 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 59 (1992).

34. *Sena v. Manila Railroad Company*, 42 Phil. 102, 105 (1921); *Manosca v. CA* 252 SCRA 412, 421 (1996).

35. *Manosca v. C.A.*, 252 SCRA 412, 419-20 (1996).

36. *Id.* at 420.

Certain traditional purposes have indisputably been recognized as public use, such as, the construction of roads, bridges, ports, waterworks, schools, electric and telecommunications systems, power plants, public markets, slaughterhouses, parks, hospitals, government offices, and flood control and irrigation systems.<sup>37</sup> A military base<sup>38</sup> and military academy<sup>39</sup> have also been upheld as devoted to public use.

#### 2. Existing Property Rights are Respected

Section 56 of the IPRA provides that property right within ancestral domains already existing and/or vested upon the effectivity of this Act shall be recognized and respected. Vested rights are immediate, fixed rights of present and future enjoyment to privately owned land. Being vested, they enjoy constitutional protection. Vested rights are in contradiction to inchoate, expectant, or contingent rights, such as those of homestead applicants who must comply with requisite application procedures before the land becomes private in nature and the rights to ownership vest.<sup>40</sup>

The rights of Indigenous Peoples under the IPRA are subject to Section 56, thereof. This has been a difficult point of debate among advocates. Property rights could include those whose ownership are evidenced by a Certificate of Title under the Property Registration Decree,<sup>41</sup> those whose rights have vested but have not yet acquired a title and arguably even those who do not possess title but who have been granted rights to use, exploit or develop resources. The right to claim ownership and develop natural resources should also be qualified by Section 57 which grants only priority rights to members of indigenous cultural communities and Section 58 which allows the use of Ancestral Domains as critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas when deemed appropriate and "with the full participation of the ICCs/IPs concerned." The use of "full participation" instead of "free and informed consent" had also been noticed.

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

37. *Ardon v. Reyes*, 125 SCRA 220, 232-233 (1983); *Cesculuella v. C.A.*, 164 SCRA 393, 400 (1988).

38. *Visayan Refining Company v. Camus*, 40 Phil. 556, 558 (1919)

39. *Benguet Consolidated, Inc. v. Republic*, 143 SCRA 466, 472 (1986).

40. *Lynch, Native Title*, *supra* note 13, at 282.

41. Presidential Decree No. 1529 (1978).

*D. List of ancestral domains claims and reservations*

At the outset, it must be noted that there is no existing list of ancestral domains in conflict with reservations which may be obtained from any government agency. The available lists from the NCIP merely provide the data on Certificate of Ancestral Land Claim (CALC) issued as of 03 June 1998, Certificate of Ancestral Domains Claims (CADC) issued as of 03 June 1998, and Ancestral Domains Claims not covered by CADC as of 07 October 2002. On the other hand, the only existing comprehensive list on reservations is on Watershed Forest Reserves as of the year 2000 from the Department of Environment and Natural Resources. The watershed listing, however, is silent on reservations currently in conflict with any ancestral domains claim. More importantly, the Real Estate Office in Camp Aguinaldo of the Armed Forces of the Philippines declined to provide the required data for security reasons. Finally, the available information from the Malacañang Records Office are no more than compilation of proclamation orders on reservations without any apparent indications of conflicts with ancestral domains claims.

*E. Case Studies on Actual Conflict of Indigenous Communities with Reservation Authorities*

1. The Aetas in the Sacobia Range (the conflict with Clark Development Corporation)

a. Historical Findings

The 'Aetas' or the 'Balugas' were the first people<sup>42</sup> to occupy the plains and mountain areas now under the separate jurisdiction of the provinces of Tarlac, Zambales, Pampanga, Bataan and Bulacan.<sup>43</sup> Their source of food and means of livelihood mainly depend on the natural resources from the mountain, hunting for wild pigs, birds and from the waters, catching fish and shell foods.<sup>44</sup> At present, they now live in permanent houses and their

42. Interview with the Indigenous Cultural Community of Bamban, Tarlac, January 2002, at Bamban, Tarlac [hereinafter Interview with the Indigenous Cultural Community]. See Bamban Aeta Tribal Association (BAT A), *Identification and Delineation of Ancestral Domain Experience of the Aetas of Bamban Tarlac* (undated and unpublished document) (on file with the Malacañang Records Office) [hereinafter Bamban Aeta Tribal Association].

43. Interview with the Indigenous Cultural Community, *supra* note 50. See Opposition to the Allegations of Clark Development Corporation (CDC) Against the Certificate of Ancestral Domain Claims Issued to Abelling/Aeta Indigenous Peoples of Bamban, Tarlac (undated and unpublished document) (on file with the Malacañang Records Office) [hereinafter Opposition Paper].

44. Bamban Aeta Tribal Association, *supra* note 42.

means of livelihood is farming and planting several crops and raising animals.<sup>45</sup>

Even before the Spanish occupation of the Philippines, the Aeta (or Baluga as commonly referred to by outsiders) were already living in established communities in what is now known as Bamban, Tarlac and have used as rice fields, lands along the Paruwao (now Bamban) River.<sup>46</sup> The Aeta communities were flourishing even before the Spanish missionaries established what is now known as the municipality of Bamban, Tarlac in 1700.

From 1900 to 1950, during the American Regime, many parts of the Aeta Ancestral Domains were taken as part of the US Military Camps.<sup>47</sup> A clear example was the establishment of the U.S. Military Camp called *Clark Field-Fort Stosenberg Military Reservation*, which occupied a huge part of their ancestral domain.<sup>48</sup> However, in manifest recognition of the rights to these lands, the Americans did not prevent the Aetas from cultivating their lands within those areas taken as reservation.<sup>49</sup> For fifty (50) years it was exclusively the Aetas who were cultivating lands within the areas taken as military camp.<sup>50</sup>

Unfortunately, during the term of President Ramon Magsaysay, areas within the US Military Camp were opened to cultivation for other peoples aside from the Aeta. Since then, many people have taken advantage of the Aeta's cultural difference -vulnerability to mainstream law and commerce-to grab Aeta lands.<sup>51</sup> This massive dispossession of cultivated lands have caused the Aeta to become impoverished and have constrained them to move to the more mountainous parts of their ancestral domains.<sup>52</sup>

b. The Sacobia Development Authority

In 1975, after Martial Law was declared, areas of the US military camp were placed under the management of Sacobia Development Authority<sup>53</sup> and portions of the community's ancestral domain was transferred to the Sacobia

45. Interview with the Aeta Indigenous Cultural Communities, *supra* note 42.

46. Opposition Paper, *supra* note 43.

47. *Id.*

48. Bamban Aeta Tribal Association, *supra* note 42.

49. Opposition Paper, *supra* note 43.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

Development Estate by virtue of Presidential Proclamation 1955.<sup>54</sup> The proclamation covering about five thousand (5,600) hectares of land encompassed most areas of the Aeta Ancestral Domains.<sup>55</sup> The proclamation thus elicited resistance among the Aeta communities whose lands were covered by the said proclamation.<sup>56</sup>

In 1982, Aetas in the villages of San Vicente, Calumpang, Manikayo, Balakbak, Hatduan, Calape, Kibladugan Tandus, Barangay San Vicente, Bamban, Tarlac and in sitios Camtahilis, Sto. Nino, Batson, Burak, San Martin, Burog, Mataba, Bagingan, Kaging, Tiayag, Mabilog, Kalbangan, Burakin, Matungkarong, Gayaman, Pamtayan, Mabanay in Barangay Sto. Nino, Bamban, Tarlac filed a petition with the Office of the President for the Declaration of their ancestral domains as Negrito Reservation.<sup>57</sup>

In 1985, the Aeta communities formed the Bamban Aeta Tribal Association or BATA and filed with the Department of Environment and Natural Resources (DENR) an application for a Community Forest Stewardship Agreement (CFSA).<sup>58</sup> To clearly demarcate their territories, the Aeta community established "the Gutierrez line" using traditional landmarks establishing whole ancestral domain claim.

