

Communal Title:
**A Valid Option
for
Land Tenure
for
Tribal Filipinos?**

Pafid's Silver Anniversary Contribution
For the International Year for Indigenous Peoples

PAFID

ABSTRACT

Most Tribal Filipinos are still living on or near their ancestral lands, lands which provide them with resources for their livelihood and also help them to define their own existence because of their emotional attachment. Most of the tribal people still adhere to the traditional view of communal ownership in regard to most of their resources which include not only the small patches of land which can be called "agricultural" but also various forest resources which are usually defined as "Minor Forest Products."

Few Tribal Filipinos have either the education or the skills to enable them to survive away from their ancestral habitat. Legal land security for such people is therefore critical.

Among other options, a Communal Title is conceived as being both possible and advantageous for the Tribal Filipinos. It will meet the land tenure problem that confronts them, and at the same time it will benefit the nation as a whole by encouraging the tribal people to act as effective stewards of their resources which are, at the same time, national resources.

A great majority of the Tribal Filipinos who were interviewed felt that a Communal Title would be an excellent way of solving their land tenure problem. These were representative of the total population of such peoples. They included the Aeta of Kakilingan in Zambales, the Ikalahan of Nueva Vizcaya, the Manobos of Sultan Kudarat, the Hanunuo-Mangyan of Oriental Mindoro, and the leaders of seven ethnic groups of Bukidnon.

This study of the way in which they view and use their resources indicateds that the Communal Title would be an appropriate means for protecting their land rights and the land. A study of the relationship between communal and private rights within their communities indicates that they could effectively handle a communal title if they were to obtain one.

The present legal structures, however, do not yet define a "Tribal Community" in a way which would enable such to own property. Because of this it will be necessary for each interested community to obtain some kind of legal personality before it could hold a Communal Title. It might be advantageous to have new legislation which would make such definition.

It is strongly recommended that all possible legal means be utilized to bring communal titling into reality for those communities who desire.

TABLE OF CONTENTS

Abstract.....	i
Table of Contents.....	iii
List of Tables.....	v
Preface.....	vii
INTRODUCTION.....	1
Definition.....	1
Problem.....	1
Research.....	2
Goal.....	3
Presentation.....	3
I. THE SOCIOLOGICAL FACTORS:.....	5
SCOPE AND LIMITATIONS.....	7
FIELDWORK.....	8
Methodology.....	8
Aeta Civil Reservation.....	8
Kalahan Communal Forest Lease.....	10
Gaddang Group Title.....	11
Manobo Reservation.....	12
Hanunuo-Mangyan Individual Stewardship.....	13
Bukidnon---without tenure.....	15
RESULTS AND INTERPRETATIONS.....	21
Respondents.....	21
Concepts of Ownership.....	23
Concept of Land Use.....	30
Problems Encountered Related to Land.....	35
Benefits Expected in Communal Title.....	37

PREFACE

The Philippine Association for Inter-cultural Development (PAFID), was initially composed of social scientists and missionaries who took up the cause of Tribal Filipinos more than two decades ago. During the last decade it has focused on the problem of land tenure and in that time it has been in the vanguard in advocating and finding ways for Tribal Filipinos to secure tenure and property develop the lands they presently occupy.

Among the programs to which PAFID contributed a great deal are the Communal Forest Lease (CFL) which is now known as the Communal Forest Stewardship Agreement (CFSA) and the Individual Stewardship Contract (ISC) which are both programs of the Bureau of Forest Development and Natural Resources. Both arrangements assure the holders of said certificates 25 years of continuous land use renewable for another 25 years.

With PAFID's continuing commitment to find better ways to assure land tenure for Tribal Filipinos, it proposed and received the needed funding for this Research on Communal Land Titling from the International Development Research Centre of Canada.

Fieldwork for the sociological section of this research was conducted between October 1986 and May 1987 among pre-selected ethnic groups. After the sociological data was analyzed and the legal team had finished its report, the PAFID conducted several workshop seminars to get additional feed back on the results of the research. The first, held in Davao City, included more than a dozen tribal groups from Mindanao. The second, conducted in Manila, included a larger number of tribal groups in addition to a significant number of government officials from Luzon and Mindoro. A third was conducted in Mindoro. The reactions and comments of the seminar participants were then incorporated into this final document. The participants in the seminars also took the opportunity to study Senate Bill 909 on Ancestral Lands which was then, and still is, under consideration in the Congress. Comments on that bill were forwarded to the Senate for consideration and the inter-relationships between ancestral lands and communal titles were noted.

We wish to express our appreciation to the Tribal communities who provided us with helpful information and opinions, and to the research aides and interviewers who contributed their time and efforts to accomplish this investigation. We also thank the many person who reviewd the manuscript and the International Development Research Centre (IDRC) which provided the funds which enabled PAFID to push through and complete this study.

INTRODUCTION

The Definition of Tribal Filipinos

This research shall be directed toward the problems of the Tribal Filipinos. Several other terms have been used in the past in regard to these peoples. These include National Cultural Minorities, Indigenous Cultural Communities, National Cultural Communities, Cultural Communities, and others. The Spanish and U.S. governments used the terms "Unpacified", "Wild", and "Non-Christian Tribes." The word "Indigenous" is proper and acceptable but the word "Minority" is usually rejected by the people, themselves, because in Tagalog the word is usually translated as "Maynorida" which implies immaturity. The term, "Ethnic community," is too inclusive because it would include migrants from other nations such as India and China. "Cultural Communities" is an interesting term but defines nothing because every community, by definition, has a culture. Derogatory and religious terminology, of course, should not even be considered.

There is no ideal term but "Tribal Filipino" has been used as a generic term in this research because it connotes the social structure and status of the communities being considered. The several communities related to the Muslim faith in the southern Philippines are arbitrarily excluded here for convenience. Although many of them are not as closely related to their land resources as are included as beneficiaries of the program. In the most portions of this report, however, the Tribal Filipinos are distinguished by individual tribal names rather than by any generic term.

The Problem

Among the most pressing problems confronting the Philippines today, none is as controversial and emotionally charged as that of land, more so now with the Comprehensive Agrarian Reform Program (CARP) of the government being implemented. Land has always been of great importance both to the landed, and the landless, and much more to the Tribal Filipinos because it brings with it the most basic of rights, access to resources.

The value of land, if it is used as an item of commerce, nearly always appreciates rapidly. For this reason, those with money to invest opt for land, being the most secure of all investments. Those with some financial means to purchase land explore every means to acquire it. Since Tribal lands appeared to be abundant, and sometimes include other natural resources, many moneyed people have turned their attention to lands occupied by Tribal Filipino communities. By way of homesteading, residence and even marriage the lowlanders gained a foothold into ancestral areas. The moment this was done, their families and relatives soon followed and, in many cases, such migrants soon outnumbered the original occupants, the Tribal communities.

Influentials have joined in depriving Tribal peoples of their land through concessions and leaseholds, with government protection, of course. It is not uncommon to hear of tribal peoples being driven away from their ancestral lands by virtue of documents acquired from government agencies and backed up by military force.

At first the uneducated Tribal peoples allowed the lowlanders to enter because their customs do not insist on exclusive ownership. They were probably thinking that the land will always be available and that the intruders would probably not be there for long anyway. After they allowed these enterprising lowlanders into their territories, however, they discovered that the lowlanders demanded exclusive rights to what they then claimed as "their" lands. The Tribal people had little choice but to keep on moving into the forested interior, continuously clearing new areas in the forest until they finally realized there was nowhere else to go. Then they realized that sometime they would have to make stand. It appears that the time has now come.

The formation of the Cordillera Autonomous Region and the clamor of the Muslims to have their own autonomy is proof of this observation. Land is at the core of these developments.

Tribal Filipinos have always occupied the mountain areas and their environs since the time immemorial. Their ancestors lived and died there, hence the term "ancestral" lands. They moved around unhampered anywhere in their domain; gathering food, hunting, and later on planting to meet their needs. These mountain people believe, until now, that they belong to the land, and the land belongs to them. Historically as well as morally, they are correct.

Legally, however, the Tribal people have to show proof of ownership. When challenged, they need to show some kind of hard evidence attesting to their being owners. In most cases they can not produce any such document simply because none exists so they appear to be squatters on the land of their forefathers.

The Research

This research on the concept of communal titling of tribal lands was approved for funding in April 1986 by the actual research was not initiated until October of that year. Rufino Tima, an anthropologist with post graduate studies in the University of Arizona, and a founding member of PAFID, was persuaded by the Board to serve as Research Coordinator.

The specific objectives of the project required both sociocultural and legal approaches. The latter was conducted by Attorneys Arnedo Valera and Jefferson Plantilla, and their companions in the Structural Alternative Legal Assistance for Grassroots (SALAG). The former was assigned to Amour Ramos, an anthropologist, and Vikki Horfilla-Jaravelo, a graduate student of Ateneo de Manila University in social anthropology. The Board of Directors, themselves, did the final compilation of the two reports and wrote the conclusions.

The Goal

That the minorities face grave problems related to land tenure is well known. Their traditional ways of proving ownership of their land, that of occupation and usage, appear insufficient to combat the activities of legally skilled intruders. There must be other evidences which can prevent encroachment and stand in court.

The overall objective of this investigation is to assess the desirability of a communal titling system for the indigenous Tribal people in the Philippines. There are three specific research objectives as follows: 1) to investigate the attitudes of Tribal Filipinos toward communal titles and other land tenure options; 2) to determine whether a communal title would be effective for tribal communities, and; 3) to investigate the legal implications and requirements for the establishment of communal titles for ancestral lands of Tribal Filipinos.

The Sociological Research Team was an ad hoc team organization. After completing their field work, the researchers analyzed and consolidated their results and prepared their report before their group was disbanded. Other staff members and members of the Board of Directors of PAFID, however, took opportunities to further supplement the research results and either verify or correct the findings. Later, members of the Board and Staff of PAFID held three different workshops with knowledgeable and concerned persons at which time the manuscript was reviewed in detail. Each of these workshops provided another opportunity for the PAFID to either verify or correct its original findings. It was no longer possible, of course, to discuss these later corrections with the original research team because it had already been disbanded.

The chapter on the legal aspects was reviewed many times during the workshops and by knowledgeable persons. All suggestions were referred directly back to the legal researchers who, themselves, wrote the corrections into the document.

The Conclusions were developed by the Board of Directors after it reviewed the two research documents. They were then written by Delbert Rice, a Board Member, and submitted to the three Workshops for evaluation, review and correction.

The Presentation of Results.

The Sociological report, as corrected, is included here as Section I which immediately follows. Following that, in Section II, the Legal report, as corrected, is given. This Introduction and the Conclusions, which constitute Section III, were prepared by members of the Board of Directors which accepts responsibility for the final report. The total report was edited many times by the Board, and others, most especially after the workshop mentioned above.

I

THE SOCIOLOGICAL FACTORS: SOCIAL REACTIONS TO COMMUNAL TITLE AND OTHER LAND TENURE OPTIONS

SCOPE AND LIMITATIONS

The research proposal specifically mentioned five groups of Tribal Filipinos to be consulted. First were the Aeta of Kakilinga, San Marcelino, Zambales because they live within a Civil Reservation of 5,000 hectares. Second, the Ikalahan of Imugan, Santa Fe, Nueva Vizcaya who were the first Community to get a Communal Forest Lease with the Department of Natural Resources. The third group was the Hanunuo-Mangyan of Malanog, Mansalay, Oriental Mindoro because they have been awarded Individual Stewardship Contracts (ISC), under the Social Forestry Program. Fourth was the Gaddang of Bananao, Paracelis, Mt. Province for having a group land title. However, after Vikki Horfilla-Jaravello's visit to the area, she recommended that this group be dropped from the research because the people had been forced to abandon their land and Ilocanos were presently occupying it. The Manobo of Lagubang, Langgal, Bagumbayan, Sultan Kudarat were substituted in the research because there is a possibility that the group could be the first to get a communal title. Finally, the last group chosen was the Bukidnon of Malaybalay because they did not have any of the four types of land tenure mentioned above.

There are several limitations to the investigation that must be mentioned. One is the language barrier that existed between the researchers and the groups. The field workers understand and speak three major Philippine dialects, i.e. Tagalog, Ilocano, and Visayan, but most of the respondents have only a limited knowledge of these. The language gap was bridged by research aides although, in some cases, it was difficult to find them.

Initially it was decided to translate the interview schedule into the five different languages but that plan was dropped after the pre-test with the Aeta. It was found adequate to make oral translation during the interviews.

The time allowed for the fieldwork must also be mentioned. Considering the total research time framework, an average of 20 days was allowed for each group. Because they are widely separated geographically this was barely enough.

An unforeseen development on the national level caused more distress than the language gap. However, the plebiscite for the 1986 Constitution and the May elections were both taking place during the time of the research. The degree of concentration needed in the discussion of the various land tenure issues was lessened and many of those consulted were busy campaigning for their candidates and could not give as much time as would have been preferred.

The number of respondents, gathered on the basis of availability, except for the Ikalahan and the Hanunuo-Mangyan are:

Ethnic Group	Respondents
Aeta	47
Bukidnon	28
Hanunuo-Mangyan	40
Ikalahan	84
Manobo	50

It was possible for the researchers to arrange a controlled sampling of the Hanunuo-Mangyan and Ikalahan.

THE FIELDWORK

Research Methodology

The coordinator and researchers decided to use participatory research technique, primarily group consultations and discussions supplemented with informal interviews with key-informants, participant-observation, and formal interviews with the use of an interview schedule. Initially it was agreed that the respondents would be randomly selected but after pre-testing the interviews among the Aeta, it was decided to rely more heavily on the group consultations as a means of gathering data and use the interview results to verify the results of the consultations.

The research design projected a six month time frame for the socio-cultural investigation. The actual data gathering, however, required almost eight months, from 7 October to 5 May 1987. Following is an account by the researchers of their fieldwork.

Aeta Civil Reservation Kakilingan, San Marcelino, Zambales

This area was included in the socio-cultural investigation because the Aeta are living within a 5,000 hectares Civil Reservation. It is presumed that because their land is a Reservation, their tenure would be assured and they would be free to use the land as they see fit but this assumption had been proven wrong, using Aeta land for their own selfish purposes. These people made it appear that the Aeta gave them permission to use the land by means of lease, and planted sugarcane. Some even produced purported "Deeds of Sale", the Aeta seller having affixed his thumbmark to the documents, they not being able to even sign their names, let alone read or understand the document which they were "signing."

Key Informants

While in Kakilingan, Ramos stayed with the Time family. While the ideal should have been for the researchers to live with an Aeta family, it must be pointed out that Ramos was already well known in the area, having been involved in the baseline research in that community in 1971 for the Southeast Asian Institute for Ethnic Studies and subsequently in a benchmark study in 1978 for the Ecumenical Foundation for Minority Development of which Rufino Tima is the Executive Director.

Several key information were tapped by the researchers: Victorio Villa who is the Aeta Development Association chairman; Pan Kuy-ang a native religious practitioner, and one of the older members of the Kakilingan community.

The researcher verified the information given by the key informants about the Aeta from other knowledgeable members of the community and the Aeta staff members of the Foundation.

The Group Consultations

Four group consultations were conducted regarding communal land titling. In these consultations the different land tenure options were discussed, e.g. Communal Forest Lease, Individual Stewardship Contracts, Civil Reservations, Individual titles, and the concepts of Communal Land Titling. The pros and the cons were fully discussed for each option in each meeting.

A common problem related to land among minorities was also mentioned this is the selling of rights to outsiders thus depriving the minorities and their descendants of their land. Among the Aeta this is common because of their traditional practice of paying the *bandi* or bride price. In many instances, when a son wants to get married, his parents will borrow money from outsiders to pay the *bandi*. This is especially true when his relatives can not contribute enough to satisfy the demands of the girl's parents. When the time comes to pay the loan and the Aeta borrower can not pay what was owed, then a document is prepared declaring that the Aeta borrower's land rights have been sold.

In four consultation meetings held: 27 October 1986 in Kakilingan, 29 October 1986 in Baliwet, 3 November in Manggahan with an attendance total of 122 participants, those consulted expressed a desire for communal title. These are the decision makers and influentials from the various Aeta families living within the Civil Reservation of which the present center is Kakilingan.

The Formal Interviews

It was difficult to get a representative sample of respondents among the Aeta. They live in a vast tract of the Reservation land, and their traditional practices of hunting and gathering are practically unabated. They go to the forest to gather *amocao* blossoms and other forest products to be sold. Seldom are they "at home" and in many instances they are away for days. Even the Aeta staff members who were recruited as interviewers commented on this difficulty.

Another problem is the inability of the Aeta to concentrate on the questions being asked. It was not uncommon for kibitzers to provide the answer for the respondent when an interview was being conducted. When requested to desist, the kibitzers usually respond that their answer will be the answer given by the interviewee anyway because they are relatives and belong to the same family. It must be admitted that the statement is probably correct even though it is frustrating for a researcher trained in a different society.

One solution that was decided on was to interview as many respondents as possible. The results of the interviews are contained in the next section of this report. Fieldwork in Zambales lasted from 7 October to 8 November 1986.

Kalahan Communal Forest Lease Imugan, Sta. Fe, Nueva Vizcaya

The Ikalahan of Imugan, Santa Fe, Nueva Vizcaya are the very first ethnic group to acquire a 25-year Communal Lease Agreement with the Bureau of Forest Development (BFD) under Presidential Decree No. 389 known as the Forestry Reform Code. The area acquired is 14, 730 hectares covering the barrios of Malico, Imugan, Baracbac, and Bacneng. These are located in the municipalities of Santa Fe in Nueva Vizcaya and San Nicolas in Pangasinan. The lease could be renewed for the same number of years at the option of the community. As to what will happen afterwards, the document is silent.

In the memorandum of agreement signed between the BFD and the Kalahan Educational Foundation (KEF), the signatories were BFD Acting Director Jose Viado and KEF Chairman Simeon Camutiao. The document was signed on 13 May 1974.

Before the lease, however, some of the older members of the Ikalahan community claim they had been paying their tax declarations. After they acquired the lease through the KEF, some of the people ceased paying their land taxes even though the Board of Trustees told them they should continue.

Fieldwork among the Ikalahan in Nueva Vizcaya was done from 26 November to 30 December 1986. Consultation meetings were conducted, key informants interviewed, and a 20% random sampling taken from a list of residents within the leased area.

Key Informants

While the Ikalahan have their own language, Ilocano is commonly used in Imugan. Communication between the researcher and the informants was not a problem especially because Ramos was not a stranger to Imugan.

The key informants who were tapped include the former barrio captain Donior Tidang, a former KEF chairman Balagtas Baluyan, and KEF board member Juana Mina among others.

While in Imugan, the researcher lodged with the Rice's but made it a point eat his meals with the residents who are his friends in the area. From informal conversations during meals, the information provided by the key informants were verified.

According to one key informant, a great number of the Ikalahan do not understand that their land tenure is a lease subject to the agreements entered into between the DEF and BFD. He said that some of the people believed their area was a Reservation intended for the Ikalahan only and that their rights would ripen into private titles. It was discovered later that public explanations of the terms of the Memorandum of Agreement were clearly understood by a large percentage of the population when it was signed in 1974 but a disinformation campaign conducted by outside persons several years ago is

still giving rise to many questions about the 25 year termination of the contract and its renewal.

A copy of the Memorandum of Agreement was secured to find out why the Ikalahan kept on referring to the area as a "Reservation." It appears that the term only appears in the Ilocano translation made by a staff member of the former Commission on National Integration (CNI). Although this is not the proper term, legally, it is not surprising in the Philippines where all kinds of toothpaste are known as "Colgate," regardless of their brand name. The staff of the KEF always uses the term "Reserve."

The Group Consultations

Four consultation meetings were held in Onib, Bacneng, and Imugan with another general meeting held at the public market in Imugan on 18 December 1986. The first meeting, composed of KEF trustees and barangay officials selected by the researchers, was held in Imugan on 8 December 1986 in the church.

At first those who attended the group consultations asked why a new concept for land tenure is being introduced again. This was explained to the title, more than 75% of those in attendance opted for communal titling. While there were those who asked for more time to mull over the idea, those in favor clearly outnumbered them.

The Formal Interviews

After selecting the interviewees from a list of all residents prepared by the KEF Agro-Forestry Team, two school teachers were engaged to do the interviews. They are experienced interviewers since they had been involved in similar surveys before. It was agreed between the researcher and the teachers that they had until 30 December 1986 to complete the interviews. They were assisted by the research aide appointed by the Rev. Delbert Rice.

Ikalahan Leadership

The traditional leadership as well as decision making processes of the Ikalahan remain intact. While they elect their barangay officials required by the political system, the traditional leaders among them are still held in high esteem.

Leadership among the Ikalahan is expressed through their council of elders. Through their traditional tongtongan, where all members of the community may participate, decisions are made through consensus. The elders verbalize the decision once a consensus is reached.

In terms of the Ikalahan's ability to manage their affairs the moment a communal title is acquired, the writer is convinced that they are fully capable. While the influence of Delbert Rice is still felt strongly in the community, others Ikalahan leaders are sharing responsibilities and rapidly developing management skills.

Gaddang Group Title Bananao, Paracelis, Mt. Province

The area was visited by Vikki Horfilla-Jaravello from 25-28 November 1986 to verify the status of the group of Gaddang in Aurora, Isabela who were able to acquire eight (8) parcels of land as a group for which group titles were issued. This case was discovered accidentally by PAFID Land Tenure Staff when a group of Gaddang sought PAFID's help regarding their land problem in Mt. Province. The members happen to be descendants of the Gaddang originally living in Aurora, Isabela.

Findings

The data presented here came from unstructured interviews with key informants and from an analysis of the documents kept by the group. The titles to these properties were issued to the Gaddang, in the name of Union Kalinga (pronounced Kali-nga, a term used by the Ilocano lowland settlers to refer to the Gaddang. This distinction is important because a group from the Kalinga tribe of Kalinga-Apayao province is laying claims to these lands alleging that the "Kalinga" in Union Kalina refers to the "Kalinga" tribe of Kalinga sub-province.

From the accounts of the informants, it is not very clear who decide to have a single title for the farm-lots owned and cultivated by the different families. The properties were acquired before 1920 actively helped the Gaddang acquire these properties and have the titles issued as a group.

These lands were part of the Friar Lands Estate which later became government property during the American period. As shown by the documents kept by the descendants of the original members of the Union Kalinga (UK) groups, the latter actually paid for these properties. Eight different titles were issued to cover the farm-lots located in seven different barangays in Aurora as follows: Antatet, Apiat, Bannagao, Dalig, Macatal, Panisen, and Seli. Eight UK groups were formed, the membership of which was based on geographical location of the individual farm-lots.

All the original members of the eight UK groups to which the group titles were issued are deceased. According to the informants, most of these original members and their families were prompted to leave their farm-lots in Aurora for other places because of harassment. And crime that occurred was always blamed by these settlers on the Gaddang and as result they were harrassed, jailed without due process or simply eliminated as suspects. One informant recounts how his uncle was burned inside his own house by some Ilocano settlers as punishment for a crime imputed to him. On the other hand, if cases of sale have actually taken place (as shown in some of the documents), the descendants claim that these happened only because the Ilocanos exploited the ignorance of the Gaddang and / or intimidated the true owners.

Only about 10 descendant families were located in Dalig and two in Antatet when the first researcher went to interview them. The other descendant families were reportedly scattered in Bananao and Mabalao in Paracelis and Ngelib in Potia, Ifugao. For that reason, the community was not considered a suitable site for the Research and was replaced.

Later, more families were discovered and the PAFID, with SALAG staff members, immediately embarked on a program to work through the courts to help them to recover their lands. The cases are still being heard although the harassment and intimidation have not ceased.

A Manobo Reservation Lagubang, Langgal, Bagumbayan, Sultan Kudarat

According to the file index of the BFD in Isulan, Sultan Kudarat, the Manobo reservation in Lagubang, Langgal, Bagumbayan, Sultan Kudarat was opened on 9 February 1982. There were 270 Manobo families residing in the area. PAFID had been instrumental in having the land surveyed for this Reservation through representation with World Concern, an international agency helping the poorest. Unfortunately the 1,200 hectares that originally constituted the Reservation was trimmed down to 1,025 hectares prior to the signing of the papers.

In the middle part of 1986, the Ministry of Agrarian Reform (MAR) announced that 1,000 hectares would be given to the Manobo (Philippine Daily Inquirer, 1 September 1986). PAFID officials, thinking that this would be a very good test case for communal titling, decided to include it in the research instead of the Gaddang area.

Fieldwork among the Manobo was conducted in 5-13 February 1987. A community organizer, PAFID staff Wilfredo Jaravelo was sent ahead to the area to prepare the way for the group consultation for the Communal Land Titling investigation. Group consultations were held in the different sitios in Lagubang with one general with one general meeting at the King's College Chapel in the area. These consultations were supplemented with informal interviews of key informants, and formal interviews using the Communal Land Titling Interview Schedule.

Key Informants

During the fieldworks, the researcher and his companion stayed with Palot Dangya, an educated Manobo caretaker of King's College in Lagubang. He is married to a Manobo of the place who is a daughter of a Manobo pastor. Palot Dangya was tapped as one of the key informants as well as interviewer for the formal interviews. Other key informants have been Abang Oting and the other datu of Lagubang.

From the key informants, the researcher learned how the Manobo could be easily divested of their land rights by unscrupulous migrants. Because of the Manobo practice of polygyny and wife grabbing, as well as the demand for *sunggod* or bride-price by the girl's parents, the Manobo male is saddled with unpayable debts. Manobo girls are given away in marriage at the tender age of 10 years. Eventually when payment for loans made in cash or in kind are due, the Manobo will have no other recourse but to sell his claim rights to the land.

Another practice that affects the Manobo's hold to property is *sambilan* or gambling. This is done during wakes, which sometimes take weeks or even months. Their dead are not usually buried but are kept inside the house safely placed in hollowed out logs with the halves glued with pitch. Thus when they want to have *sambilan*, all they do is to bring out one of their dead. In events like this, a Manobo may gamble away even the cloth he wears. Then he may borrow money and use his land rights as payment.

In terms of leadership, the traditional Manobo leaders have lost some of their effectiveness. Formerly, the *datus* could make decisions for their followers and such decisions were quickly respected and carried out. However, with the election of barangay officials and the appointment of new *datus* by government officials, the *datus* are reduced to mere settlers of disputes regarding the payment of *sunggod*.

With the weakening of the *datu* system, new leaders are appearing from within the community. One such Manobo leader is Abang Oting who led a group of 40 Manobo warriors to fight against the military. The informants related that due to killing by Abang Oting of an Ilocano who grabbed 40 hectares of land cleared by him, the military tried to arrest Oting. He reacted by gathering a group of Manobo warriors to fight back. While Oting was eventually persuaded to surrender and was pardoned; as a settlement for his crime he agreed to give 20 hectares to the heirs of the man he killed. When the researcher talked with Oting, however, he learned that none of the land was returned to Oting.

Group Consultations

Group consultations were held in the different Manobo sitios in Lagubang. In these consultations a majority of the sitio members attended and discussed the different land tenure options available to them. Questions were raised and issues were discussed fully.

In the general consultation meeting held in King's College at Lagubang, with all the sitio leaders, both traditional and elected, the participants were unanimous in their acceptance of a communal title to their land. As a result a document was prepared stating that they want a communal title. Said document was notarized in Islan, Sultan Kudarat and the original copy sent to PAFID.

The Formal Interviews

During the group meetings it was explained to the leaders that formal interviews will follow to document their decision and further clarify points. To this they agreed.

Before the researcher and community organizer left the area, Palot Dangya was requested to do the interviews.

No attempt was made to get a truly random sample in this community but the fact that the leaders and influences of decision had been the informants interviewed, convinces the researcher that the data gathered is accurate for the community as a whole. The results are tabulated in a later portion of this report.

In the case of the Manobo of Sultan Kudarat, it was strongly suggested to PAFID that a program of community organizing be initiated in Lagubang. This should be followed by leadership training so that the traditional leaders and those who are newly emerging as leaders will have the necessary concepts and skills in leading their people in the present new situations. If eventually they acquire a communal title, the organization training will acquire more significance for the Manobo in Lagubang.

Hanunuo-Mangyan, Individual Stewardship Contracts Malan-og, Mansalay, Oriental Mindoro

Malan-og, an area inhabited by Hanunuo-Mangyan, is located in the southwestern uplands of the municipality of Mansalay, Oriental Mindoro. It consists of five sitios, viz., Abakahan, Panhulugan, Pasi, Dagum and Mausoy which stretch along the whole length of the Malan-og River. The area is accessible only by foot through a trail that can be covered in two to four hours' hike. In 1981, it was picked as the setting of the Bureau of Forest Development (BFD) District Forest Occupancy Management Program. Two years later, in January 1983, the Bureau of Forest Development Upland Working Group (BFD-UWG), an inter-agency body chaired by a BFD representative, which aimed to develop tested participatory approaches to upland development, chose Malan-og as one of three pilot sites of the Upland Development Project which started officially in 1984.

Sometimes in 1982, however Kevin Jackson, a Peace Corp Volunteer (PVC) had introduced the idea of the communal lease in Dagum. This move was prompted by the encroachment on the choice farm-lots (an irrigable area along the riverbank) in this sitio by lowland settlers. To prevent further incursions, the Hanunuo-Mangyan with the assistance of Jackson, sought to secure their claim to their ancestral lands by applying for a communal lease. When the members of the other sitio who were also having problems of encroachment heard about this they asked to join Dagum in securing the Hanunuo-Mangyans' land claims in the Malan-og area. However, Jackson's term as a PCV ended before the request for a communal lease could be realized. It is still pending.

The BFD-UWG field team presented the idea of individual stewardship agreements. In a general meeting called to discuss these options, attended by the residents of all the five sitios, only the people of Dagum opted for a communal lease while the members of the other four sitios voted for individual stewardship agreements while many other households, refused to avail of either option.

Key Informants

The researchers first visited this site between 7-18 December 1986. This preliminary visit was done to: 1) inform the community of the research PAFID was undertaking and to enlist their cooperation; 2) gather basic community data and determine the sample size equivalent to 20% of the household population; 3) familiarize themselves with the community and identify contact persons who could facilitate the research activities; 4) locate potential research aides and interpreters; and 5) conduct exploratory interviews with key informants. The fieldwork proper was conducted from 29 January to 16 March 1987. It was from these key informants and from the records of the PAFID that the background information recorded above was obtained.

The Group Consultations

During the fieldwork, community meetings were conducted in only four sitios and another general meeting was held after all the sitio-level meetings were conducted.

It was ascertained during the meetings that as soon as the Hanunuo-Mangyans of Malan-og chose individual stewardship over CFL, BFD conducted the necessary parcellary survey to determine and mark the boundaries between the individual farm-lots of those who opted to acquire stewardship agreements. Before this survey the permanent plants of the Hanunuo-Mangyan were scattered in various areas often times within the claimed area of other families. Since the survey involved straightening the farm lot boundaries, much plant swapping took place. The straightening of boundaries began the process of transforming the Hanunuo-Mangyans of this community (at least of those who availed of stewardship agreements) from migrant swiddeners into settled agriculturists.

Eve before BFD awarded the ISC's to the Hanunuo-Mangyans of Malan-og, however, the latter were already "modified" swiddeners. Each year a Hanunuo-Mangyan household cultivates a *tanman* or *kaingin* usually one fourth of a hectare in size in different spots within its "defined" area. They normally plant rice and corn fries, then root-crops and vegetables. Permanent crops have also been planted by the occupants, or their ancestors. A majority of the respondents claim that they have not transferred to or from their present farm-lots because they could not leave the permanent crops already existing in their fields. Thus, they are swiddeners but only within a limited area which the family "claims".