In 1986, the Municipality of Tarlac officially recognized the Gutierrez Line and in a Declaration of Policy declared their intent and will to establish

54. The text of Proclamation No. 1955 states:

Upon the recommendation of the Minister of Human Settlements pursuant to the provisions of Presidential Decree No. 1396 dated June 2, 1978 and the LICENSE issued by the United State Secretary of the Air Force, I, FERDINAND E. MARCOS, President of the Philippines, hereby segregate a portion of the U.S. MILITARY RESERVATION (CLARK AIR BASE) Municipality of Bamban, Province of Tarlac within the boundaries as follows, for BLISS Program: casia

Bounded on the NORTH by Mountains, on the EAST by the Municipality of Bamban, by the CLARK AIR BASE on the SOUTH and by Mount PINATUBO on the WEST. containing an area of FIVE THOUSAND SIX HUNDRED TWELVE HECTARES, which is known and referred to as SACOBIA.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 25th day of March, in the year of Our Lord, nineteen hundred and eighty.

55. Opposition Paper, *supra* note 43.

56. *Id.*

57. *Id.*

58. *Id.*

and protect the Gutierrez Line (Aeta Territories).<sup>59</sup> Meanwhile, in 1992, Republic Act 7227 established the Bases Conversion and Development Authority (BCDA) to plan, program and undertake the readjustment, relocation, or resettlement of population within the Clark and Subic military reservations and their extensions as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units.<sup>60</sup> Accordingly, the

59. *Id.*

60. In pertinent part, Republic Act 7227 provides:

Sec. 3. Creation of the Bases Conversion and Development Authority. - There is hereby created a body corporate to be known as the Bases Conversion and Development Authority, hereinafter referred to as the Conversion Authority, which shall have the attribute of perpetual succession and shall be vested with the powers of a corporation.

It shall be organized within thirty (30) days after approval of this Act. It shall have a term of fifty (50) years from its organization: Provided, That Congress, by a joint resolution, may dissolve the Conversion Authority whenever in its judgment the primary purpose for its creation has been accomplished. It shall establish its principal office in Metropolitan Manila unless otherwise provided by the Conversion Authority and may put up such branches as may be necessary.

Sec. 4. Purposes of the Conversion Authority. - The Conversion Authority shall have the following purposes:

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(f) To establish a mechanism in coordination with the appropriate local government units to effect meaningful consultation regarding the plans, programs and projects within the regions where such plans, programs and/or project development are part of the conversion of the Clark and Subic military reservations and their extensions and the surrounding communities as envisioned in this Act; and

(g) To plan, program and undertake the readjustment, relocation, or resettlement of population within the Clark and Subic military reservations and their extensions as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units.

Sec. 15. Clark and other Special Economic Zones. - Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and the contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, located the within the territorial jurisdiction of Angeles City, Municipalities of Mabalacat and Porac, Province of Pampanga, and the Municipality of Capas, Province of Tarlac, in accordance with the policies as herein provided insofar as applicable to the Clark military reservations.



President was authorized to create, by executive proclamation, a Special Economic Zone covering the lands occupied by the Clark military reservations and the contiguous extensions.<sup>61</sup>

c. The Findings on the CADC Process

In 1993, the DENR issued Administrative Order No. 2 for the "identification, delineation and recognition of our ancestral domain."<sup>62</sup> With the 1987 Constitution as basis, A.O. 2 was premised on the belief and conviction that "time immemorial possession by natives of their land vests valid title."<sup>63</sup> As a matter of fact, the term "Recognition" was used in the title of A.O. 2 to stress the fact that indigenous peoples' rights to their ancestral domains were already vested and the process for issuance of a Certificate of Ancestral Domains Claims was simply a formal re-affirmation of such vested rights.<sup>64</sup>

Unfortunately, Bamaban was not included in the list for the implementation of A.O. 2.<sup>65</sup> As a reaction, Bamaban Aeta Tribal Association (BATA), in representation of several other Aeta Communities in Tarlac, moved for the inclusion of the Bamaban in the scope of A.O. 2 as there were 5,000 or more indigenous inhabitants in the province.<sup>66</sup> This was communicated in a resolution dated 14 March 1993 to the DENR who favorably acted upon the request.<sup>67</sup>

Relentless, despite the inclusion of Bamaban,<sup>68</sup> the community filed a petition for CADC with the DENR on August 30, 1993.<sup>69</sup> On 18 October

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The governing body of the Clark Special Economic Zone shall likewise be established by executive proclamation with such powers and functions exercised by the Export Processing Zone Authority pursuant to Presidential Decree No. 66 as amended.

The policies to govern and regulate the Clark Special Economic Zone shall be determined upon consultation with the inhabitants of the local government units directly affected which shall be conducted within six (6) months upon approval of this Act.

61. *Id.*

62. Bamaban Aeta Tribal Association, *supra* note 42.

63. Opposition Paper, *supra* note 43.

64. *Id.*

65. Bamaban Aeta Tribal Association, *supra* note 42.

66. Opposition Paper, *supra* note 43.

67. *Id.*

68. Bamaban Aeta Tribal Association, *supra* note 42.

69. *Id.*

1993, the Sangguniang Tribu of the municipality of Bamaban, Tarlac through Tribal Consultant and Adviser, Mr. Marcelo R. Gutierrez filed a request for identification, delineation and recognition of the Aeta Ancestral Domain in Bamaban, Tarlac.<sup>70</sup> For almost 2 years, there was no action on their petition. Subsequently, they filed another Application with the DENR on June 15, 1995.<sup>71</sup> From 1993 to 1995, they launched a series of consultations in various "sitios" of Aetas within their ancestral domain to discuss the contents of A.O. 2 in preparations of the required evidence and documents to show proof of their claim to the ancestral domain.<sup>72</sup>

In 1993, pursuant to R.A. 7227, the Clark Development Corporation was established to accelerate the sound and balanced conversion of the Clark military reservations and its contiguous extensions into alternative productive civilian uses to promote the economic and social development of Central Luzon in particular and the country in general.<sup>73</sup> Presidential Proclamation

70. Opposition Paper, *supra* note 51. The Indigenous Peoples Settlement included in said petition were Sitios San Martin, Burog, Sta. Rosa, Maligaya, Kaging, Baiatong, Malanday, Malaza, Mataba, Bagingan, Gayaman, Mabilug, Matagpo, Mainang, Hatduan, Kalapi, Calang, Calumpang, Malhaya Uyong, Magube, Uybo and Morales.

71. Bamaban Aeta Tribal Association, *supra* note 42.

72. *Id.*

73. Executive Order No. 80, Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing All heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program (1993). Pertinently, it states:

Sec. 1. Creation of the Clark Development Corporation. - A body corporate to be known as the Clark Development Corporation (CDC) is hereby authorized to be formed as the operating and implementing arm of the BCDA to manage the Clark Special Economic Zone (CSEZ).