A majority of those who have *papeles* (contracts) have not read or heard the provisions in the contract. For most of these beneficiaries the *papeles* are something that provides them security over their claim to the land, i.e., "*hindi na maaagaw ng iba*" ("the land cannot be taken away from them by others"). However, most of the beneficiaries interviewed claim that they did not know that the *papeles* they now possess stipulates that the land they are occupying is *leased* to them by the government. Almost all of them expressed disappointment and discontent over this matter during the interviews and community meetings. They could not understand why the government does not recognize them as the *owners* of these lands. Why should their ancestral lands have to be leased to them by the government when they and their ancestors were the ones who have been cultivating them. They find it hard to accept that the government considers them as mere lessees.

It is rather difficult to explain why the Hanunuo-Mangyans of Malan-og failed to understand the concept of the stewardship agreement when, in fact, this and the CFL concept were discussed with them by the BFD-UWG team before the former decided to avail of the stewardship agreements. Apparently, the beneficiaries were so engrossed over the debate between CFL and ICS, i.e., whether the arrangement should be individual or communal, that they missed the issue of whether or not the papers recognized their ancestral claims. It could be that the BFD-UWG failed to explain and discuss this matter with them adequately in order for the people to grasp it well. A single explanation is seldom sufficient.

With regards to non-beneficiaries, most of them live near the perimeter of the pilot project area. They could be classified into two groups, those who are averse to the stewardship agreement and other changes that are introduced into their lives and whose are not. In the second category fall those who actually wanted to have their lots surveyed and acquire the *papeles* but were unable to do so for various reasons, such as confused scheduling of the survey and location of lot (i.e., isolated or not adjacent to lots which were to be surveyed). On the other hand, the non-beneficiaries who really did not want stewardship agreements cite the following reasons for not availing of the stewardship agreement: 1) their ancestors did not have their *kaingin* surveyed by the government and they did not have money to pay for the expenses of the survey and the taxes the government might collect.

During the community meetings the question of communal as compared to private was discussed. Of the four sitios, two (Pasi and Dagum) are inclined to favor communal for their sitio, one (Panhulugan) outrightly rejected the idea of communal, while the last one (Abakahan) asked to discuss the matter among themselves first before making any comments or statements of the majority for the households accurately because the attendance during the meetings was low (17 people in Panhulugan, 21 in Abakahan, 47 in Pasi, 26 in Dagum, and 52 in the general meeting.) Very few of the non-beneficiaries of stewardship agreements attended these meetings.

It is also the impression of the researchers that the persons who attended the meetings were the more acculturated Mangyans who have accepted values and customs of the adjacent lowland societies. Families who maintain the more indigenous values were not in attendance.

The Formal Interviews

As mentioned, not everyone in the community had availed of individual stewardship agreements and to capture the variation in perception and aspirations of the Hanunuo-Mangyans with regard to land tenure, the sample for the structured interviews was stratified into beneficiary and non-beneficiary. Thus, individual interviews using the Communal Titling Interview Schedule were conducted in a 20 percent stratified random sample of the sitio household population. A separate Interview Guide for the evaluation of ISC was used to however, was slightly short of the goal by one or two interviews per

sitio because of 1) the unavailability of the respondent; 2) outright refusal of the respondent to be interviewed; or, 3) time constraint.

The sample was drawn from a listing of households constructed by a panel of informants. It was necessary, though, to check with other informants to complete the list before the final sample list was ready. In some cases a name appeared in several sitios. When that occurred, a decision was made to cancel the person's name in all but one sitio listing.

Of the five sitios in the Malan-og river area, only four sitious viz., Abakahan, Panhulugan, Pasi, and Dagunm were covered by the research because them members of sito Mausoy were not available at the time of visit of the research team.

An attempt was made to find a local interviewer but since no one was would want their lands titled but they prefer individual titles rather than a communal one. Most cite as reason for their preference the uncertainty of having only one person holding the communal title--- he might sell the land without consulting the others. Even if the idea of several people or all members each keeping a copy of the communal title was introduced and explored as a possible arrangement, still the ultimate choice for most of the respondents was for individual titles. Only a handful opted for communal titling during the interviews.

Hanunuo-Mangyan Leadership

It is the impression of the researchers that the Hanunuo-Mangyan community leadership is weak. The Hanunuo-Mangyan, like the Aeta of Zambales, are family centered. The people have elected leaders but they have not lived up to the expectations of the members of the community and some have committed wrongs which were never corrected.

Bukidnon Consultations Malaybalay and Impasug-ong, BUKidnon

Bukidnon, as province, could boast of having the most number of Tribal Groups. There are seven distinct ethnic groups indigenous to the area. These are the Igaonon, Bukidnon, Talaandig, Tigwahanon, Manobo, Matigsalog, and Umayamnon. While there are similarities in their cultural practices, they each have their own language and manner of dress.

The fieldwork in Bukidnon was conducted from 21 April to 4 May 1987. In this area, the researcher had the time to do participant -observation, interview key informants, conduct three group consultations, and accomplish a significant number of interviews using the Communal Land Titling Interview Schedule. Although the total time spent was short, he met with the leaders and decision makers of the several groups, and interviewed them. It must also be pointed out that this was the time when the politically minded were busy with the congressional election campaigns. In these communities the interviews were limited were limited to the more highly educated members of the society.

They were not typical but they were, it is felt, a good representation of the opinion formers.

Leadership Structures

The primary leader in these societies is the datu. The researcher was informed that a datu must go through several stages of initiation before he can assume the title. These are combinations of political and religious trials that the prospective datu must go through. There are also activities that will try the candidate's courage and if he fails in any of the trials, then he must be content to be a mere follower, subject to the decisions made by his leader.

It was noted that the datu's word is law to his followers as well as the members of his family. He is not only a political leader but also a religious leader in their native religion.

Every community has its own datu who traces his lineage from the former datu of their group. Aside from lineage, the datu must have knowledge and wisdom and be able to deal with lead his followers. From among them, these datu form a council called a *gipulon*. One of them is chosen to act as head of the council and is called *tomuay*.

This same leadership pattern seems to hold true for all of the seven groups. The researcher asked if there is an inter-tribal *gipulon*. If so, it would be the highest *gipulon* in the Bukidnon. His informants assured him that there is and that the researcher's host is that *gipulon's tomuay*. This was later denied by the person concerned, but the researcher saw it to be modesty on the part of the *tomuay*.

Participant-Observation

The researcher and his aide lived with an Igaanon. He claims that being a datu, he is expected by his followers to practice the traditional customs of the Igaanon, which includes having more than one spouse.

In the place where the datu lives, near a forested area, he is surrounded by his relatives. The researcher noted that the datu is generous in sharing food with those that surround him. As a *tomuray* he entertains other datu from other groups coming to Malaybaly. When Umayamnon datu come, his house is the place for them to stay. When other datu stayed with him it was noted that they usually drank until they got drunk and then started singing native songs.

The researcher wondered if this particular tomuay would be entertained the same way when he went to other places. This as found to be the case when the researcher went with him to Kalabugao in Impasugong to attend a meeting of datu in the area. The host went out of his way to butcher a pig for the visitors. Drinking started at 3:00 o'clock in the afternoon and went until past mid-night. After the meeting was concluded, the datu started singing songs and playing musical instruments.

Key Informants

Among the key informants of the researcher are two *tomuay* and *masicampo* of the Umayamnon group. These are Datu Handungayon and Datu Manlumandab Manlangit. While these two are the high datus of their group, they recognized our host as the *tomuay*.

The Group Consultations

There were three group consultations conducted on Communal Land Titling in Bukidnon. One such was done in Baganao, Kibalabag, Malaybalay. In this consultation, the decision influencers and makers attended. As in the other earlier areas, the purpose of the consultation was explained as well as the different land tenure options available. This was also the case in the consultation with the assembled datus in Kalabugao, Impasugong, Bukidnon.

Questions were raised in these consultations and issues discussed fully. When they asked if the idea of communal titling is acceptable to those consulted, they expressed positive response. However, they requested that if possible the various leaders of the seven ethnic groups be invited to a general meeting so that the idea of communal titling being initiated by PAFID be presented to them also.

A general meeting was called utilizing the radio station in Malaybalay to inform all the datus and *tomuay* of the Iganonon, Umayamnon, Talaandig, Manobo, Bukidnon, Matigsalug, and Tigwahanon to come to Malaybalay. The meeting was held in the Office of Muslim Affairs and Cultural Communities (OMACC) now dissolved and replaced by the Office of Southern Cultural Communities in Mindanao) in 30 April 1987. the different *tomuay* and *babaeyons* leaders of their group came except the Matigsalug *tomuay* who was then busy campaigning for the May elections. The leaders who attended the general consultations on Communal Land Titling in Bukidnon were Datu Sangkuan of the Bukidnon, Bae Dahin-o of the Manobo, Bae Kinulintang of the Tala-anding, Datu DAg-on of the Tigwahanon Datu Masaguksok of the Igaonon. Of course Datu Ligden, the recognized leader of the groups, was also there he being the OMACC provincial chief.

The consultation started at 9:00 o'clock in the morning and lasted up to 3:00 p.m. After the meeting, those assembled stood up one by one to express their opinion that communal titling for their respective tribal groups would be very appropriate.

The Formal Interviews

There were only 27 respondents for the formal interview. However, as already pointed out, the number includes the different datus who were consulted. There was no attempt to get a random sample because of time constraint and the developments that came because of the national elections.

Subsequent Research

Further field research indicates that the *timoay* position mentioned above was recently invented by the PANAMIN, a semi-government agency held responsible for the welfare of the Tribal peoples during much of the Martial Law period. It seems not to be an indigenous position although the *datu* position has been known for centuries. The persons who have been called *timoay* are undoubtedly of high prestige and influence but that prestige might not be as widespread as the title seems to indicate. It also appears that some persons have been passing out “*datu*” status to persons who are not entitled to it.

Several recent informants, also during the subsequent research, indicated that there is a significant number of people who are historically and biologically members of these tribal communities but who, because of education, are psychologically outside of the tribal society. They usually live in the town rather than in their ancestral lands. Several of the original informants could possibly have belonged to this group and the editors were concerned that perhaps this fact would invalidate the results. When the conclusions of this research were discussed with these later informants, however, they also supported the conclusions and were probably more strongly in favor of communal titles as a policy than the more educated group originally interviewed. One thing which was very strongly emphasized by the later interviewees, however, was that they do not want the “town dwelling tribal people” to be the ones to hold the title papers if such would be issued. There seems to be a significant amount of unrest in this area caused by a lack of confidence of the majority of the tribal population in several of their apparent leaders. The social structures seem to be in a flux and the communities are working to find a way to establish a more responsive community structure without causing loss of face for any of the present titular leaders or any family disputes within the societies.

RESEARCH RESULTS And INTERPRETATIONS

The PAFID research team obtained large samplings of two of the ethnic groups, i.e. the Hanunuo-Mangyan and the Ikalahan. In the three other Tribal communities which were visited, random samplings were not possible but the opinions of the leaders were taken both privately and publicly and, given the leadership structures, there is little likelihood that an extensive sample would produce different results. It has already been mentioned, of course, that the team decided in the beginning that the main technique of data gathering would be participatory research, especially group consultations and discussions in clarifying issues. This being the case the results presented in the following section should be taken as supplementary and/or supportive of the findings in the groups consultations recorded above.

What follows then is a comparative presentation of how the respondents from the different groups consulted answered the interview questions.

The Respondents

The groups selected for the consultation are as diverse as one could possibly get. They are different in terms of language, degree of interaction with the larger society,

level of education, and leadership structures and partners. They are similar, however, in that most of them are the decision makers or influencers in their respective groups. A majority of them have little or no formal education.

The profile of the respondents can be seen in Table I. The predominance of males over females in the number of respondents had been intentional since most if not all Tribal communities in the Philippines are male dominated. All decisions are made by the family head, the father, with the spouse agreeing to whatever decision is made. Even with a wife who is better educated, (in itself a deviation from the cultural pattern among these people) she should only influence his decisions in private. Even among the Ikalahan, where the women are more influential, the elders are mostly males.

Table 1. The Research Respondents

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
Sex										
Male	33	70	25	89	40	100	70	83	49	98
Female	14	29	3	10	-	-	14	16	1	2
Age										
18-25	10	21	1	3	5	12	7	8	6	12
26-35	12	25	10	35	8	20	30	35	18	36
36-45	9	19	5	14	14	35	22	26	16	32
46-55	6	12	5	17	4	10	12	14	10	20
56-up	6	12	7	25	8	20	11	13	-	-
Don't know	-	-	-	-	1	3	-	-	-	-
Status										
Single	-	-	-	-	-	-	6	7	-	-
Married	45	95	23	78	35	87	75	89	41	82
Widowed	2	4	2	7	2	5	2	2	-	-
Separated	-	-	-	-	1	2	-	-	-	-
Polygenous	-	-	3	10	2	5	-	-	9	18
NA	-	-	-	-	-	-	1	1	-	-
Education										
None	26	55	5	17	36	90	17	20	43	86
Elementary	19	40	15	53	4	10	40	47	2	4
High School	2	4	7	25	-	-	20	23	-	-
College	-	-	1	3	-	-	6	7	-	-
NFE	-	-	-	-	-	-	-	-	5	10
Vocational	-	-	-	-	-	-	1	1	-	-
Occupation										
Farmer	34	72	22	78	39	97	56	66	49	98
Housewife	9	19	3	10	-	-	6	7	-	-

Laborer	1	2	-	-	1	2	9	10	-	-
Employee	1	2	-	-	-	-	8	9	-	-
Chieftain	-	-	3	10	-	-	-	-	-	-
NA	2	4	-	-	-	-	5	5	1	2

Assuming that those interviewed are leaders and decision makers of their respective groups, one can gather that they belong to 26-45 age bracket. Among the groups consulted it appears that their leaders are comparatively young.

With regards to formal education, the interview results show that the better educated are the Ikalahan and the Bukidnon. The establishment of the Kalahan Academy in Imugan to train and educate the young Ikalahan has contributed to this development. The Ikalahan Educational Foundation, which they established, also provides scholarships to selected youth for higher education which has now become a value to them. The Bukidnon, on the other hand have easy access to the educational institutions in the different municipalities of the province. It is not uncommon to meet professionals who belong to Bukidnon Tribal groups.

The least educated among the groups consulted are the Manobo of Sultan Kudarat, followed by the Hanunuo-Mangyan, and the Aeta in that order. However, with the presence of mission related institutions among the Manobo and the Aeta, the educational situation will soon change.

The people interviewed depend primarily on land for their livelihood with the Manobo and the Hanunuo-Mangyan topping the rest. Only the Ikalahan appear to be shifting to other means with only 66% of the respondents as farmers as compared to 98% among the Manobo.

Three groups show the practice of polygyny; the Bukidnon, Manobo, and Hanunuo-Mangyan. While the Aeta are not strictly monogamous, the writer has observed, during his several visits, that the Aeta male only has one spouse at a time.

The Concept of Ownership

There are several types of ownership that the investigation tried to determine from the selected Tribal groups. These are the personal, familial, and communal ownerships. Land ownership is reserved for the next section.

Personal Ownership

To bring out their idea of ownership the respondents' were asked to enumerate the things they own personally and why they claim these as such. Coming from widely separated areas it was expected to get answers unique to the respondents' group. Their answers were as follows:

Table 2. Enumeration of Personal Property

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
Land/farm	21	44	11	39	1	-	29	34	47	96
House	15	31	12	42	1	-	37	44	-	-
Kitchen/Houseware	23	48	3	10	20	50	-	-	-	-
Weaponry	20	42	11	39	18	45	-	-	-	-
Tools/bolo/Knives	46	97	-	-	28	70	13	15	-	-
Clothing	10	21	-	-	19	48	16	19	-	-
Animals	-	-	7	25	6	15	29	34	24	48
Coffee Plants	-	-	-	-	7	18	22	24	-	-
Baskets	15	31	-	-	10	25	-	-	-	-
Radio Set	9	19	-	-	10	25	-	-	-	-
Jars	-	-	2	21	-	-	-	-	-	-
Wives & Children	-	-	4	14	-	-	-	-	-	-
Beads	-	-	-	-	2	5	-	-	-	-
Others	-	-	-	-	2	5	-	-	-	-
Nothing	-	-	-	-	4	10	-	-	-	-

To the Aeta of Zambales, a radio set is still a novel item and owning one is a status symbol in their community. Baskets are used as containers for farm and forest product that the Aeta is forced to gather daily to exchange for food and other items needed, e.g. kerosene, salt, etc.