The CDC shall be a subsidiary corporation of the BCDA and shall be formed in accordance with the Philippine corporation law and existing rules and regulations promulgated by the Securities and Exchange Commission pursuant to Section 16 of RA 7227.

The CDC shall be subject to the policies, rules and regulations of the BCDA for the CSEZ.

Sec. 2. Powers and Functions of the Clark Development

Corporation. - The BCDA, as the incorporator and holding company of its Clark subsidiary, shall determine the powers and functions of the CDC. Pursuant to Section 15 of RA 7227, the CDC shall have the specific powers of the Export Processing Zone Authority as provided for in Section 4 of Presidential Decree No. 66 (1972) as amended.



No. 163 designated the areas covered by the Clark Special Economic Zone (CSEZ) which involved the lands consisting of the Clark military reservations, including the Clark Air Base proper and portion of the Clark reverted baselands, and excluding the areas covered by previous Presidential Proclamations, the areas turned over to the Department of Agrarian Reform (DAR), and the areas in the reverted baselands reserved for military use.<sup>74</sup>

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Sec. 6. Local Autonomy. - Except as herein provided, the affected local government units shall retain their basic autonomy and identity. Angeles City shall be governed by its charter and the Municipalities of Porac, Mabalacat, Bamban and Capas shall operate and function in accordance with Republic Act no. 7160, otherwise known as the "Local Government Code of 1991." In case of conflict between the CDC and the local government units concerned on matters affecting the CSEZ other than defense and security, the decision of the CDC shall prevail.

74. Proclamation No. 163, Creating and Designating the Area Covered by the Clark Special Economic Zone and Transferring these Lands to the Bases Conversion and Development Authority Pursuant to Republic Act 7277 (1993). In pertinent part, it states:

Pursuant to the powers vested in me by law and the resolutions of concurrence of the local governments units directly affected, I, FIDEL V. RAMOS, President of the Republic of the Philippines, hereby create and designate the area covered by the Clark Special Economic Zone (CSEZ) comprising the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, located within the territorial jurisdiction of Angeles City, Municipalities of Mabalacat and Porac, Province of Pampanga, and the Municipality of Capas, Province of Tarlac, as follows:

Sec. 1. Creation of the Clark Special Economic Zone. - The CSEZ shall cover the lands consisting of the Clark military reservations, including the Clark Air Base proper and portion of the Clark reverted baselands, and excluding the areas covered by previous Presidential Proclamations, the areas turned over to the Department of Agrarian Reform (DAR), and the areas in the reverted baselands reserved for military use.

Specifically, the areas covered by the CSEZ and the areas excluded are as follows:

I. AREAS COVERED BY THE CSEZ

	Approximate Area
1. Clark Air Base proper	4,440 Hectares
2. Portions of Clark Reverted Baselands:	
a. Zone A	7,205
b. Zone B (Net of	

O'Donnell Transmitter Station and Resettlement Area under Proclamation No. 813	3,052
c. Zone D (Net of Sacobia Area and Resettlement Area under Proclamation No. 812)	13,344
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Sub-Total	23,601
Total CSEZA Area	28,041 Hectares
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II. AREAS IN THE REVERTED BASELANDS EXCLUDED FROM THE CLARK SEZ:

1. For the Pinatubo Commission Resettlement Sites in Zone B and D	
a. Under Proclamation No. 812 (11 October 1991)	122 Hectares
b. Under Proclamation No. 813 (11 October 1991)	348
2. For the Sacobia Development Authority Resettlement Project in Zone D Under Proclamation No. 1955 (25 March 1980)	5,612
3. For DND/Military Use:	
a. O'Donnell Transmitter Station	370
b. O'Donnell Excepted Area	1,755
c. Zone C (Crow Valley)	17,847
4. For the Department of Agrarian Reform (DAR):	
a. Zone E	7,006
b. Zone F	1,749
c. Zone G	1,969
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Total Excluded Areas	36,778 Hectares
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The total area of the CSEZ is 28,041 hectares, more or less, subject to actual survey, covering Clark Air Base proper (4,440 has.) and portions of the Clark reverted baselands (23,601 has.).

Sec. 2. Transfer of CSEZ Areas to the Bases Conversion and Development Authority. - The Clark Air Base proper covering 4,440 hectares, more or less, and portions of the Clark reverted baselands covering 23,601 hectares, more or less, totalling 28,041 hectares declared as the total area of the CSEZ in accordance with Section 1 hereof are hereby transferred to the BCDA.

On 15 June 1995, BATA's request for delineation was finally acted upon.<sup>75</sup> On September 12, 1995, the DENR Undersecretary for Field Operations issued a Memorandum ordering the DENR-RED to create the Provincial Task Force on Ancestral Domain (PTFAD) who would take charge of the delineation process in accordance with the procedures outlined in DAO 2, series of 1993.<sup>76</sup>

Formally created on October 25, 1995, the PTFAD was comprised of the DENR, Local Government Units, Aeta leaders and PANLIPI as the NGO. However, no immediate action was undertaken because the Secretary of DENR held the delineation in abeyance<sup>77</sup> as a result of certain issues raised by the Sacobia Development Authority (SDA).<sup>78</sup> Eventually, the PTFAD resumed the identification and delineation of our ancestral domain.<sup>79</sup> The PTFAD conducted several meetings and consultations among the IPs, together with representatives from LGUs and the Clark Development Corporation (CDC).<sup>80</sup>

On 20 February 1997 the procedure for the issuance of CADC to the Aeta in Bamban, Tarlac was reinstated, at the conclusion of a dialogue held with the CDC and PTFAD.<sup>81</sup> This dialogue was just one of the many

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These areas are approximate and subject to actual ground surveys.

The BCDA shall determine utilization and disposition of the above mentioned lands.

Sec. 3. Governing Body of the Clark Special Economic Zone. - Pursuant to Section 15 of R.A. 7227, the BCDA is hereby established as the governing body of the CSEZ. The BCDA shall promulgate all necessary policies, rules and regulations to govern and regulate the CSEZ thru the operating and implementing arm it shall establish for the CSEZ.

Sec. 4. Memoranda of Agreements. - The areas inside the Clark Air Base proper intended for use by the military, by the Mt. Pinatubo Assistance, Resettlement and Development Commission, by the University of the Philippines (U.P.) and other institutions, if any, shall be delineated and covered by separate Memoranda of Agreements to be agreed upon and entered into by the BCDA and DND/AFP, the Pinatubo Commission, the U.P. and other institutions, subject to the final approval of the President.