The Bukidnon respondents included wives and children as their personal property. This is likely to change very soon because their practice of payment of a brideprice is no longer commonly done among them. Had the Aeta or Manobo given these answers, it could be explained by the *bandi* and the *sunggod*, respectively, among these people. Among the Manobo the writers was informed that the father of a young girl will practically look around for a man, single or married who is willing to pay the *sunggod* he demands for his daughter.

Regarding the means of acquisition of these properties, those who gave answers show that what they own are bought, given, or made. The next table show a comparison of their answers:

Table 3. Means of Acquiring Property

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
Made	37	78	10	35	37	93	7	8	-	-
Bought	47	100	18	64	39	98	16	19	2	4
Planted	16	34	-	-	6	15	-	-	20	40
Gift/Inherited	1	2	19	67	16	40	5	5	36	72
Exchange	-	-	4	14	10	25	-	-	-	-
NA	-	-	-	-	-	-	56	66	-	-

As to the proof of ownership, it appears that possession and use of an object is enough proof. Owning something implies the ability to do as you like with it. These groups also felt that it was only proper to use something you possess as a beneficiary. They would forbid the destruction of the object without valid reason.

Family Ownership

Family ownership could be the equivalent of joint property. This implies that a co-owner can not unilaterally dispose of what is jointly owned without the partner's knowledge and consent. With this idea, the query was posed as to who the members of the family are. This is to find out the partners who co-own the family properties.

In a nuclear family, the members are the father, spouse and their children. The rest are relatives but not family members. Of course the extended family also exists and is defined by the household. However, as soon as a married child leaves the household, he and his family become a separate family.

When asked whom they consider as members of their family, the respondents answered as follows:

Table 4. The Respondent's Family Members

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
Respondent	-	-	-	-	8	20	-	-	-	-
Spouse/s	25	53	20	71	38	95	68	80	26	52
Children	39	82	22	78	38	95	70	83	43	86
Parents	24	51	14	50	2	5	16	19	26	52
Siblings	30	63	-	-	0	0	5	5	19	38
Grandparents	8	17	-	-	1	3	3	3	3	6
Parents-in-law	33	70	9	32	1	3	3	3	3	6
Siblings-in-law	-	-	5	17	0	3	1	1	17	34
Children-in-law	-	-	5	17	1	3	1	1	17	34
Cousins & Relatives	8	17	5	17	0	0	4	4	-	-
Step Children	-	-	-	-	2	5	-	-	-	-
Other Household members	-	-	-	-	1	3	-	-	-	-

Their answers show that it is not only the consanguineous but also the affines that constitute their groups' families. Only the Hanunuo-Mangyan come close to the nuclear family. The most extended is that of the *bandi* system. When a male family member is getting married, the *bandi* demanded by the girl's parents must be paid. To raise the amount, all those considered family members must make through because to back out will still require the man to pay.

The same holds true for the Manobo because of the *songgod*. However, among this group, should the family members fail to pay the *songgod*, the man can approach his datu who will make arrangement with the girl's parents. The man must then serve the datu until the amount is fully paid.

With regards to family properties, it could be noted that those mentioned as personal property are also mentioned as family owned, between personal and family properties. The following table shows the respondents' replies:

Table 5. Family Properties

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
Land/Farm	-	-	15	53	3	8	82	97	45	90
House	32	68	15	53	5	13	20	23	16	32
Kitchen/Houseware	40	85	9	32	27	68	-	-	-	-
Weaponry	24	51	13	46	1	3	-	-	-	-
Tools/bolo knives	25	53	6	21	1	3	-	-	-	-
Clothing	4	8	-	-	7	17	-	-	-	-
Plants	30	63	8	28	16	40	-	-	-	-
Animals	19	40	14	50	17	43	8	9	34	68
Radio	8	17	-	-	0	0	-	-	-	-
Foods	-	-	-	-	9	23	-	-	-	-
None	-	-	-	-	4	10	-	-	-	-

As to the means of acquiring the family properties, the answers are the same as that personally property, i.e. made, bought, inherited, and planted. There are two new responses from the Ikalahan who mentioned the Kalahan Education Foundation as a means of acquisition and the Manobo who mentioned the government. In the case of Ikalahan, the organization of the Foundation has done a lot of good for the community. The American missionary was a moving force behind the organization, and he has introduced the Ikalahan into the intricacies of documents' follow-up in both government and private agencies.

With regards to the right of family members to use what are deemed family properties, and if there is equality in the right of usage, here is how the respondents answered:

Table 6. Family Members' Rights

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
Yes	44	93	23	82	35	87	70	83	49	98
No	1	2	2	7	-	-	11	13	1	2
Don'r now	0	0	0	0	1	3	0	0	0	0
NA	2	4	3	10	4	10	3	3	-	-

The overwhelming affirmation to the existence of equal rights among family members in the use of family property negates the separation between what is personal and familial among the respondents. Those who gave negative answers explain that it only pertains to small children who are not yet responsible. In the Ikalahan, negative response constituting 13% of the group's respondents show the slow evolution of the personal and familial among Tribal peoples. This could be explained by their higher exposure to formal education.

Aside from the right of equal usage, however, the disposal of family properties still rest on the family head---the father. The decision to sell, give away, mortgage, or exchange family properties is always his prerogative.

Communal Ownership

Communal ownership belongs to a higher degree of categorization. Even in a small group or community, this implies several families that live together in a geographically contiguous area. This being the case, those who are recognized as community members must be identified.

To the question of whom they consider to be members of their respective communities, the respondents answered as follows:

Table 7. The Community Members

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
All natives in the community	46	97	23	82	31	78	80	95	49	98
Non-natives married to natives	22	46	17	25	0	0	70	83	-	-
Children of Above	32	68	20	71	0	0	69	82	-	-
Relatives of those married to natives	31	65	6	21	2	5	8	9	-	-
Non-native permanent residents	30	63	-	-	3	8	31	36	-	-
All Mangyans	-	-	-	-	8	20	-	-	-	-
NA	-	-	-	-	1	3	-	-	1	2

The purpose of the Hnaunuo-Mangyan and the Manobo could be compared to the thinking of the Aeta in 1971 when the baseline research for the involvement of the Ecumenical Foundation for Minority Development was made. At that time the members of their community are only *puro*, meaning pure breed, kinky haired, and loincloth wearing Aeta.

Apparently the new outlook of the Aeta is an influence of the Foundation's operation in developmental activities. The Foundation executive director, a Kalinga, had lived in the Aeta community for more than a decade with his family. For the Bukidnon and Ikalahan, it was already pointed out that they are highly exposed to outsiders and are therefore adjusted to accepting non-natives as members of their community.

According to the respondents' answers, there are three ways of becoming a member in their respective communities, i.e. marriage to a native, permanent residence in the community, and their leaders' decision. Table 8 gives a better picture.

Table 8. Means of Community Membership

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Marriage to Native	43	91	12	42	2	5	30	35	32	64
Birth only	-	-	-	-	2	5	-	-	-	-
Leaders' decision	-	-	5	17	3	7	7	8	26	52
Permanent Residence	-	-	4	14	10	8	20	64	-	-
Request	-	-	-	-	12	30	-	-	-	-
Popular Decision	-	-	-	-	7	30	-	-	-	-
Cooperative	-	-	-	-	5	13	-	-	-	-
NA	4	8	11	39	6	15	7	8	-	-

Take note that in the Table 7, 30 Aeta respondents said that non-relatives who permanently reside in their community are considered as members of their community. This is 63% of the Aeta respondents. They also claim that the relatives of the non-natives who married Aeta are also members. However, in Table 8, 91% of the respondents say that the means to community membership among the Aeta is through marriage to a native which only got 46% in Table 7.

Apparently this has something to do with the Aeta orientation of being an extended family. The concept of community is still in the formation stage and not yet fully developed as compared to, say, the Ikalahan and the Bukidnon groups.

It should be noted that any person who desires to become a permanent resident in an Ikalahan community would need to obtain permission from the Tribal elders. Permission would not be given if the elders did not consider the person congenial to the community. Mere "squatting" in the area would be difficult.

When the respondents were confronted with the request to enumerate what they consider as communal properties, they gave the following:

Table 9. Community Properties

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Forest	42	89	14	50	1	3	51	60	40	80

River	45	95	13	46	1	3	-	-	40	80
Spring	41	87	13	46	0	0	48	57	50	100
Mountain	40	85	9	32	-	-	24	28	14	28
Level land	30	63	-	-	0	0	-	-	-	-
Forest products	-	-	-	-	7	17	-	-	-	-
Tribal Hall	-	-	11	39	-	-	5	6	-	-
Religious areas	-	-	4	14	1	3	5	6	-	-
School	-	-	-	-	-	-	29	34	-	-
Samahan proj.	-	-	-	-	8	20	-	-	-	-
Nothing	-	-	-	-	28	70	-	-	-	-

Take note that the Hanunuo-Mangyan do not seem to consider as many things as community property as the other tribes. Those who dared to answer mentioned forest products as communally owned. Vikki mentioned in her fieldwork among these people that they only claim what they have actually planted as their own. The idea of Communal ownership seems to run counter to this concept but we are forced to ask; “If forest products are considered community property then the forests themselves must surely be considered as communal. They may not yet consider them to be “owned” in the sense that they could exclude others from their use but they are forced to try to exclude non-Mangyan’s from their use just to ensure Mangyan survival. When asked if each community member has equal rights to the use or exploitation of what are communally owned the respondents’ answered:

Table 10. Do all have equal rights

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Yes	44	93	21	75	9	23	69	82	50	100
No	-	-	2	7	3	8	5	6	-	-
NA	3	6	5	17	28	70	10	12	-	-

Occupancy and usage appear to be the primary proofs of ownership from the viewpoint of the respondents. Again these are the traditional concept of ownership. Some groups only claim the improvements/plants as their property because they strongly believe that the lands is God’s. Table 11 shows their answers regarding the proof of communal ownership.

Table 11. Proof of Communal Ownership

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Occupancy	28	59	-	-	0	0	22	26	-	-
Usage	1	2	12	42	3	8	40	47	50	100
Created by God/ natural resources	3	6	5	17	-	-	-	-	-	-
Leader’s say so	-	-	2	7	0	0	9	10	-	-
Don’t Know	-	-	-	-	9	23	-	-	-	-
NA	15	31	9	32	28	70	13	15	-	-

There was a time in the past when the mere presence of a community proved their right to stay there and develop the land. In other words occupancy and usage constituted ownership. The Aeta and Ikalahan having been in their land. the Manobo are unanimous in saying that use of the land is proof of ownership. While only a few gave their answers from the four groups, they also recognize usage as another proof.

While only two groups, the Aeta and Bukidnon answered that land is created by God, it deserves some comment. While the writer was in Malaybalay he was invited by his host to attend a native ritual performed by the Igaonon to thank Magbabaya (God) for His blessings: the land, rivers and mountains. They sacrificed a white rooster and the *tomuay* performed a ritual. According to the informant, the Igaonon do this annually on the 1st of May.

Pan Kuyang of the Act group, a religious practitioner, also informed the writer that every year, the Aeta butcher a pig to give thanks to *Namamadyadi*, he who created everything. He owns the land as well as all living creatures on it.

Interestingly, the Ikalahan also recognize “Hota Nalgan Hi-gatayo” as a specific creator deity. They recognize His power and authority over everything but never any sacrifices to Him.

Ownership Consideration

The respondents use the land in raising their crops but in terms of ownership, how do they view it? Who owns the land being used? The individual, the family, or their community?

The “no answer” category shows that many respondents did not answer the question. It could be that their concept of ownership differs from the researchers’ and, for that matter, the lowlanders, but it also appears that there is no clear-cut separation between familial, communal and personal property. Because the individual is a member of the family, and the family forms the community, the delineation is transparent. What is clear, however, is that among the respondents, the family is basic and as it grows wider it becomes the community, and eventually, in the evolution of ownership, the individual is recognized. Table 12 shows the responses of the different groups.

Table 12. Ownership Considerations

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Ricefield										
Personal	10	21	9	32	-	-	5	6	28	56
Family	11	23	2	7	4	10	24	28	28	56
Communal	3	6	-	-	-	-	-	-	28	56
NA	19	40	17	60	36	90	55	65	22	44

Dryland field										
Personal	12	25	14	50	9	23	-	-	50	100
Family	15	31	1	3	30	75	9	10	50	100
Communal	11	23	-	-	1	3	-	-	50	100
NA	12	25	13	46	0	-	75	89	-	-
Kaingin										
Personal	17	36	13	46	9	23	5	6	9	18
Family	12	25	1	3	30	75	65	77	8	16
Communal	10	21	4	14	1	3	2	2	9	18
NA	11	23	10	35	0	0	12	14	41	82
Fallow Field										
Personal	-	-	-	-	8	20	-	-	-	-
Family	-	-	-	-	27	68	-	-	-	-
Communal	-	-	-	-	1	3	-	-	-	-
NA	-	-	-	-	4	10	-	-	-	-
Houselot										
Personal	10	21	9	32	9	22	2	2	39	78
Family	15	31	-	-	29	73	18	44	33	66
Communal	10	21	-	-	0	0	-	-	5	10
NA	12	25	19	67	2	5	45	53	12	24
Orchard										
Personal	10	21	6	21	5	13	5	6	1	2
Family	14	29	-	-	18	45	48	57	1	2
Communal	10	21	3	10	0	0	2	2	1	2
NA	15	31	19	67	17	43	29	34	47	94

Among the Bukidnon respondents the claim to personal ownership of land predominated, while among the Ikalahan, Aeta and Hanunuo-Mangyan, family ownership appears to predominate. The Manobo, on the other hand, family, the community, and the individual. The different types of agriculture will be defined following the next chart.

The observation made in the preceding section on the concept of ownership among the respondents may explain this disparity. The demarcation line or separation between family ownership and personal ownership is not clear.

The Concept of Land Use

In the preceding section, the respondents' claim that occupancy and usage are their bases for claiming ownership to the land. this section will now discuss how the respondents use the land and how they view ownership of it, i.e., individual, family, or communally owned.

How is the land currently occupied by the respondents used? Table 13 shows how.

Yes	2	4	11	39	2	5	13	15	-	-
No	27	57	7	25	38	95	23	27	50	100
NA	18	38	10	35	0	0	48	57	-	-
Exchange										
Yes	1	2	12	42	2	5	5	6	-	-
No	26	55	6	21	38	95	28	33	50	100
NA	20	42	10	35	0	0	51	60	-	-
Bequeath										
Yes	5	10	-	-	38	95	29	34	-	-
No	26	55	4	14	2	5	5	6	50	100
Na	16	34	24	85	0	0	50	59	-	-

While there is a prevalence of negative and NA's, the mere fact that several respondents said "yes" to the questions posed, no matter how minimal, show that they can dispose of the land, or at least their rights, they are currently using. Of course they are aware of the consequences of whatever action they take. While the Manobo answered 100% negative to all the questions, there have been a prevalence of selling and mortgaging of land rights to enterprising Ilocanos and Visayans in the area.

The next item again shows the Manobo giving 100% negatives replies they have sold or mortgaged their land. This just is not so. It must be pointed out, however, that the Manobo, upon learning that the government could still reverse its decision to give them titles to the land, started to mend the situation. They have made arrangements for the repayment of land they have sold or mortgaged.

Table 15. Have You Done Any Of the Foregoing?