75. Opposition Paper, *supra* note 43.

76. *Id.*

77. Bamban Aeta Tribal Association, *supra* note 42.

78. *Id.*

79. *Id.*

80. *Id.*

81. Opposition Paper, *supra* note 43.

meetings involved in the process of delineation, where CDC representatives were present.<sup>82</sup>

Publication of the Ancestral Domain Claim was made in local newspapers including Herald Tarlac and Ups and Downers as required under the DAO 2 process.<sup>83</sup> Notices were also posted in public places. No opposition to the claims were interposed during the period prescribed by interposing objections.<sup>84</sup>

Ocular Inspection and Validation were conducted by the PTFAD from 14-18 April 1997.<sup>85</sup> Thereafter, a recommendation for the issuance of a CADC to the Aeta Communities in Bamban was endorsed by the PTFAD.<sup>86</sup>

In 1997, CADC 107 was signed<sup>87</sup> which covered an area of 5,515 hectares.<sup>88</sup> In the meantime, the IPRA was signed into law.<sup>89</sup>

Despite the CADC, the Clark Development Corporation continued filing complaints in different agencies of government,<sup>90</sup> the reason being that the indigenous cultural communities impeded the operation of their concluded projects. The Corporation came up with different projects within the ancestral domain without any consultation with the IPs.<sup>91</sup> Investors and businessmen entered and occupied part of their ancestral domain and the CDC guards allegedly harassed the community because of their persistent claim to the domain.<sup>92</sup>

In June 1996, President Fidel Ramos issued Executive Order 334 and Proclamation 805. These Orders respectively provide:

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82. PSTF AD Meeting 4 Sept. 1996 with CDC present, San Martin, Bamban, Tarlac, 28 Jan. 1997, attended by Emilio Magbag and other offices of SDA-CDC, 20 February 1997 at the Tarlac Provincial Capitol, attended by CDC representatives.

83. Opposition Paper, *supra* note 43.

84. *Id.*

85. *Id.*

86. *Id.*

87. CADC 107: Historical Background in Chronological Event (unpublished manuscript) (on file with the NCIP, Regional Office III, San Fernando, Pampanga) [hereinafter Record on CADC 107].

88. Opposition Paper, *supra* note 43.

89. R.A. 8371.

90. Bamban Aeta Tribal Association, *supra* note 42.

91. *Id.*

92. *Id.*

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippine, by virtue of the powers vested in me by law and the sovereign will of the people do hereby include in the Clark Special Economic Zone the five thousand seven hundred twenty four (5,724) hectares portion located in the municipalities of Mabalacat, Pampanga and Bamban, Tarlac, more commonly known as Sacobia, which parcels of land, subject to the final survey and delineation on ground by the Department of Environment and Natural Resources, are described and defined in Survey No. SWO-O3-000083 of the DENR, Region III Land Management Sector. Further vested rights and valid ancestral domain claims within the Sacobia area as verified and validated by the DENR and other pertinent government agencies shall be respected.

Sec. 7. Settlement and Resettlement of Sacobia Communities. Subject to existing legal rights and valid ancestral domain claims within the Sacobia area, as verified and validated by the Department of Environment and Natural Resources, communities and permanent residents of Sacobia may be transferred and resettled by the CDC, at the expense of BACDA, to give way to development projects in the area.<sup>93</sup>

The inclusion of Sacobia under the Clark Special Economic Zone was endorsed by different LGUs and government agencies *under the condition that legitimate ancestral domain claims of the Aetas will be recognized and respected.*<sup>94</sup>

93. Opposition Paper, *supra* note 43.

94. "The O.N.C.C. Executive Director, in a letter dated 10 June 1996, informed us that in the areas covered by the SDA, there are four (4) sitios occupied by members of indigenous cultural communities (Aeta) Tribe who have the intention of applying for a Certificate of Ancestral Domain Claim once the DENR has organized the Task Force on Ancestral Domain in Tarlac. The DENR endorsed the issuance of the attached draft proclamation (referring to Pro. 805) and EO (referring to EO 344) provided that vested rights and valid ancestral domain claims within the Sacobia area will be respected. (underscoring supplied) (Memorandum for the President signed by Secretary Torres, dated 14 June 1996).

"RESOLVE, that the Sangguniang Bayan of Bamban hereby endorses the proposal to annex the development and management of Sacobia to the Clark Development Corporation, subject however to the following conditions: ... (3) the possessory rights of farmers in the Sacobia Estate including Aetas with ancestral claim should be respected and protected. (underscoring supplied) ( Resolution no.72, Series of 1996, Sangguniang Bayan, Municipality of Bamban).

"RESOLVED, That the Sangguniang Panlalawigan of Tarlac hereby manifests its support and endorsement of the productive development of the Sacobia Estate with its integration in the expanded Clark Development Authority and the Province of Tarlac, particularly the Municipality of Bamban, under certain terms and conditions that would ensure the protection of the interest of the Province, the entire Sacobia area falls within the entire Province of Tarlac, to

On January 9, 1998, then CDC President Romeo S. David wrote a letter to P.M.S. Secretary Alexander P. Aguirre signifying CDC's strong protest to the issuance of CADC to the Aetas of Bamban<sup>95</sup> with their justification that CADC 107 be declared null and void on the following reasons:

- a. it is in conflict with existing regulations;
- b. award of CADC was based on gross misrepresentation;
- c. survey requirements of Department Administrative Order No. 02 was not complied with;
- d. the area is already covered by existing commitments.<sup>96</sup>

The complaints of CDC compelled the Ramos administration to create on 19 February 1998 a multi-agency Joint Action Team (JAT) to conduct an investigation.<sup>97</sup> The JAT was composed of representations from DTI, DENR, leaders of barangays located within the ancestral domain and representatives from the academe of Tarlac and Pampanga.<sup>98</sup> The JAT was also tasked to conduct the verification surveys of Aetas living in Sacobia, to ascertain their ethnic affiliation, to establish their number, and to verify the landmarks of the domain.<sup>99</sup> Status quo shall be maintained by not canceling the existing CADC, pending the verification of the claim, but no new CADC shall be issued.<sup>100</sup>

Eventually, the JAT submitted its findings and recommendations to Executive Secretary Ronaldo B. Zamora and Hon. Edgardo Espiritu. In pertinent part, the findings of JAT are as follows:

- a. There are 457 families living in Sacobia, 296 of whom are Aetas who inhabit the central and western part of the area;
- b. The extent of Ancestral Domain claim as verified more or less tallies with what was approved by DENR;
- c. No inherent conflict in relevant laws ( IPRA, CDC & SDA charters);

wit: (b) CDC will consider the ancestral claims of the cultural minorities in the area and the possessory rights of farmers in the lands they are presently tilling. (underscoring supplied) *Id.*

95. Record on CADC 107, *supra* note 87.

96. Case Brief, Aeta Ancestral domain (CADC-107) within the Clark Development Corporation (CDC), prepared for the Presidential Adviser on Indigenous Peoples Affairs (unpublished manuscript) (on file with the Malacanang Records Office) [hereinafter Case Brief].

97. Bamban Aeta Tribal Association, *supra* note 42.

98. *Id.*

99. Case Brief, *supra* note 96.

100. *Id.*

d. Guiding principles as parameters are right to self determination and preservation of indigenous ways,<sup>101</sup>

Consequently, the JAT recommended the following:

a. CDC may continue with its development activities in accordance with IPRA which requires Free and Prior Informed Consent;

b. IPs shall be the final deciding entity on how development shall proceed in their ancestral domain;

c. CDC plans shall therefore be presented to Aeta community and revised and modified according to their priorities;<sup>102</sup>

On June 24, 1999, NCIP Chairman David A. Daoas wrote Rufo Colayco, then President and CEO of CDC, to respect the rights of indigenous peoples within CADC 107, to stop the threat of CDC security guards towards the IPs, and dismantle the checkpoints around the ancestral domain.<sup>103</sup> Mr. Colayco then replied asking for the adjustment of the area covered by CADC 107.