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Ricefield										
Yes	-	-	14	50	0	0	4	4	-	-
No	6	12	-	-	4	10	15	17	50	100
NA	41	87	14	50	36	90	65	77	-	-
Upland										
Yes	-	-	-	-	0	0	-	-	-	-
No	6	12	-	-	40	100	13	15	50	100
NA	41	87	28	100	0	0	71	84	-	-
Kaingin										
Yes	-	-	-	-	0	0	-	-	-	-
No	6	12	15	53	36	90	16	19	50	100
NA	41	87	13	46	4	10	71	84	-	-
Orchard										
Yes	-	-	1	3	-	-	3	3	-	-
No	6	12	13	46	-	-	13	15	50	100
NA	41	87	15	53	-	-	68	80	-	-

Number of Years You Plan To Use Land

To the inquiry on how many years the respondents intended to use the land they are tending, here's how they answered:

Table 16. Years of Land Use

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
6-10 Years	-	-	-	-	-	-	2	2	-	-
As long as I live	28	60	13	46	39	97	67	79	50	100
NA	19	40	15	53	1	3	15	17	-	-

Assuming that the respondents mean their answers, this could be because they have realized the value of land. this is a positive development.

Assuming of Continuous Land Use

When asked what assurance they have so that they could keep on using their land, the respondents said that they are occupying the land and that is assurance enough. With the current demand for land, however, there is a need for a more solid and legal basis for their tenure.

Of course the Aeta and Manobo live within Reservations, but apparently only their elders and leaders are aware of the fact. While there is the Ecumenical Foundation assisting the Aeta, there is still much to be done especially in community organizing and adult literacy. Had this been done intensively in the past, the Aeta would have known their rights as citizens.

The Ikalahan specifically mentioned the Kalahan Educational Foundations's memorandum agreement with the Bureau of Forest Development. The presence of college educated young people in the community explains the knowledge of the Ikalahan of developments affecting their interest. This shows what formal education can do for Tribal Filipinos.

Communal Land Titling

Now comes the actual purpose of the investigation---to discover the acceptability of communal land titling from the selected Tribal communities. Some questions raised in the section on communal ownership were repeated to double check the replies given earlier.

In regard to Communal property, for instance, the answers given here should be compared with that of Table 9. upon doing so one will notice some changes.

Table 17. Communal Properties

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Forest	44	93	20	71	26	65	51	60	40	80
Mountain	44	93	19	67	4	10	24	28	14	28
River	44	93	19	67	25	63	48	57	40	40
Spring	44	93	19	67	25	63	48	57	40	40
Level Land	42	89	18	64	3	7	-	-	-	-
NA	3	6	8	28	4	10	33	39	10	20

Whereas in the earlier table, the Hanunuo-Mangyan gave no answer, now the same items are considered community property. Even the Ikalahan answers differ. Only those of the Manobo remain consistent.

Right of Use

On the repeated inquiry on whether every member has equal rights in the use of communal properties, the respondents are consistent with a very slight difference. One Bukidnon who did not answer this time answered “yes”.

Problems Encountered Related to Land.

As noted earlier there are land related problems encountered by those consulted. The replies given by the informants offer a glimpse of their quandary.

The Aeta and Bukidnon respondents mention land grabbing as their problem while the Bukidnon mention loggers. These are supported by newspaper reports coming from the provinces in question.

There many respondents who did not answer this question. Of the few who replied, they said that they called the government’s attention to their plight. Some claimed to have organized and have called those affected to discuss their situation.

Recently, the Bukidnon have taken matters into their hands. Seemingly fed up with the loggers who are denuding their forest, they have taken up arms against their perceived enemies.

Acceptability of Communal Title

As earlier mentioned, the investigation used group consultation as the basic technique to find out the acceptability of communal titling. It used the interview schedule to supplement the results of the consultations. It must be admitted, at this juncture, that the level of understanding of the term “Communal Title” was not homogeneous. This was not unexpected but at least the people understood that a communal title provided them with as much land security as the lowland communities and a measure of protection from land-grabbing.

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Yes	43	91	17	60	10	25	78	92	50	100
No	-	-	2	3	25	62	1	1	-	-
NA	4	8	9	32	5	13	5	6	-	-

Those who gave negative answers prefer to get individual titles to their land. this was expressed to the researchers by those informally interviewed.

Problems Foreseen

While the acquisition of communal titles to the land occupied by the respondents will solve their land tenure woes, it may create problems of another nature. It is a truism that any solution brings about new unforeseen problems.

When asked what problem they foresaw if their lands would be communally titled, they gave the following responses which give us a glimpse of what problems they expect in spite of a large number who gave no reply.

Table 19. Problems Foreseen If Land is Communally Titled

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Land Division	3	6	-	-	6	15	5	6	-	-
Taxes/expenses	-	-	11	39	2	5	31	36	-	-
Who keeps title	12	25	-	-	6	15	-	-	-	-
Sale of Title	-	-	-	-	-	-	-	-	50	100
Production and Market	-	-	4	14	-	-	-	-	-	-
NA	32	68	13	46	26	65	48	57	-	-

Although the Manobo unanimously gave negative answers to selling, mortgaging, and giving away of their land in Table 14, it has already been noted that their actions disagree with their principles. Here in Table 19, they unanimously express their permission. This reveals their very real fear. Clearly a provision must be made that said land cannot be sold.

Another concern for both the Aeta and Hanunuo-Mangyan, when they acquire communal titles, is common to the less educated: who is going to hold and keep the communal land title. They are not used to having communal responsibilities. The Ikalahan, on the other hand, like the Bukidnon, are very much aware of the problems of paying taxes and are concerned as to how they could pay the taxes on a large area of communal land. a few Mangyan recognized that problem but it was not so common. Clearly this is a problem to be studied very carefully.

Who Holds The Community Title Papers?

Aware that this issues will be raised, the respondents were asked to whom they would entrust their precious document. An enumeration of their answers will illicit amusement. However, their answers have been grouped together and what came out is the next table.

Table 20. Who Holds The Title?

	Aeta	%	bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Community Officials	25	53	11	39	0	0	-	-	45	90
Members to decide	-	-	7	25	7	17	37	44	-	-
Tribal Elders	-	-	-	-	5	13	-	-	-	-
Each has copy	-	-	-	-	-	-	23	27	-	-
To be chosen	-	-	-	-	-	-	23	27	-	-
NA	22	46	10	35	24	60	24	28	5	10

Again the traditional political orientation of the respondents can be seen. The four who answered that their leaders should hold and keep their documents are known for their dependence on their tribal leaders. The Manobo and Bukidnon still have their datus to whom they go to when they have problem, and let the traditional leaders find solutions for them. This does not mean, however, that they trust their officials. Note that the Manobos voted 100% to let their leaders hold the papers but the same 100% expressed concern that those leaders might sell their rights. While this might seem surprising, it should be noted that to do otherwise would be to insult their leaders, an action which they would greatly hesitate to do.

While the Ikalahan have their elders who preside during their *tongtongan* or group consultation and discussion, the leaders only voice out the consensus reached by the community officials are appointed by persons, non Ikalahan, outside of their society. This being the case, their answers that the members should decide and to be chosen are expected to come from this particular ethnic group.

Benefits Expected In Communal Title

With regards to the benefits the respondents expect the moment they acquire communal titles to their lands, here are their answers.

	Aeta	%	Bukidnon	%	H. Mangyan	%	Ikalahan	%	Manobo	%
Land will not be grabbed	41	87	-	-	14	35	55	65	20	40
We can develop as we desire	6	12	9	32	-	-	-	-	-	-

We can expect assistance	-	-	4	14	-	-	-	-	12	24
Our children assured of land	-	-	-	-	-	-	-	-	18	36
NA	-	-	15	53	26	65	29	34	-	-

Responsibility If Communally Titled

It follows that with benefits come responsibilities. The respondents were asked what their responsibilities would be if they have their lands communally titled.

Table 22. Responsibilities

	Aeta	%	Bukidnon	%	H.Mangyan	%	Ikalahan	%	Manobo	%
Careful use of land	44	93	10	35	3	8	56	66	48	96
Protect	-	-	-	-	2	5	-	-	-	-
Pay our taxes	-	-	-	-	-	-	26	30	-	-
NA	3	6	9	32	35	87	2	2	2	4

As had been the case with the earlier questions there are many who did not answer but those who replied reveal the traditional ideal of careful utility of resources.

SUMMARY

1. What is the Importance of the Land to Tribal Filipinos?

The Tribal Filipinos interviewed depend on land for their survival. This was an assumption at the beginning of the research period and it is supported by the data given in Tables 1 and 12. Our knowledge of the other Tribal peoples in the nation indicates that there are very few tribal societies which do not depend on land as their primary source of livelihood. Even the Tagbanua of Coron Island who were formerly dependent on the sea for their livelihood have now made a change. The ecological damage caused by other people, mostly from the Visayan islands, has so damaged the marine resources that the Tagbanua are now forced to learn new technologies and try to get their livelihood from the land. Given the social and educational status of the Tribal societies there is no reason to expect a change in this situation in the near future.

2. What is the attitude of the Tribal Filipinos toward Communal Titles?

Four of the five societies interviewed responded very strongly in favor of communal titles. In the case of the Ikalahan it is known that even most of those who did not respond (6%) would favor a communal title when their present communal lease expires. They did not respond because they want to complete what they have started.

In the case of the Hanunuo Mangyan, the evidence is not so clear. The group discussions clearly favored private titles but the data in Table 18 indicates that they also favor a communal title. During more recent conversations between a PAFID Board Member and other groups of Mangyans discussing various types of land tenure their first reaction to communal ownership was negative. They stated clearly that the Mangyan are very individualistic. They had the mistaken impression, however, that a "communal title" would necessarily mean "communal *farming*". When it was made clear to them that a communal title merely meant that the subdivision of lands would be handled entirely by the total population or by their own freely chosen leaders who would also handle boundary disputes and promote development of the area, they changed their minds and became very favorable to the communal title option. It is possible that this is also the case here and further research might be able to answer the question but in view of the data in Table 18, it is not critical to the present analysis.

Again, in the case of the Hanunuo Mangyan, it was noted above that a large proportion of the participants in the discussions were more highly acculturated to lowland societies and cultures and had already begun to think primarily in terms of "Private" property. Their less acculturated brothers might tend the other way.

In summary, it can be said that the majority of the Tribal communities interviewed would react very positively to Communal Titles for their ancestral lands. From other knowledge it is also felt that these five groups are representative of the Tribal Filipinos as a whole. Other options should be available but it appears that Communal Titles are acceptable to the large majority of tribal peoples.

3. Would Communal Titles be Effective for Tribal Filipinos?

There are at least two sub-questions in this subject. One is "Could the Tribal society handle the Communal Title without losing it?" Another question is "Could the tribal society effectively protect their resources and make the communal title a resource for their families generations hence?"

Data on ownership show that the minorities are still largely communal in their orientation. Tables 9 to 15 demonstrate this very clearly. This being the case there seems to be no reason why they could not handle a communal title effectively, both to protect it from loss and to protect the resources from dissipation.

Data in Table 22 indicate that the Tribal communities are very strongly aware of their need to protect the land. This awareness would surely bring forth the necessary accomplishment.

The fear of some of the communities that a leader, or group of leaders, might be tempted to sell the ancestral communal title must be taken seriously. This has happened in the past in many parts of Mindanao and could happen in the future although it is much less likely to happen in Northern Luzon than elsewhere in the Philippines due to the different social structures.

The need to promote a better understanding of the ecological problems involved in sustainable development indicates that education must be taken seriously as a part of the total program of granting communal title to such communities.

In summary, the data strongly indicates that communal titles would be effective for the Tribal communities. Some protective measures should be taken, of course, to prevent the alienation of the land by misguided members of the tribes and to promote good ecological understanding. These measures are neither impossible, nor extremely difficult.

II

THE LEGAL FACTORS: ANCESTRAL LAND OWNERSHIP AND COMMUNAL TITLES

INTRODUCTION

Philippine laws and jurisprudence do not define in a clear manner the meaning of ancestral land. they may determine the nature of the land as either public or private property but they remain silent on the actual legal meaning of ancestral land. because of this there exist diverging opinions on the legal status of ancestral land and on the enforceability of the rights attached to it.

Much of the controversy regarding ancestral lands hinges on the determination of the extent of the effect of the concept of Regalian Doctrine. This does not mean, however, that the problem is simply a question of the power of the State as against the rights of the private individual. It is more on the confused manner of enforcing the Regalian Doctrine viz a viz the right to ancestral lands which was never surrendered by the indigenous peoples to any State. Many factors contribute to this situation and one of the most obvious factors is that the tribal people have not made sufficient advocacy for the recognition of their ancestral lands. This is not to say that they should be blamed for this situation. It is merely to state a fact. The tribal people have their own reasons for this stance.

The Regalian Doctrine was once defined by the Philippine Supreme Court in the 1921 case of *Lawrence vs. Gaduno* (G.R. No. 10942) as follows:

"The regalian theory may be defined as the prerogative of the king, or the right which the king claims, in the property of private person. The doctrine had its origin in the autocratic government of kings, and has been perpetuated in other kingdoms and other forms of autocratic governments through the same influence. Its origin antedates any organized system of general taxation by which the people are required to pay all expenses of the government. It has its origin in the fact that kings were obliged to personally furnish the sinews of war and funds for the general administration of the government, in order

that they,, in times of stress, might adequately protect their dignity and their realm. The rich minerals of the realm, being real, tangible treasures, were at once set aside as the patrimony of the king by virtue of this prerogative."

This can be considered as an amplification of the definition of the Regalian Doctrine of *jura regalia* provided for in legal dictionaries.<1>

For purposes of tracing the laws that have been enforced, and those that the presently being enforced, in the Philippines concerning Regalian Doctrine and its relation to the ancestral land issue, the definition provided for by the Philippine Supreme Court does not suffice. The definition is limited to the need of the kingdom or government to have a support for its administration of the royal realm or the national territory. As will be seen in the discussion below, there are other reasons for the exercise of the Jura Regalia. The definition, therefore, of the concept of Regalian Doctrine, in this study, will be derived from the laws enacted and enforced by the holder of government authority.

For purposes of defining "ancestral land" the following may be adopted:

"An area of land used since time immemorial for habitation and economic activities by a community of people sharing the same socio-cultural values and practices and over which the same people exercise indigenous concepts of ownership or right."<2>

This definition is not yet a legal definition sanctioned by any law or jurisprudence but, for lack of a better one, it may be used as a starting point in understanding the laws of the State and the decisions of the court regarding ancestral land.

The following portions of this discussion on ancestral land deal with a review of the Spanish, American and Philippines land laws which affect ancestral land.

Land Laws Affecting Ancestral Land

Spanish Royal Decrees

The King of Spain, in the middle of the 16th century, sent instructions to his representatives, supposedly the "conquistadores" (conquerors), in the Philippines archipelago stating that it was his will that the lands (in the Philippine archipelago) be settled and divided among those who conquered and subdued the inhabitants thereof. These instructions were the first acts of the Spanish King in the exercise of Jura Regalia affecting the lands in the Philippine archipelago.<3>

Significantly, despite the royal tone of appropriating the lands in the Philippine archipelago as part of the royal domain, the instructions provided that the distribution of the lands shall not prejudice the natives with respect to their land-holdings. This latter provision was enforced in the settlement areas where the Spaniards started to establish their communities.<4>

In the 1588 royal instructions, homesteads, farms and other landholdings were ordered to be given to the Spanish settlers but, again, without prejudice to the rights of the "Indians" (the natives).

The early royal instructions from Spain failed to provide fixed, formal legislation regarding the disposition and acquisition of ownership of the crown in the Philippine archipelago.^{<5>} This observation was made in Spain itself as the Council of the Indies, the official body charged with the administration of the Spanish colonies, wanted to compile all the colonial legislations.^{<6>} As a result, the "Reconpilacion de las Leyes de las Indies" was promulgated in 1680 to govern the Spanish colonies. This compilation of laws was extended to the Philippine archipelago.