On October 15, 1999 Chairman Daoas, Commissioner Erlinda A. Dolandolan, Director Rosalina L. Bistoyong and NCIP Regional Staff conducted a dialogue with Mr. Colayco for the settlement of issues involving CADC 107 particularly the area coverage of said CADC.<sup>104</sup>

On November 26, 1999, Director Rosalina L. Bistoyong and the NCIP staff attended a meeting at CDC together with the Tribal Leaders.<sup>105</sup> The meeting was sponsored by Congressman Jesly Lapuz who asked for the opinion of the Tribal Leaders regarding the problems besetting CADC 107. All the Tribal Leaders expressed for the retention of the 5,515 hectares.<sup>106</sup>

Subsequently, on March 1, 2000, a meeting was held at CDC.<sup>107</sup> In this meeting, CDC Representative Prexy Naguiat recognized the validity and legality of CADC 107.

101. *Id.*

102. *Id.*

103. Record on CADC 107, *supra* note 87.

104. *Id.*

105. *Id.*

106. *Id.*

107. It was attended by NCI R-3 Staffs headed by Regional Director Rosalina L. Bistoyong, Commissioner Erlinda M. Dolandolan, CDC President Sergio T. Naguiat and CDC Executive Vice President Hilana T. Roman and Ruben Sison, President, President, Federation of Tribal Council of Sacobia to resolve the problems governing CADC 107.

On April 6, 2000, the NCIP and CDC agreed to prepare a Memorandum of Agreement on the contested CADC 107. On July 11, 2000, the PTFAD issued another resolution in support of CADC 107.<sup>108</sup>

108. Resolution of the PTFAD in Support to CADC No. R.03-CADC-107 Issued by the DENR to the Indigenous Peoples of Sacobia, Bamban, Tarlac (July 11, 2001) (on file with the author). The entire text of the Resolution states:

WHEREAS, on motion of CENR-Officer Meliton I. Vicente Jr. of CENRO Tarlac, City as the Presiding Officer in a meeting held July 11, 2000 relative to the written request of Ms. Carmela Sibal, Bamban Aeta Tribal Association President and a member of the Provincial Task Force on Ancestral Domain of DENR, PENRO Tarlac in order to shed light relative to the introduced House Resolution No. 1354 by Honorable Jesli A. Lapuz, Congressman of the Third District of Tarlac urgently directing the Committee on Natural Resources to conduct and inquiry, in aid of legislation, into the land disputes among the farmers of the municipalities of Capas and Bamban in Tarlac and of the municipality of Mabalacat, Pampanga the cultural minorities therein, and the Clark Development Corporation, Bases Conversion Development Authority;

WHEREAS, the Brief on Sacobia as compiled by Clark Development Corporation states that as it is hereby quoted, "CDC intended development for the area, however, was severely impeded when a Certificate of ancestral Domain Claim (CADC) was issued by DENR on 2 November 1997;" "CDC officially requested nullification of said CADC as formalized by CDC's letter to the Office of the President on 13 January 1998 since CDC maintains that they were premised on faulty information;"

WHEREAS, on the same brief, CDC's opposition to the CADC is focused on three major items, namely: \* the declared area. \* the named beneficiaries and \* and some faulty information which became the basis of the CADC award by DENR; and

WHEREAS, PTFAD found the information submitted by CDC to the Honorable Congressman Jesli Lapuz as to their opposition found to be wanting and full of incumbrances and just to discredit DENR who have issued the CADC in good faith and for the good of the indigenous peoples;

WHEREAS, the PANLIPI, the legal arm of the Indigenous peoples shall also submit their Resolution/stand relative to the CDC's opposition on the CADC issued by DENR as informed by Ms. Lenny Dias, PANLIPI representative.

NOW THEREFORE, on motion of Ms. Carmela Sibal and duly seconded by Mr. Serafin S. Rufo, Forester II, of DENR Tarlac and Action Officer BE IT RESOLVED AS IT IS HEREBY RESOLVED that the memorandum of the Head, Community Forest Management Office, Director Romeo Acosta to the Head Executive Assistant, DENR Head Office, Quezon City dated February 12, 1998 BE ADOPTED and a copy of which is to be furnished to Honorable Secretary Antonio Cerilles. FURTHER, mr. Melencio Polon, Provincial Cultural Community Officer of the National Commission on Indigenous Peoples motioned that the ANSWER OF NCIP TO THE ISSUES RAISED BY CDC as submitted by NCIP Regional Office San Fernando, Pampanga BE

## d. Recent Developments

In January 2002, after an interview with the community, all data gathered by the research team were confirmed.<sup>109</sup> True enough, certain businesses are well within the ancestral domain under CADC 107. CDC continues to go on with projects that apparently encroach upon their ancestral domain.

A gigantic Orchidarium was erected therein. The Orchidarium basks over a huge tract of land with plantings all over the place. Horticulture was being conducted in the said place. Coconut trees have also been planted in order to mark its boundaries. Tractors and other facilities have likewise been installed. More imperatively, the orchidarium has been fenced to prevent any unauthorized person from going inside the premises. Permanent tenants also supervise the place.

According to the community, more projects were being planned according to the members of the community.<sup>110</sup> All of these were being done without their free and prior informed consent.<sup>111</sup> More importantly, the DCD guards continually harass and threaten them with violence.<sup>112</sup>

On the contrary, Atty. Emmanuel Angeles, President of the Clark Development Corporation, explained that the Corporation has been talking with the leaders as regards any act they intend to do over the same.<sup>113</sup> He said that he was aware of the existence of the IPRA law.<sup>114</sup> According to him, he has been talking to the representatives of the communities ever since he assumed his position. He, however, pointed out that he was mandated by law to continue the contract that the CDC has previously entered into.

ALSO ADOPTED and FURTHERMORE, again on motion of Ms. Leonarda Taclang, Senior Forest Management Specialist of the Office of the Assistant Regional Director for Operations and duly seconded by CDO II Brenda Clemente of PENRO Tarlac RE ALSO ADOPTED, this after a thorough discussion of all the position papers of Director Romeo Acosta, NCIP and RED Gregorio Nisperos.

RESOLVED FURTHER, in motion of Engr. Amalia Fajardo, CENRO Tarlac Land Management Officer n as duly seconded that copies of the resolution together with the photocopies or true copies of the documents as stated be forwarded to the Secretary, Department of Environment and Natural Resomces, through the Regional Executive Director and ARED for Operations, for their information and perusal.

109. Interview with the Indigenous Cultural Community, *supra* note 42.

110. *Id.*

111. *Id.*

112. *Id.*

113. Interview with Atty. Emmanuel Angeles, CDC President, May 2002, Angeles City.

114. *Id.*

Surprisingly, Atty. Angeles was always ready to recognize the rights of the communities and enter into any agreement with them.<sup>115</sup>

According to Lady Sibal, a respected tribal leader in Bambang, Atty. Angeles has declared that he will do all his best to respect the rights of the IPs over the area.<sup>116</sup> Atty. Angeles was willing to enter into an agreement with them as regards the cultivation of the ancestral domain.<sup>117</sup> However, this promise was not formalized.<sup>118</sup>

Recent developments have strengthened the position of the Aetas as regards their ancestral domains claim. President Gloria Macapagal-Arroyo has just allotted around P20 million for the delineation process of NCIP. Moreover, talks with Atty. Angeles have shown that the Aeta community will be benefited by the operations of the Orchidarium through a share in the income of said project.