The "Recopilacion" was significant for the following provisions:

- a. Spanish settlers were given incentives in making settlements in the hinterlands of the Philippine archipelago. Houses, lots, lands, peonias (tracts of land in a conquered country given out to the soldiers for their military services) and caballerias (tracts of land given to cavalry men who had served the war) were provided to the Spanish settlers in the towns and places where they were assigned;
- b. For the first time, this law compelled those in possession of public land, without written evidence of title, or with defective title papers, to present evidence as to their possession or grants, and obtain the confirmation of their claim to ownership. Failure to have such confirmation of title or of claim to ownership will force the Spanish government to sell the land at auction to the highest bidder.
- c. Upon proof of four-year residence in the assigned area, the settler is given absolute ownership of the same land;
- d. It provides certain protection to the rights of the natives to the land by mandating that in giving preference to the "regidores" in acquiring lands, they (the natives) should be left with their original holdings, patrimonies, and pasture lands; that in the distribution of lands, lawful and peaceful means shall be employed so as not to impair the rights and interests of the natives; that in the granting of lands, care should be taken that the natives were not deprived of their holdings or disturbed in their peaceful occupation and cultivation thereof; and that adjustments (registration) of lands shall not be made with regards to those which the Spaniards had acquired from the natives contrary to the provisions of the royal cédulas and ordinances; and
- e. This law states the reasons why the Spanish Crown was distributing lands to the Spanish settlers. It provides that lands are being distributed to encourage the Spanish settlers to undertake the discovery and settlement of the Indies (including the Philippine archipelago) and that they may live with the comfort and convenience which the Spanish Crown desires. ^{<7>}

In the year 1754, a Royal Cedula was enacted to make the titles to the land-

Holdings absolute and secure. This law applied to all, Spanish subjects and natives, who have acquired titles to lands considered as royal lands. This law is supposedly meant facilitate the developmetn of agriculture in the Philippine archipelago.<8> An important provision of this law states that where the possessors are not able to produce title deeds it would be sufficient if they would show *ancient possession* as a valid title by prescription. Just like the “Recopilation de las Leyes de las Indies”, this law requires the possessors to confirm their title to their land, otherwise they will be evicted from the land and the same will be granted to others.<9>

The Royal Cedula of October 21, 1797 was promulgated for the benefit of the natives. They are allowed to enjoy the use of lands, waters, and the pastures gratuitously for their labor and work animals. These areas are not subject to adjustment (confirmation) of title such as are needed for other lands.<10>

The Royal Cedula of March 23, 1798 provides for the adjustment of titles to lands of small value (P200.00) wgu cg sgakk be nade wutgiyt tge beed to go into the formalities and proceedings established by the statutes in force at the time.

The Decree of the Cortes of Cadiz of January 4, 1813 again provided for the adjustment of titles to land.<11>

Another Royal Decree, that of June 25, 1880, provides that all persons in possession of royal lands shall be considered as owners thereof provided they can prove that they had occupied and possessed the same without interruption for ten consecutive years in good faith and by virtue just title. In the absence of good faith and just title, an uninterrupted possession of twenty years is required to be proved.<12>

This same law supplied the definition of royal lads as all lands whose lawful ownership is not vested in some private person, or (actually the same thing) which have never passed to private onwership by virtue of cession by competent authorities made either gratuitously or for a consideration.<13>

Classification of the royal lands occurred with the Royal Decree of January 19, 1883. It provides that the royal lands shall be either alienable and disposable areas, which means that they sutiable for agricultural activities, or reserve areas which should not be explited since they affect the climate, hygiene and hydrology. <14> The Spaniards apparently recognized ecological realities.

The Spaniards colonial government, by the later part of th e19th century, had not actually occupied many parts of the Philippine archipelago such as the islands of Palawan and Mindanao. In order to fulfill its occupational goal, the Spanish colonial government provided incentives to any of its soldiers who would settle in these areas. Incentives were as follows:

- a. exemption from the payment of taxes and duties for the importation of necessary agricultural implements and materials;*
- b. exemption from the payment of cedula;*
- c. exemption of the sons of the settlers from military service;*

- d. free license to bear arms for all European and Filipino foremen;*
- e. soldiers might go and settle in the islands of Palawa and Mindanao with free transportation;*
- f. the families of "disciplinaries" (groups of soldiers composed mostly of ex-convicts) might be granted, on application, concession of lands of 3 hectares each;*
- g. soldiers could acquire equal concessions (3 hectares) on condition that they would work and cultivate them during their hours when they were off-duty.<15>*

This law is significant because it deals with the settlement of specific areas in the Philippine archipelago which had not been actually occupied by the Spanish forces as late as the latter part of the 19th century although it was already considered as part of the royal patrimony.

In 1893, the Spanish Mortgage Law was enacted. According to its main proponent, Antonio Maura y Montaner, this law was meant to facilitate the commercial transactions on lands and to secure the titling of the ownership over the same. <16> Under this law, there are two ways of registering private rights to the land. one is through the possessory proceedings which result in the acquisition of possessory information which evidence right of possession over a specific land. the other is the proceeding to convert possession into ownership. In the second proceeding, a record of ownership is obtained. According to Article 394 of the same law, the entry of possession shall not prejudice the person who has a better right to the ownership of the realty, although his title has not been recorded, unless the prescription has confirmed and secured the claim recorded. Thus possessory information under this law still protected the unrecorded holder of a better right to the land.

A year after, in 1894, a Royal Decree was promulgated known as the Maura Law which is meant to adjust and quiet title to the lands in the Philippine archipelago. Land of the public domain may be acquired through sale or by possessory information proceedings. It is also provided that in case the applicant failed to avail of the benefit of possessory information in one year, the right of the holders of the land to obtain a free title deed to the property is barred and the full title would revert to the State or to the citizens in common.

The Spanish laws, as a whole, offered to the Spanish subjects lands for settlement which were not yet occupied. Corollarily, the lands which were held by the natives were mandated to be protected against any encroachment by the Spanish subjects. This legal provision can be seen as a limitation on the exercise of jura regalia. The definition of royal lands provided in the Royal Decree of June 25, 1880 supports this observation.

The Spanish laws which were enforced were enforced during the three hundred years of Spanish colonial rule can be classified under three types. The first type refers to

those laws that declare the whole archipelago (Philippines) as part of the Spanish royal domain. The second refers to laws that distribute lands to Spanish subjects. The third type refers to laws that call for adjustment or registration of rights to the land.

American Colonial Land Laws

The change of colonial government brought with it changes in the laws. New principles of law were introduced and enforced. An new system of governance was also instituted.

On December 10, 1898, a treaty of peace was signed by the representatives of the Kingdom of Spain and the United States of America. In Article III of the treaty, Spain ceded the Philippine archipelago to the United States. Included in that article is the amount of the cession, twenty million dollars. From the time that this treaty of peace was ratified by the respective governments of the signatories, the Philippines (along with Cuba and Puerto Rico) belonged to the United States of America.

Pursuant to the governance of the Philippine archipelago by the American colonial government, the then President of the United States sent instructions to the Philippine Commission, the official body charged with the colonial administration, ordering the setting up of civilian government in the archipelago. The same instructions provide some inviolable rules such as the due process principle that no person shall be deprived of life, liberty or property without due process of law and that no private property shall be taken for public use without just compensation. Another significant provision is the instruction to maintain the organization and government of the tribal peoples (termed as uncivilized tribes).

The United States Congress then enacted the Philippine Bill on July 1, 1902, which was entitled “ An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes.” This law became the organic act which would govern the Philippine archipelago until a new organic act was enacted. In Section 5 of this law, the due process clause was enshrined. In Section 13, homesteading was allowed on an area of land not to exceed 16 hectares. Those who failed to obtain Spanish titles despite completion of the requirements under the Spanish laws would be ruled by land laws to be enacted. Free patents would be given to the natives who were the actual occupants of the public lands either personally or by himself or his predecessors prior to August 13, 1898. Under Section 15, sales and conveyance of public land to actual native occupants is provided: sixteen hectares for individuals and one hundred forty-four hectares for corporations. In Section 16, the actual occupant of the land of the public domain must consent to the sale and conveyance of the land to other persons.

The need for a more systematic, realistic and effective scheme of land registration was introduced by Act No. 496. This, the first land registration law under the American Colonial Government, enforced the Torrens system in the Philippine archipelago. One important feature of this new registration system was the principle of ‘incontrovertibility’ which prohibited the raising of any question on the validity of the Certificate of Land Title after the lapse of a certain period of time. A second important feature was that of ‘imprescriptibility’ of Land Titles after they have been adjudicated by the Court. This protected the land owner against any other rights that may have been acquired by reason of possession. It is said that this law is a reproduction of the Massachusetts law on land registration.<17>

In 1903, the first public land law was enacted. Act No. 926 provided for the disposition of alienable and disposable public agricultural lands. It increased the area that could be obtained from 16 hectares to 24 hectares for homesteads while an individual would be allowed to purchase up to 144 hectares. It is interesting to note that the term “Royal lands”, used during the Spanish period, became “Public Lands” during the administration of the U.S. government.

Commonwealth Laws

During the Commonwealth era, a new public land law was enacted. This law remains effective up to the present time although some of its provisions are no longer applicable due to the changes brought by more recent laws. Commonwealth Act No. 141 was enacted on November 7, 1936. It provides for the classification of public lands into “alienable and disposable” lands; “timber” lands; and “mineral” lands. The latter two types of lands are subject to alienation by the State but only through lease. Alienable and disposable lands can be acquired through homestead patent, sale, and confirmation of imperfect or incomplete title. In regard to ancestral lands, Section 44 of the same law (Chapter VII Free Patents) as amended in 1964 by Republic Act No. 3872, provides the following:

“A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, whether disposable or not since July 4, 1955, shall be entitled to the right granted in the preceding paragraph of this section: Provided, that at the time he files his free patent application he is not the owner of any real property secured or disposable under the provision of the Public land law.”

In Section 48 of the same law, the following provisions are made:

“xxx xxx xxx
(c) Members of the national cultural minorities who, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in section (b) hereof (confirmation of title).”

It is important to notice that both sections 48 and 44 as amended include the phrase “whether disposable or not.” This implies that the tribal people are the owners of their lands and the actions prescribed within the law are “confirmatory”.

Commonwealth Act No. 141 was also passed which governed the reservations for the settlement of tribal peoples.

Laws under the Philippine Republic

One significant law that was enacted after the Second World War is Presidential Decree No. 410. This law was significant, not in the sense that it actually brought benefits to the tribal people in relation to their ancestral land, but that this is the first law that dealt specifically with ancestral land.

Presidential Decree No. 410 defines ancestral land as follows:

“...lands of the public domain that have been in open, continuous, exclusive and notorious occupation and cultivation by members of the National Cultural Communities by themselves or through their ancestors under a bona fide claim of acquisition of ownership according to their customs and traditions for a period of at least thirty (30) years before the date of approval of this Decree.xxx”

The same law provides that the occupants of ancestral lands are given a period of ten (10) years from the date of approval of the Decree within which to file application to perfect their title to the land. Failure on their part to do so would mean losing their preferential rights thereto and the land would be declared open for allocation to other deserving applicants (Section 8). This law was enacted on March 11, 1974, but was never implemented because the president impeded the release of the implementing guidelines. No titles whatever were issued under its provisions.

In 1987, the government enacted a law on agrarian reform. This is the Executive Order No. 229 which covers all agricultural lands whether public or private. Section 24 of the said law states that ancestral lands are to be protected from the coverage of the law within the framework of national unity and development. This is provided to ensure the economic, social and cultural well-being of the indigenous cultural communities.

In the subsequent enacted agrarian law, Republic Act No. 6657 which replaces Executive Order No. 229, another provision is made for ancestral lands. It provides that the rights of indigenous cultural communities are to be protected to ensure their economic, social and cultural well-being. The indigenous systems of land ownership, land use, and the modes of settling land disputes must be recognized and respected. The agrarian law may not be implemented in these lands until there is identification and delineation of the areas of ancestral lands.

The 1935, 1973 and 1986 Philippine Constitutions ascertained the concept of Regalian Doctrine when they provided, in an almost identical manner, that all lands of the public domain, waters, minerals, oils, all sources of energy, fisheries, (Section 1, Article XII, 1935 Constitution; Section 8, Article XIV, 1973 Constitution; and Section 2, Article XII, 1986 Constitution).

The 1986 Constitution, however, has a provision regarding Indigenous Cultural Communities and their ancestral lands. This is the first time that ancestral lands have been included in the basic law of the land. Section 5 of Article XII states the following:

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

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.”

The inclusion of this ancestral land provision in the Constitution is indeed a very welcome development because it finally makes ancestral rights a concern demanding the attention of the whole government of the State.

Other pertinent provisions of the present Constitution include Section 22; Article II which states:

“The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and developemtn.”

and, Section 6, paragraph 1 of Article XII which states:

“The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of natural resources, including lands of the public domain under lease or concesssion suitable to agriculture, subject to prior rights, homestead right of small settlers and the rights of indigenous communities to their ancestral lands.”

As regard culture, Section 17 of Article XIV provides:

“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.”

Although this provision does not mention land specifically it is implied by the fact that the traditions and institutions of tribal peoples are invariably linked to their lands.

Jurisdiction

Affecting Ancestral Lands

The Philippine Supreme Court has decided a number of cases involving the right to ancestral land. The decisions, however, do not ail follow the same principles or doctrines. They need, therefore, to be looked into more carefully.dpa km

A 1904 decision (Valenton vs. Murciano, 3 Phil. Reports 537) explains the Regalian Doctrine. The case involves the issue of whether the mere fact of long possession and occupation will vest title to the possessor. The Supreme Court in this case answered in the negative. Citing the Regalian Doctrine the courts said that only when the State had adjudicated the land to the possessor

can he acquire any right or title to the land. as a general rule, prescription does not run against the State. The court, however, mentioned the exceptions based on the Royal Cedula of October 15, 1754 that ancient possession will be a ground for granting title to the land; and based on another law, the Royal Decree of June 25, 1880, twenty to thirty year possession, even without title, will amount to a right to acquire the land.

In 1909, the United States Supreme Court in decision on appeal (*Carino vs. Insular Government*, 41 Phil. Reports 935) made a good statement on the limits of the Regalian Doctrine as applied to the realities of enforcing the law by the colonial government. The decision defines ancestral lands and, in a litany of reason, the said court did not accept the theory that all lands in the Philippine archipelago belong to the Spanish Crown. The following reasons were put forth:

- a. *Spain would not have permitted and would not have the power to enforce a law that would have denied native titles by mere want to ceremonies (adjustment procedures);*
- b. *Spanish laws requiring adjustment of title apply only to lands which are admitted to be public land;*
- c. *In cases where there is proof of ancient possession, the natives are given the benefit of the doubt;*
- d. *Spain did not assume to convert all the native inhabitants of the Philippines archipelago into trespassers or even into tenants at will. She recognized native titles to exist that owed nothing to the powers of Spain beyond the recognition in her books;*
- e. *As prescription against the Crown was recognized by the laws of Spain, there is no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty and*
- f. *There are indications that registration was expected from all, but non sufficient to show that, for want of it, ownership actually gained would be lost. The effect of the proof, whenever made, was not to confer title, but simply to establish it, as already conferred by decree, if not by earlier law. The Royal Decree of February 13, 1894, declaring forfeited titles that were capable of adjustment under the Royal Decree of 1880, for which adjustment had not been sought, should not be construed as confiscation, but as the withdrawal of a privilege.*

With this decision, many laws of Spain were analyzed and given the proper interpretation. As to ancestral lands, the decision is clear that when the land has been held by individuals as far back as memory goes, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. this should settle the argument on the nature of ancestral land.

This decision , *Carino vs. Insular Government*, has been cited in several cases up to the present time in controversies relating to the registration of titles to land. in the case of *Susi vs. Razon* (48 Phil. Reports 424) the court held that long possession entitles a person to the issuance of a certificate of title by operation of law. And the right acquired can be enforced in court in an action to recover possession of the land. The Director of Lands therefore has no more authority to dispose of the same land.