## 2. Mindoro College of Agriculture and Technology

## a. Historical Findings

The Mangyans are the original inhabitants and the only tribe indigenous to the island of Mindoro.<sup>119</sup> They have occupied the place they call Kaldayapan and Kalbot. Sometime in 1948, several landless farmers settled and began clearing and cultivating portions of the public lands at Brgy. Alcate and Villa Cerveza, in the municipality of Victoria, Oriental Mindoro. Residing in Brgy. Alcate are *Mangyan Communities* who have been actually, directly, and continuously using and occupying the land near the Mag-asawang Tubig River since time immemorial.<sup>120</sup>

On June 22, 1951, President Elpidio Quirino issued Proclamation No. 260, creating the Mindoro National Agricultural School (later referred to as the Mindoro College of Agriculture and Technology or MCAT) reserving for agricultural school purposes a certain parcel of public domain situated in

115. *Id.*

116. Interview with Lady Sibal, Indigenous Cultural Community Leader, May 2002, Angeles City.

117. *Id.*

118. *Id.*

119. RESOLVING THE FIFTY-YEAR MINSCAT LAND CONFLICT: A TEST OF DETERMINATION AND POLITICAL WILL I (unpublished and undated manuscript) (on file with the Malacanang Records Office) [hereinafter MINSCAT LAND CONFLICT]

120. *Id.*

Brgy. Alcate, Victoria, Oriental Mindoro.<sup>121</sup> It set aside a total of 3,680 hectares encompassing the areas being occupied by the Mangyan communities and the farmer settlers.<sup>122</sup> The passage of time has, however, shown that the reservation was no longer used in its entirety for the purpose for which it was established.

From then on, the Mangyans and the farmer settlers have been experiencing various forms of harassment through the use military operation, such as indiscriminate cutting and destruction of plants, bulldozing and burning of houses, confiscation of farm implements and forcible eviction, among others.<sup>123</sup>

The Mangyan residents were sent to Block III. They tried to develop the place but further harassment continued when they were driven out to give way to the government's project called "Palayang Bayan."<sup>124</sup> The Mangyans were then ordered to return to their former place in Kaldayapan. Still, they continue to experience acts of harassment including forcible eviction and destruction of plants and crops.<sup>125</sup>

#### b. Proclamation 626

On April 21, 1970, then President Ferdinand Marcos issued Proclamation No. 626 releasing 316 hectares of the MCAT reservation, of which 263 was re-proclaimed for use of the Bureau of Plant and Industry.<sup>126</sup> Another Presidential Proclamation (No.1831) was issued by President Marcos on March 19, 1979, releasing another 1,120 hectares of the MCAT reservation to be disposed under the provision of the Public Land Act, to bonafide occupants.<sup>127</sup> However, the area was not awarded to the rightful beneficiaries, who are the descendants of the original occupants of the land.

The MCAT management had previously leased 300 hectares of the reservation to Victorias Milling Company (VMC) for the benefit of VMC workers in Negros Occidental, and another 50 hectares to LIVECOR, a private company.<sup>128</sup>

121. Aide Memoire, Land Dispute in the Mindoro State College of Agriculture and Technology (MINS CAT) (April 18, 2002) (unpublished manuscript) (on file with the Malacanang Records Office) [hereinafter Aide Memoire].

122. *Id.*

123. MINS CAT LAND CONFLICT, *supra* note 119.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

Apart from the ancestral domain claim of the Mangyans, farmers play the third party in the controversy between the Mangyans and the school. Farmers, who are non-IPs, have settled in the same place as the land therein was fertile. Interestingly, even during the time of President Marcos, more than 1000 hectares have already been alienated in favor of farmers (non-IPs) who have settled in the portion beyond the river. Hence, a remaining 2,680 hectares was allegedly declared free for disposal for the farmers and IPs.<sup>129</sup>

The 2,680 hectares remaining have been recently determined by the Department of Agrarian Reform (DAR) as suitable for agriculture, and no longer actually, directly and exclusively used or necessary for the purpose for which they have been reserved. The DAR distributed several hectares to the farmers but the school wanted to retain 700 hectares. Half of the area is even occupied by farmers. To date, MCAT's total reservation area is 700 hectares.<sup>130</sup>

The Mangyans, on the other hand, claim the same territory (actually, according to the Mangyans, they could lay a claim on the whole 3,680 hectares based on their occupation since time immemorial).<sup>131</sup> Although they are entitled to a greater area, they only claim a smaller portion – *the farmplots which they actually occupy*. However, even with this little claim, the school has refused, for quite some time, to give the Mangyans the land that they claim to be their ancestral domain.<sup>132</sup>

#### c. Result of Findings

The school wanted the area occupied by the Mangyans for two reasons: (1) it is contiguous to the actual site of the school; and, (2) it is already cultivated, hence conducive for agricultural learning.

Although the school was willing to relocate the Mangyans to some other parts of the site, the Mangyans refused to leave the area also for good reasons:

1. the area where they will be relocated is not suitable for cultivation since it is rocky;
2. several non-Mangyans have settled in the new place;
3. the present state of the area is due to their cultivation since time immemorial.<sup>133</sup>

129. *Id.*

130. Aide Memoire, *supra* note 121.

131. Interview with Ka Bering, Leader of the Mangyan Community, Oriental Mindoro (January 2002).

132. *Id.*

133. *Id.*

According to Ka Bering, a leader of the Mangyan community, they already filed a petition for a Certificate of Ancestral Domain Claim with the National Commission for Indigenous People (NCIP).<sup>134</sup>

Hence, the issue at fore in this case is the right of the IP to claim parts of the school reservation which actually fall under their ancestral domain. Several consultations and dialogues were conducted by DAR, MCAT, NCIP and non-governmental organizations to address the land dispute.<sup>135</sup>

According to the Presidential Management Staff, a Technical Working Group (TWG) conference has been held. Those present were representatives of MCAT, DENR, CHED, PMS, DAR, NAPC, NCIP, farmers and members of the Mangyan groups. Several options were discussed during that meeting, among them are:

1. 328 hectares for MCAT, 372 hectares for Mangyan groups. MCAT is willing to keep 328 hectares and give 372 hectares to the Mangyans. The 328 hectares does not even have to be necessarily contiguous, because according to Ms. Umali, the contiguous issue is not an issue anymore. The condition to this proposition is that the 328 hectares that will be owned by MCAT must be free of squatters. The problem here is that out of the 328 hectares, 83 hectares of that is being squatted upon by farmers. So before agreeing to give the 372 hectares to the Mangyan groups, the 83 hectares should be cleared of squatters.
  2. Relocation of MCAT. The school is also willing to relocate the campus on the condition that the area is the same, with similar road infrastructure and funding superstructure. But according to DENR, it is not possible because there is no land available.
  3. Usufruct agreement. MCAT has agreed to enter into a usufruct agreement with the squatter farmers. But the farmers disagreed with this suggestion upon discovering that the Mangyan group will get to own 372 hectares.
  4. Re-proclamation. This is the last option to be resorted to.
3. Central Mindanao University

#### a. Historical Background

Established in 1911, the Central Mindanao University started as a settlement farm school catering to the teaching of advanced agriculture in Malaybalay, Bukidnon.<sup>136</sup> It moved to Managok in 1927 also in Bukidnon and was then

<sup>134</sup> *Id.*

<sup>135</sup> Aide Memoire, *supra* note 121.