In the case of *Abaoag vs. Director of Lands* (45 Phil. Reports 518), the court ruled that every presumption of ownership under the public land laws is in favor of the one actually occupying the land for many years, and against any government which seeks to deprive him of it for failure to comply with provisions of any subsequently enacted registration land act.

The case of *Lee Hong Hok vs. David* (48 SCRA 373) merely reiterated the principle that in land which is clearly determined to the public lands, the Regalian Doctrine governs and only the State has the power to dispose of it. This does not include ancestral lands.

The 1984 case of *Director of Lands vs. Romamban* (131 SCRA 431) upholds the principle that the presumption that all belong to the State cannot cover a case when there is proof of possession since time immemorial. The same result obtains in the 1986 case of *Director of Lands vs. Intermediate Appellate Court* (146 SCRA 509).

An Analysis Of the Laws and Jurisprudence Affecting the Ancestral Land Issue

This first part of this paper has shown the numerous laws and decisions of the court that have existed or are still existing which have, in one way or another, a relationship to the issue of ancestral lands of the tribal people. A review of the laws and jurisprudence will raise these basic issues. 1) Do the laws enforced in the Philippines since the establishment of colonial government determine the existence or non-existence of ancestral land? 2) Are the court decisions clear in defining the concept of ancestral land?

There is no doubt that even from the early Spanish decrees, ancestral lands are recognized and even protected. The usual provision in these laws is that the rights of the natives to their land must not be prejudiced. This need not be elaborated. The Spaniards were conscious that they had entered a land which was not theirs but which they then claimed to belong to the Spanish Crown under the premise that the Philippine archipelago had been "conquered" because even to the latter part of 19th century orders were still being sent to his personnel to occupy and possess other "unconquered" parts of the archipelago. The King had to offer incentives to them to assure the occupation of those territories. It is clear that the Spanish colonial government did not have enough resources to fully control the whole archipelago and thus the voluntary participation of its subjects was sought. It is thus not difficult to understand why the United States Supreme Court had to state that Spain could not have considered the native inhabitants as trespassers for their failure to follow the Spanish laws on the adjustment of title since it merely exercised paper sovereignty over the areas of the natives who still lived as indigenous tribal people.<18>

Seen also from a review of the laws is the fact that even though the laws came into existence under different sovereigns, the basic principles of law that affects the ancestral land issue remained the same; that is, the basic principle on vested rights. From the very beginning of the Spanish rule up to the end, there was always the protection of property rights that had been acquired by the lapse of time and actual occupation. Even for those lands that are considered possessed unlawfully, opportunities are given to occupants to adjudicate their ownership. The American

colonial government adopted the same principle of vested rights which demand protection of property and the rights accruing thereto.

Patent also from the laws and jurisprudence reviewed is the fact that the Regalian Doctrine has been exercised by the Philippine government. It is not necessary to contest the existence of the Regalian Doctrine, however, to protect the right to ancestral land. any government will exercise some power similar to the Regalian Doctrine. What matters is whether or not laws enacted pursuant to this doctrine determine the existence or non-existence of ancestral land rights. The answer to that question seems to be two-pronged.

On the one hand, if the basis of the answer is the interpretation of the laws in the *Carino vs. Insular Government* decision then it is clear that ancestral rights existed long before the laws espousing the Regalian Doctrine came into being in the Philippines and these lands had always been treated as private property and no one could claim any right over them except by actual occupation and appropriation. The Spanish government failed to gain control over them and their paper sovereignty could not prevail over actual and real rights. The Spanish interpretation of the Regalian doctrine recognized these facts.

If one bases the answer to the previous question on the realities of law enforcement, however, some interpretations of the Regalian Doctrine assert that rights to the land can only be obtained from the State. Even long possession of the land needs confirmation from the State otherwise it will not ripen into a right that is enforceable. This thinking is based on the theory that the land was previously public in character but had been acquired by private individuals through prescription. The private character of the land, according to this line of reasoning, came only after the act of ownership was performed.

Although the 1986 Philippine Constitution does not provide a final answer to the query, it does recognize ancestral rights which would tend to favor the principles espoused by the court decision in *Carino vs. Insular Government*.

The existence of the two diverging views on the nature of ancestral land should not unduly affect the tribal people, however. In the past, they did not bother with the land laws and their possession and exercise of ownership over their lands was neither removed nor diminished. The government was much too far from them.

It is in the present times, however, that the peoples should be concerned because many non-tribal peoples are now attempting to take possession of tribal lands and resources and are inventing "legal" means to accomplish their goals. The Constitution provides some protection from interference in the possession and ownership of the land but it also provides that ancestral lands, just like any private property, are subject to the powers of the State. Even in the most recent Constitution, the recognition of the right to ancestral land is dependent on the national development program and the other constitutional provisions.

Are the court decisions clear in defining ancestral lands? The answer to this question is "No". even the *Carino vs. Insular Government* decision does not define them, it merely determines the relationship of ancestral rights to the presumption that all lands are publicly-owned unless they are shown to have been disposed of by the State. No court decision has yet come up to the point of defining "ancestral land".

It is not surprising to find the inadequacy of protection, much less recognition, of the right to ancestral land. No law was ever enacted which emphasized the private character of ancestral lands but, rather, emphasized the overriding concern for the disposition and conservation of public lands. Thus any protection of ancestral rights was merely incidental to the main goal of protecting public lands.

Considering the laws and jurisprudence so far discussed, there is no doubt that there are ancestral lands owned by the indigenous peoples of the Philippines. The only remaining issues are on the different aspects of these ancestral lands. Because of the lack of nay legislation that would comprehensively deal with this matter, differing opinions can always arise. Because of this, it would still be advantageous to have legislation that would deal directly with ancestral land---a

law that would protect ancestral rights in recognition of the reality that tribal peoples have lived on their ancestral lands since ancient times without tribal peoples have lived on their ancestral lands since ancient times without reference to any government. Present condition demand that recognition.

An Analysis of the Legal Status of the Communal Title

One significant facet of the ancestral land issue that has not yet been discussed in this paper is the legal status of a communal title. Can it be used as the means to evidence ownership over a certain area of ancestral land?

It is important to look again into the most recent legal basis for the communal title, the 1986 Philippine Constitution. Paragraph two, Section 4, Article XII (National Economy and Patrimony) states:

“The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.”

This provision is significant because of its recognition of the customary laws of the indigenous people on property rights. It, of course, does not give a mandatory obligation to the Congress to adopt the customary laws in determining the ownership and extent of ancestral lands, but it can be argued that the adoption of the customary laws is a necessity because it would lead to the economic, social and cultural well-being of the indigenous people. In the final analysis, this provision in the Philippine Constitution can be used as a legal basis for asserting the use of customary laws in determining the ownership and extent of ancestral lands.

Ordinarily, the law on property registration considers the title as belonging to an individual, but the law does provide two methods by which titles can be granted to a group of people. One is possibility of co-ownership for which special policies have been described. The other requires that the joint owners register themselves as a “corporation” which, by legal fiction, is defined as an “individual”. Beyond this, communal titles would be looked upon as unusual and unless there is a strong reason for insisting that the ownership of a certain land is vested in a community, the titling of land would ordinarily be on an individual basis.

If we assume that it is legal for the indigenous people to assert that their land should be registered under a communal title, the next question must be which portions of the Civil Code will apply to such land and what are the rights and responsibilities which the owners enjoy? If a community registers itself under the Securities and Exchange Commission as a corporation, of course, it is covered by Corporation law and there are few problems except the need to keep the SEC notified of its activities, etc. If a community does not register itself with the government, however, either as a corporation or as an association of rural workers, it seems that such a communal title would be governed by the provisions on co-ownership under the New Civil Code (Republic Act No. 386). There are, however, some legal technicalities that should be considered. Ownership by a tribe or group of indigenous people cannot be simply said to be in the nature of a

co-ownership. The rights and obligations pertaining to an indigenous person within the communally-owned property are not the same as the legal rights and obligations that would pertain to a co-owner under the New Civil Code. Although it may be convenient to simply assert that the members of a specific group of indigenous people are co-owners, such an act may cause more problems later. This is especially true in the case of an individual who, as a co-owner of a piece of property, later opts to sever his co-ownership relations but still keep control of a portion of the property. This is, of course, allowed in the Civil Code provisions for Co-ownerships but must not be allowed in the case of an Ancestral Communal Title.

Claiming, therefore, a communal title is not legally impossible. It is actually permitted although in a different sense as discussed above. The question that needs to be settled is not, it seems, how one defines a communal life, but how one defines a communal **owner** in a way which is acceptable to the condition and needs of the indigenous people and at the same time acceptable to the legal profession?

What are the legal consequences that should flow out of a communal title system? Will the customary laws be the sole basis of a law governing communal title? Can the present laws be made to apply to the actual situation of the indigenous? How can an “indigenous community” be defined? These are valid questions because the call for a communal title is a demand that seems to have no precedent. It seems, therefore, that new legislation may be required and the law should be comprehensive enough to deal with the diverse facets of communal title for tribal people. It is likely that this would require a specific law and not a mere amendment to existing land laws.

The laws and jurisprudence in the Philippines are by nature considerate of the changing situation of the Philippine society. Unfortunately, despite this flexibility, they have not yet made a good adaptation (with some exceptions) to the different condition of the tribal people and are not yet able to provide full protection to the rights of the tribal people to their ancestral lands.

Conscious of the long history of neglect, forthcoming laws and jurisprudence must rectify this fatal injustice. Only then can it be said that the tribal people have been given what is due them.

III

CONCLUSIONS

It is now necessary to consolidate the findings of both the legal and the sociological research in regard to Ancestral Communal Titles. The question of Ancestral Land Rights has raised many issues and these issues have been brought to popular attention in many ways. In order to relate this research directly to the questions which are being asked, we will state the conclusions of this present research in the form of answers to those questions.

1. Should tribal lands be declared alienable and individual titles issued to entitled families?

If, as in the case of all of the communities investigated in this research, the community has no background of clearly defined, permanent, ad individual land ownership, the answer is **NO**. This has nearly always been a short cut to the permanent loss of tribal lands. Invariably a private title issued to individuals in communities which have only recently come into contact with the “Title” system is quickly sold. A short term need of cash could easily tempt an “owner” to sell his “paper” without realizing that he has, in so doing, alienated his descendants from access to their basic resources.

If, on the other hand, the community has a long history of private ownership and individual Pieces of property already have carefully defined boundaries, such as the rice terraces in Ifugao and Kalinga, individuals could be given titles and the answer to the above question might be “Yes”. Even in this latter situation, however, problems requiring adjudication could more easily be handled according to tribal customs rather than burdening the individuals with the need to go through expensive legal processes. This could be accomplished more easily if the property were under a Communal Title. This is discussed again under Question 10.

There is, however, another very practical reason to opt for a communal title. The time, Money and labor expended to obtain an individual title covering a mere 100 square meters is very little different from that required to obtain a communal title covering the ancestral lands of 300 families. Given the difficulty which the government of the Philippines has in processing papers, it would be much more efficient to issue title communally.

2. What is the problem with the COMMUNAL STEWARDSHIP AGREEMENT? Why should it not be continued instead of considering Communal Titles?

Actually the CFL (Communal Forest Lease), or Communal Forest Stewardship Agreement

(CFSA), as it is now called, is a good means of providing land security for tribal communities. The problems with it are mostly psychological but nevertheless real. First, why should the people be made to “lease” their own ancestral lands? It is an embarrassment, if not an insult. Second, why should the people be required to go through the “Renewal” phase every 25 years? Politics being what it is there is always an element of doubt about its being renewed and this inhibits the proper attitude of genuine “Stewards”. A Communal Title would be psychology more acceptable by these communities.

3. Is it legally possible for a community to own a communal Title?

There seems to be no inhibition to a community owning a communal title. It has already been done in the case of the tribal people of Aurora, Isabela. Corporations own titles. Why not communities?

4. What legal personality is needed for a community to own a title?

In the case of several communities, they have already become legal personalities by registering themselves with the Securities and Exchange Commission as Foundations. Some other communities have registered themselves with the Bureau of Rural workers. This has also been tested and found to give them sufficient legal personality.

It is the opinion of Atty. Own Lynch that it would be wise to list the total membership of such community in case some legal impediment would interfere with the corporate personality in the future. This is also recommended so that even in the case of dissolution, the membership would be able to prove their rights.

It is conceivable that the Barangay government, itself, could provide the legal personality but this could be dangerous since Barangay officials have frequently been appointed, removed and replaced by higher government officials without the consent of the population. The present structure of the Philippine Government provides for a significant amount of supervision by the Department of Local Governments over Barangay governments. This authority would interfere in the direct supervision of the community over its resources. For these reasons it would be much wiser to have a separate legal structure which is supervised by the local community alone to accomplish the task.

It would probably be advantageous if new legislation could eventually be passed allowing “tribes” to be considered as legal personalities, each one governed by a “Board of Elders” which is the ancient system of government within the archipelago (not a datu, however). Each tribe could then define its own membership according to its own customs. It seems improper for the legislation, in itself, to define tribal membership because different groups have different definitions of membership.

5. Who should be considered to be a member of a Tribal Community?

As implied in # 4 above, each community has its own definition of tribal membership as can be seen in Tables 4, 7 and 8. Some communities, for instance, easily accept individuals who marry into the society while others do not. The final decision as to qualifications for membership and acceptance into the community must be included in any definition and they might well be mentioned in the legislation. (See Table 8). They would include at least the following:

a. The first is biological: An individual should have some valid biological inheritance rights from person who are commonly recognized to be members of the Tribe.

b. The second is cultural: The person should speak the tribal language, feel the tribal

culture and be accepted by the community as a member.

c. The third is intentional: The person should truly intend to reside in the community and utilize the resources of the community as a means of supporting his or her family.

The vast majority of the tribal people who have discussed this matter feel that the second and third are more important than the first. They are particularly unhappy with tribal peoples who opt to live in the city but still claim to be leaders of the village of their ancestry.

It might be possible to have two levels of recognition within the community. The first would recognize biological membership but that would not necessarily entitle a person to utilize the resources within the Ancestral Title. Utilization rights would be granted only to those who also met the cultural and intentional qualifications. If that were done, it would mean that a tribal person who decided to live in the city would not have any authority to send workers to cultivate a portion of the Tribal Title which he claimed for himself. If, however, his children opted for closer membership in the tribe and desired to live within the area, they could be granted rights to cultivate.

6. Is a Native Title a legal title?

A Native Title is a legal title and it has been so decided by the Supreme Court in the case of *Carino vs. Insular Government*. This has usually been ignored by Administrative Policies but it has not been voided. The Native Title has not been tested yet on “communal” land, only “individual”, but there seems to be no inherent reason to claim that the idea of Native Title refers only to individual lands and cannot include communal lands?

7. Do Tribal Filipinos want to have Communal Titles over their ancestral lands?

No one can answer for all Tribal Filipinos. The results of this research indicate that a good majority of them are opting for this method of obtaining land tenure over their ancestral lands.

8. Could a Tribal community manage a Communal Title?

Although there might be some problems with a few of the many concerned communities, it is the firm conviction of the writers of this report that the Tribal Filipinos are capable of handling a communal land title. The fact that the Title is “Communal” will force the persons holding it to act more responsibly than they might do otherwise.

9. How could a community distinguish between the lands which are handled communally and those that are treated as private lands within the communal title.

This is a matter for the community itself to decide and should not be indicated in the documents which cover the land. Each Tribal community already has sufficient customs and mores to enable it to handle all such decisions to the satisfaction of the population. They will undoubtedly have some problems in the beginning but as long as they are the only ones involved, they can work out the solutions.

10. How would land conflicts between individuals or families be settled if the community had a Communal Title?

Every tribe has several means of adjudication of problems such as these. Conflicting claims

between individuals, families, and other social entities have been solved for centuries and can still be solved through the cultural means which the community has maintained. If these means have been damaged by the impact of modernization in the area, the need for them to be restored will soon bring about their restoration. This has been demonstrated many times. In addition to being less expensive and quicker than can usually be accomplished in the regular courts of law, the culturally created methods usually result in the restoration of friendly relationships between the contestants which is a extremely valuable to any community.