<sup>136</sup> See *Land Conflict in Central Mindanao University*, PHIL. STUDIES 352 [hereinafter *Studies*].

known as the Bukidnon Rural High School, later to be known as the Bukidnon National Agricultural School.<sup>137</sup>

The school remained in Managok until the outbreak of the Second World War.<sup>138</sup> The war destroyed major installations of the school with ricelands becoming unproductive and the roads impassable after years of neglect and isolation.<sup>139</sup>

After the war, on 12 June 1946, the school was planned to be transferred to Musuan due to the destruction brought about by the war to its old campus. Around the same year, and at that early, the inhabitants of the area, specifically the Kibalagon, were already active in protesting such relocation.<sup>140</sup>

This is where the problem began.

#### b. The Transfer and the Affected Communities

A preliminary survey was conducted between July and August 1946 to determine the school site.<sup>141</sup> The survey also revealed that the location allotted for the school had already been settled into by Maranao and Bukidnon natives.<sup>142</sup> The natives included around 320 Manobo-Talaandig specifically from the Buntan, Guimba and Anecito clans.<sup>143</sup>

Despite the efforts of the tribes, their ancestral domain was still included in the school's 3,080 hectare property.<sup>144</sup> The affected tribes then wrote to President Ramon Magsaysay requesting that their lands be excluded from the school's territory.<sup>145</sup> The President endorsed the letter to the Director of Lands. The Director replied that his office would interpose no objections to the reservation of lands in favor of the Mindanao Agricultural College subject to the condition that the claim of the different occupants thereof be excluded only if the school authorities would be able to reimburse the

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* (citing Elvigia Parel, *Central Mindanao University 1927-1968*, C.M.U. J. Sci. & Tech. 1, 1 (1968)).

<sup>140</sup> Record on Central Mindanao University (unpublished manuscript) (on file with the NCIP-Bukidnon Provincial Office) [Record on CMU].

<sup>141</sup> STUDIES, *supra* note 136.

<sup>142</sup> *Id.*

<sup>143</sup> Record on CMU, *supra* note 1540.

<sup>144</sup> *Id.*

<sup>145</sup> STUDIES, *supra* note 136.



occupants of the value of their improvements.<sup>146</sup> No substantial concrete action was then taken.

On January 1958, then President Carlos P. Garcia signed Proclamation No. 476 which reserved an area of 3,401 hectares of private land in Musuan for the school *subject to the "private rights."*<sup>147</sup> At this juncture, it must be noted that the reservation covered cultivated farmlots of the natives.<sup>148</sup>

### c. Attempts to Hammer Out a Solution

On April 17, 1961, an attempt to find a solution to the conflict was initiated in the form of a cadastral hearing.<sup>149</sup> Sixty-four parties registered their claims in the said hearing. No fruitful results came out of the hearings. Ten years later the Presidential Action Commission on Land and Agrarian Problems (PACLAP), later renamed the Commission for the Settlement of Land and Agrarian Problems (COSLAP) was formed.<sup>150</sup> It recommended that 400 hectares be segregated from the school reservation for distribution to the rightful owners.<sup>151</sup>

The school, now known as the Central Mindanao University, filed a civil case to restrain the order of the COSLAP.<sup>152</sup> Martial Law then dawned on the country and the problem was once again ignored.

In 1971, President Marcos, in a speech before the Bukidnon farmers declared the segregation of "whatever area" occupied by settlers from the school.<sup>153</sup> This prompted a 500-strong bolo wielding farmers to enter into CMU premises as a sign of occupancy. Clashes between the military and the farmers left properties damaged. The event was marked by tension and almost bloody encounters between the farmers and the forces of law as well as the destruction of government property.<sup>154</sup> The ensuing conflict caught the attention of the government authorities.

To defuse the otherwise explosive situation, then Acting Secretary of Agriculture and Natural Resources Jose Drilon issued a Special Order No.

146. *Id.* (citing *Letter of Zoilo Castrillo to the Petitions of the CMU Reservation, in REPORT OF THE CUDAL COMMITTEES 1*).

147. *Id.*

148. *Id.* at 353.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

438 creating a special committee to conduct an investigation to the unrest.<sup>155</sup> The Committee was headed by Provincial Board Member Esmeraldo Cudal of Bukidnon, hence the name Cudal Committee.<sup>156</sup> After several meetings, the Cudal Committee gave the President the very same recommendation given by the COSLAP, that 400 hectares be segregated and given to the natives. Subsequently, a Memorandum of Agreement between the farmers and the school administration was entered into in 1971.<sup>157</sup>

In December 1971, the Court of First Instance of Bukidnon handed down its decision on the Cadastral cases regarding the land in issue wherein a total of 275 hectares were granted to certain claimants.<sup>158</sup> The court however qualified that the areas adjacent, around or near the watershed of CMU may be taken by CMU subject to replacement. Pursuant to this, an agreement was signed on August 4, 1973.

However, the Maranaos did not submit their evidence of occupancy during the hearings.<sup>159</sup> They insisted that the first president of CMU already promised them in 1946 that the individual area they occupied at Musuan would be exchanged or substituted in equal size and extent with the land vacated by the Bukidnon National Agricultural School at Managok.<sup>160</sup> Unfortunately, the promise was not acted upon.

### d. Recent Developments

On April 8, 2001, Congressman Juan Miguel Zubiri wrote President Arroyo, seeking an amendment of Proclamation 476 which defined the area covered by CMU.<sup>161</sup> The NCIP received a letter from the CMU President Dr. Mardonio Lao that they would not oppose the land claim for so long as it is outside the CMU property.<sup>162</sup> Anent to the conflict, due to harassment by the CMU Management toward the community, the community submitted reports to the NCIP on July 17, 2001 stating that shanties and sacred areas were destroyed by well armed CMU guards.<sup>163</sup> Similar reports were

155. *Id.*

156. *Id.* at 354. The Cudal Committee was composed of the following members: the District Land Officer, the head of the Office of the Register of Deeds, the Provincial Assessor, the CMU legal officer and an FFF representative.

157. *Id.*

158. Cadastral Case No. 22, L.R.C. Cadastral Record No. 414 (C.F.I. Bukidnon, Branch II, 1971).

159. *Id.* at 355.

160. *Id.*

161. Record on CMU, *supra* note 140.

162. *Id.*

163. *Id.*

received on November 1, 2001. These armed guards continue to guard the perimeter of the school all week long.

#### e. Problems and Concerns

With respect to the harassment reports, among the issues raised by the Indigenous peoples in the area are:

- a. the unsolved killings of their people;
- b. the presence of military men/detachment within the premises;
- c. the fencing of their farms;
- d. the demolition of their houses; and
- e. the leasing of lots by the school among others.<sup>164</sup>

As regards their culture, the community avers:

- a. mockery of their spiritual/cultural penalty;
- b. manipulating Indigenous Peoples to fight against each other.<sup>165</sup>

As regards survival, they claim that:

- a. they lost all farms to work on; hence, lacking source of food and basic needs;
- b. no other place for relocation is suitable as that in CMU;

The NCIP Provincial Office has taken steps to resolve controversy. They have examined documents to support individual claims to the domain, conducted dialogue, requested dialogue from the CMU President, and documented the cultural penalty imposed by the community on the President of CMU.<sup>166</sup>

Despite these steps however, the problem remains unresolved. Although there has been a successful segregation of 319 hectares to Bukidnon tribes, the Maranaos have yet to receive their land which they have been claiming since 1946.

#### IV. WHO HAS THE POWER TO RESERVE?

The Office of the President of the Philippines has always been viewed with awe because of the immense powers that are vested in it.<sup>167</sup> In accordance

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Alex B. Brillantes, Jr., *The Executive*, in *GOVERNMENT AND POLITICS OF THE PHILIPPINES* 113 (Raul P. De Guzman and Mila A. Reforma eds., 1988).

with the Constitution, Section 1 of the Administrative Code of 1987 states that the President shall have control of all the executive departments, bureaus, and offices.<sup>168</sup>

In issuing executive orders and proclamations, the President usually acts in his/her capacity as executive performing the constitutional duty to see that the laws are faithfully executed. Some rules are promulgated by him/her pursuant to statutory authority and in order to carry out the declared purposes of legislative enactments.<sup>169</sup> But if the legislature delegates rule-making function to the President the conditions under which the rules should issue, such as public hearings to be conducted and publication, may be prescribed in the statute.<sup>170</sup> Where a statute confers on the President the authority to promulgate rules and regulations, both the statute conferring rule-making authority and the rules promulgated thereunder are subject to judicial review.<sup>171</sup>

In view of this, the power to classify lands exclusively belongs to the Executive Department.<sup>172</sup> The President of the Philippines has the recognized competence to reserve by executive proclamation alienable land of the public domain for a specific public use or service.<sup>173</sup> Under Section 64(e) of the Revised Administrative Code, the President may "reserve from sale or other disposition and for specific uses or services, any land belonging to the public domain of the Government of the Philippines, the use of which is not otherwise provided by law."

The Administrative Code of 1987, in Section 14 (r), Chapter 4, Book III thereof, also provides that:

The President shall have the power to reserve for settlement or public use and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved area shall thereafter remain subject to the public purpose indicated until otherwise provided by law or proclamation.<sup>174</sup>

It further provides, under Section 12, that:

<sup>168</sup> Administrative Code, § 1 (1987). This section states: The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

<sup>169</sup> IRENE R. CORTES, *THE PHILIPPINE PRESIDENCY A STUDY OF EXECUTIVE POWER* 82 (1966).

<sup>170</sup> *Id.* at 84.

<sup>171</sup> *Id.* at 89.

<sup>172</sup> *Abelardo*, *supra* note 2.

<sup>173</sup> Republic v. October, 16 SCRA 848 (1966).

<sup>174</sup> AMADO D. AQUINO, *LAND REGISTRATION AND RELATED PROCEEDINGS* 43 (1997) [hereinafter, AQUINO].

The President shall determine when it is necessary or advantageous to exercise the power of eminent domain in behalf of the National Government, and direct the Solicitor General, whenever he deems the action advisable, to institute expropriation proceedings in the proper court.<sup>175</sup>

Consequently, the classification of public lands is an exclusive prerogative of the Executive Department of the Government and not of the courts.<sup>176</sup> Specifically, section 6 of Commonwealth Act 141 states: "The President, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into: a) alienable or disposable; b) timber; and c) mineral lands, and may at any time and in a like manner transfer such lands from one class to another, for the purpose of their administration and disposition."<sup>177</sup> It also vests upon the legislature and the President, upon recommendation by the Minister of Natural Resources (now the Secretary of the Department of Environment and Natural Resources) the power to declare from time what public lands are open to disposition or concession.<sup>178</sup>

The President is authorized to establish within the lands of the public domain forest reserves, forest reservation for the national park system, or critical watersheds or for any other purpose, and modify boundaries of existing ones.<sup>179</sup>

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

#### V. CONCLUSIONS AND RECOMMENDATIONS

Legally, re-proclamation is advisable. In such case, the petition shall be filed with the NCIP. NCIP together with DEPED/CHED in school reservations, DND in military reservations and DENR in watershed and forest reservations, shall determine the actual use of the said reservations. The NCIP shall determine the boundaries of the ancestral domain vis-à-vis the

175. *Administrative Code*, § 12.

176. AQUINO, *supra* note 174 at 37.

177. *Id.* at 38.

178. *Abelardo*, *supra* note 2.

179. Philippine Decree No. 705, § 18 (1975), cited in Gatmaytan, *supra* note 61 at 1, 5 (1989).

area of the reservation site. Upon determination of non-use of the reserved area for the purpose reserved for, the NCIP shall issue a Resolution declaring such fact. It shall recommend to the President for a re-proclamation, segregating certain parts of the reservation and declaring it as part of the ancestral domain.

As an alternative, the concerned parties may negotiate. Parties can stipulate on the terms and conditions that would be beneficial to both. Their MOA shall be submitted to NCIP for recording. NCIP shall see to it that the agreement is not injurious to any party, and it gives effect to the right of the IPs to claim parts of reservation. The Agreement shall be binding upon the parties upon the approval of the NCIP. The agreement shall bind the parties and its successors in office, except if some event/s necessitates the modification of the terms and conditions of the agreement. During the negotiation proceedings, parties must respect the status quo and no acts should be done to injure the parties, specially the IP community concerned.

#### VI. PROPOSED POLICIES

The President should seriously consider re-proclamation of reservation sites whose original purpose has ceased to be served by the same. The department heads should be more vigilant in determining the relevant and actual use of the reservation sites. They should form committees, if they have none, in assessing the present status of the reservation. At the very least, the committee should have at least a tribal leader as a consultant without any prejudice to the requirement of Prior Informed Consent by the members of the communities thereto. In this regard, a Memorandum of Agreement/Understanding<sup>180</sup> may be entered into by the parties involved in the dispute as a *preliminary* or an *independent* step before re-proclamation.

180. To illustrate, the Memorandum may be phrased in the following manner:

This MEMORANDUM OF UNDERSTANDING (MOU) made and executed this \_\_\_ day of \_\_\_\_\_ 2002 at the Malacañang Guest House by and between:

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

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

## WITNESSETH THAT:

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

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

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

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

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

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

1. The NCIP, in coordination with \_\_\_\_\_ (head department) and other appropriate agencies of government, shall initiate and undertake the survey for purposes of this MOU in preparation for the eventual processing of the claims in accordance with the provisions of IPRA;
2. The \_\_\_\_\_, through its Chairperson, hereby agrees to immediately facilitate the entry and access to the \_\_\_\_\_ (site) by the NCIP and such other agencies of government which will form part of a team tasked to conduct a survey of the areas claimed by the IP's;
3. NCIP shall request assistance from the PNP as the need arises for a peaceful and orderly conduct of its functions and to prevent any untoward incident during the survey; and NCIP and \_\_\_\_\_ shall form a joint technical working group to provide technical and secretariat support in the undertaking of the above-mentioned functions.

## Diverting the Mainstream: An Attempt to Reconcile Local Administration with IP's Right to Self-Governance\*

*Tanggapang Panligal ng Katutubong Pilipino/Legal Assistance Center for Indigenous Filipinos (PANLIPI)\*\**

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### I. INTRODUCTION

The Local Government Code of 1991 (LGC) provides that "the barangay serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities, and forum wherein collective views

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\*\* The author of this article is Christian Castillo, an intern of Tanggapang Panligal ng Katutubong Pilipino or the Legal Assistance Center for Indigenous Filipinos (PANLIPI).