11. Many of the lands which are considered to be ancestral are very fragile areas such as critical watersheds. What would be the environmental effects of a communal title over such lands?

This is an important, even a serious, problem in some areas. If the situation warrants it, it might be wiser for the people to first have a Stewardship Agreement for a period of time, 15-25 years, with clear provisions written into it that they must protect the water resources and the fertility of the soil. The Stewardship Agreement should then ripen automatically into a Communal Title at the end of the period. This would allow for a generation of training in environmental control before the provisions were released.

Such a provision is similar to what which was included in the granting of Homestead Patent under former legislation, i.e., certain provisions being established which needed to be met before the final Title could be issued. Such a provision would establish a temporary legal and cooperative relationship between the tribal community and the Forest Management Bureau of the Philippine Government which would be beneficial to all concerned.

12. Would the alienation of these ancestral forest lands, through communal titles, be sacrificing the welfare of the majority for the welfare of a few?

While this is theoretically possible, it is extremely unlikely. **First**, because the people are already there. They would not be utilizing any lands which are not already being utilized. **Second**, the existence of a communal title commits the community to having that land inherited by their grandchildren and great grandchildren in good condition. The community is very unlikely to do anything to damage such an inheritance. **Third**, if the areas contain timber or other resources there is no valid reason why the Tribal Filipinos cannot, themselves, harvest those products to the saw mills or other appropriate consumers. They will undoubtedly hire foresters or other specialists to help them with the technical aspects as they require. This would democratize the resources. As education becomes more available, it is likely that some of their own young people can be employed by them to perform these functions. (This is already the fact with the Ikalahan). It should be recalled that the people, themselves, are likely to be more careful in their harvesting techniques than the large logging corporations or other firms who expect to leave the area soon after the harvest. **Fourth**, the areas are not so great as to sacrifice the welfare of the total nation. **Fifth**, it is probable that the total area would be improved, not damaged, as a watershed, for instance, by the improvements made by the Tribal peoples.

13. How should the ancestral lands be delineated? What should the boundaries be?

This is not as difficult as it seems. Briefly the boundaries should include the ecosystem upon which the given community depends for its livelihood. In cases where portions of that ecosystem have already been alienated in favor of other peoples a decision will need to be made on the basis of the local situation. If the community still has a sustainable source of livelihood without utilizing the area which has been alienated away from them, they will probably opt to leave things as they are. If not, the community will need to work out some suitable arrangements with the other

claimants, perhaps by purchasing their rights unless it can be demonstrated that the “rights” are actually fraudulent or were obtained by force or deceit.

Basically the local community will need to handle this decisions and it will, therefore, be done on a case-to-case basis.

14. What about taxation of ancestral lands covered by communal titles?

This could be a serious problem. It is critical to a Tribal society that they control the basic resources of their area including the watersheds. This means that they should include in their communal title, lands which will NEVER be cultivated and are being protected as a PUBLIC TRUST. Those lands would then be developed as multiple purpose watersheds. Such lands would probably not be productive enough to enable the occupants to pay taxes on them. In view of the fact that they are protecting the watersheds and other national resources, it would seem to be improper to expect them to pay taxes on those portions of their communal title. There are at least three solutions to this problem: 1) The community may be satisfied with a STEWARDSHIP Agreement and not opt for a Communal Title. In such a case there would be no taxes levied on the land. 2) Legislation should be provided which would exempt the owner of a “PUBLIC TRUST” from taxes *on that portion* of the property. All other properties would be assessed according to standards rates. 3) There is yet a from page 66... the government assessors to use an especially low rate to assess the total property which would take into consideration the community responsibility to protect the watershed. The second option is more defensible but the third is easier to accomplish.

15. What about sale of lands with a communal title?

A Communal Title should be inalienable. If the present Torrens system does not allow for That limitation, the necessary legislation must be enacted. The transfer of individual rights within the Communal Title should be limited to people who already have inherent rights within the area and must be registered with the community leaders and subject to their approval. The deeds of transfer, if prepared, could be duly notarized but would not need to be registered with the Register of Deeds since they would be internal transactions as far as the Register is concerned. The members of the community should not think of “selling” the land. Sales should only involve the “improvements” on the land and the land itself is merely being transferred from the supervision of one individual to another within the community.

16. What about the lease of lands within a communal title to an external entity?

This is a very difficult question to answer. It is conceivable that a community might want and need to lease a small corner of their communal lands to an outside entity for commercial purposes in order to obtain sufficient operating capital for the development of the main portion of the land for themselves. It is the hesitant feeling of this research team that perhaps this could be respected. On the other hand, such a provision could become a “loophole” which could open the door for the eventual effective and legal loss of future rights by the community. This should be seriously studied and, if allowed, the area leased should be limited and located on the margin of the area in such a way as to prevent social interference the community could find some other resources that could provide the necessary capital without using the land itself.

17. Is new legislation required before a communal title can be issued?

Probably not if the community is willing to register itself, as many communities have already done, with one of the government agencies which can provide it with a legal personality according to the present legal structures. Such registration would case the community to become an

“individual” in the eyes of the law and the relationships, rights and responsibilities of the various persons within the community would be defined by their organizational documents. It is recommended that the community itself designs its own structure for registration to insure that the registered structures are sympathetic with the ancient social structures of the community.

At some time in the future it might be advantageous to have legislation prepared which would enable a community to have a legal personality based on the ethnic identity of its members without the necessity of creating a new vested in a “Board of Tribal Elders”, not in one individual.

18. Should a single pattern of land tenure be required for all tribal Communities in the Philippines?

NO. there is no reason to believe that all communities are exactly the same. This has been mentioned above under question 1. Each community should have the option to choose from a variety of solutions which would suit the specific sociological, ecological and legal problems which it is facing. Various combinations should be considered also, especially that of granting a STEWARDSHIP AGREEMENT and having it ripen into a Communal Title at the end of 25 years assuming that the community has accomplished its obligations under the terms of the STEWARDSHIP AGREEMENT. (See item 11 above).

19. How large should a communal title be?

That would depend on the community but there are two limitations: one sociological and one geographical. The supervising community must be a true sociological community already recognizing itself as such. This present research does not touch on this issue and cannot, therefore, give any concrete answer, but the experience of the writers indicates that it would probably be less than 3,000 persons. Geographically, the land to be covered should be an integrated ecosystem. Such an area should include watersheds and forests in addition to residential and agricultural lands. The community will not be able to make properly integrated development plans if it does not control the watersheds and other necessary parts of that ecosystem. On the other hands it would probably be difficult for on community to properly supervise more than 18,000 hectares.

20. Would the present proposal to identify “Ancestral Domain” be helpful toward solving the various land problems of tribal peoples?

Yes, of course. The present Senate Bill 909 could be very helpful toward identifying ancestral rights if it would be properly implemented but it is inadequate because it seems not to provide sufficient freedom for the people to confidently develop their lands themselves in a sustainable way. After Ancestral Domain has been defined by law, each community in the tribe should be encouraged to file for a communal title over those portions of their ancestral domain which are most important to it. This would give them freedom to move beyond a mere claim to a legal “right” upon which they can build a confident future.

21. Should a communal title be considered as a temporary measure which would eventually be replaced with individual titles?

That is a possibility, of course, but for several reasons the writers feel that to do so would be a mistake.

- a. There are large areas within the ancestral lands which should be protected for their ecological value, as watersheds and as atmospheric purifiers. These could be best protected if they remain within the communal title.

- b. If the areas would be broken up into private titles, these smaller titles would likely be sold to outside persons which would have a negative effect on the social and emotional welfare of the community. The selfish actions of a few would have detrimental effect on many.
- c. If portions of the communal title would be developed as a community enterprises it would be improve the economic viability of the total community and encourage entrepreneurship in the community. This would be less likely to happen if the total area would be broken up into individual titles.

This conclusion goes contrary to some of the assumptions which were stated in the Research design but the researchers feel that the results of the study are strong enough to force them to this conclusion.

IV

ENDNOTES

1. See Black's Law Dictionary. Revised Fourth Edition, West Publishing Company, St. Paul, Minnesota (U.S.A.), and Bouvier's Law Dictionary and Concise Encyclopedia, Third Revision, West Publishing Co. (1914)

2. Quoted from a position paper on the recovery of the Paitan Mangyan Reservation in Naujan, Oriental Mindoro. Said paper was made in 1987 by the Paitan Mangyan Mission and submitted to the Department of Environment and Natural Resources on December 9, 1987.

3. See Blair and Robertson, *The Philippine Islands*, Vol. 2. Quoted in the book, "The Development of Land Laws and Registration in the Philippines," A.C. Manalac and R.R. Manalac. Tenth Edition, 1961. Philaw Publishing, Manila.

4. See Blair and Robertson, vol. 7, and also Manalac and Manalac, page 4.

5. See Manalac and Manalac, page 6.

6. See Enrique Fernando, *Philippine Legal History*, PCF Publications, Escolta, Manila (1950), page 142.

7. See *Valenton vs. Murciano*, 3 Phil. Reports 537, 540.

8. See Manalac and Manalac, page 11.

9. See *Valenton vs. Murciano*.

10. See Francisco Ventura, *Land Registration and Mortgages*, Community Publishers, Manila (1947), page 12

11. See Ventura, pages 12-13

12. See Manalac and Manalac, page 18 and Ventura, pages 14-16

13. See Valenton vs. Murciano, page 549
14. See Ventura, page 20
15. See Manalac and Manalac, page 31
16. Based on the letter sent by Antonio Maura y Montaner to the Spanish Cortes on May 26, 1893, published by the U.S. Gov't Printing Office, Wash. D.C., page 175.
17. See Enriques Altavas "Land Registraton in the Philippine Islands" 2nd Edition, Oriental., Manila, page 3, 8, also Narciso Pena "Registration of Land, Titles and Deeds", 1982, Revised Book, Rex Book Store Manila, page 7, also Ventura page 68.
18. See Carino vs. Insular Government

APPENDIX A

RESEARCH DESIGN

TITLE	: COMMUNAL TITLING OF ETHNIC LAND
THE PROBLEM	<p>: One of the most pressing problems confronting ethnic Filipinos is land tenure. While Philippine jurisprudence alludes to what is known as Native Title it has never assured the ethnic groups of permanent tenure to the land they occupy.</p> <p>Landless lowlanders encroach on ethnic lands and the occupants are either driven out forcibly or voluntarily leave the land due to fear of being harmed by those interested in the land that has been cleared generations ago by their forefathers.</p> <p>Thus these tribal Filipinos settle farther into the interiors. Time was in the past when land had been abundant and the forest seemingly vast. However, many of them now realize that they have to settle down acquire tenure to the land they are in. There is no longer a place to move.</p> <p>In so far tribal Filipinos are concerned, there are several options open for them. These are the Individual Stewardship Contracts and the Community Forest Lease. Another is the proclamation of the land they occupy as a civil reservation by the government.</p>
RESEARCH OBJECTIVES	: The overall objective of this investigation is to assess the desirability of a communal titling system for indigenous peoples in the Philippines. The specific objectives are 1) to

research the subject of communal titles and other land tenure options; 2) to determine the acceptability of a communal title scheme among tribal communities.

- RELATED LITERATUR** : There are several articles, mostly foreign, that deal with communal ownership of land. in Nigeria there is a report that land ownership is traditionally communal. The same is true with Fiji Island. Yet due to the demands of economics the people in both places are slowly turning to private ownership. One report is saying that communal ownership of land is just one step in the evolution of the economy and that eventually private ownership will be adopted as means of land tenure.
- Another case is reported of the Faroe Island belonging to Norway but is under Danish sovereignty. This is known as sheep island since it was used for raising sheep. Economic changes, however, have changed the usage of land. it is currently experiencing problems in the traditional mode of ownership.
- ASSUMPTION** : Communal ownership is also the traditional arrangement among Tribal Filipinos. If an anthropological verbal report is to be considered seriously, this too is slowly changing.
- The acquisition of communal title is, therefore, a mere formality to assure the Tribal Filipinos of land tenure and that as they begin to realize their being part of the larger society, acquire education, and get involved in the affairs of the nation, then they will prefer private ownership as a means of owning land.
- METHODOLOGY** : The researchers will make use of the traditional anthropological technique of participant observation. This will need staying in the field and living with the people.
- Full utilization of group consultation and discussion is the main feature for data gathering. Among Tribal Filipinos, anthropologists attest to this method as the people's means of arriving at a consensus. This traditional decision making process will therefore be exploited as a technique of presenting the problem and getting the peoples reaction to the possibility of communal titling.
- Unstructured interviews with key informants will be conducted until the appropriate questions will evolve for the creation of an interview schedule, e.g. their concept of ownership, family, and community and means of becoming members in these institutions.

WORKPLAN	:	ACTIVITY	TIME FRAME
		1. Writing and revision of research design	2 weeks
		2. Preliminary Test	1 week
		3. Preparation of Protocol	1 week
		4. Data Gathering	10 weeks
		5. Data Analysis and Interpretation	5 weeks
		6. Writing preliminary Research Report	3 weeks
		7. Consultation with Legal Group	5 weeks
RESEARCH PERSONNEL	:	DESIGNATION	NUMBER
		Research Coordinator	1
		Research Associates	2
		Research Aides	6
		Secretary/Typist	

APPENDIX B

**COMMUNAL LAND
TITLING RESEARCH**
Interview Schedule

TO INTERVIEWER: Please print answers and complete all the information asked as much as possible. Write Not applicable or Don't know if necessary but do not leave blanks. Thank you.

Place of Interview: _____ Province: _____
Interviewer : _____ Date: _____

I. RESPONDENT'S HOUSEHOLD DATA

Name	Sex	Age	Status	Education	Occupation
------	-----	-----	--------	-----------	------------

A. Respondent:

B. Spouse/s:

C. Children living with respondent:

1. Where were you and your immediate relatives born?

	Birthplace	Year
Respondent	_____	_____
Spouse	_____	_____
Father	_____	_____
Mother	_____	_____
Father-in-law	_____	_____

2. When did the following migrate to this area?

	Year
Respondent	_____
Spouse	_____
Parents	_____
Parents-in-Law	_____
Grandparents	_____
Great Grandparents	_____
Other (Specify)	_____

3. If you migrated to this area what were the causes / reasons?

Respondent	_____
Parents	_____
Parents-in-law	_____
Grandparents	_____

4. If you have children who moved out of this area, where are they now and why?

Where	Why
_____	_____
_____	_____
_____	_____

5. If you yourself are planning to move out, where will you go and why?

_____	_____
-------	-------

II. OWNERSHIP

A. Personal Ownership

1. What things would you consider as your personal property and how did you acquire these?

Personal Property	How Acquired
_____	_____

_____	_____
_____	_____
_____	_____

2. Aside from means of acquisition you mentioned, how else can you acquire personal property?

Personal Property	Why you can do with them
_____	_____
_____	_____
_____	_____
_____	_____

3. What can you do with your personal property? Please enumerate.

Personal Property	What you can do with them
_____	_____
_____	_____
_____	_____
_____	_____

4. How can you prove that you really own what you claim as your personal property?

5. Are there any restrictions or prohibitions with what you can do with your personal property? If there are what are these?

Prohibitions	Why
_____	_____
_____	_____
_____	_____
_____	_____

B. Family Ownership

1. Whom do you consider as member of your family? Please enumerate.

_____	_____
_____	_____
_____	_____
_____	_____

2. What do you consider as your family property? Please enumerate. Why should you consider these as family property?

What	Why
_____	_____
_____	_____

3. How do you acquire family property? Please enumerate the means of acquiring them.

4. Do all family member have equal rights in the use of family properties? If not, why?

5. What can you do with what you consider as family property? Can all family members do the same? If not, why not?

6. Are there any prohibitions or restrictions with what you or any member of your family can do with your family property? What are these restrictions? Please list them all.

C. Communal Ownership

1. If you consider yourself as part of a group or community, whom do you consider as member of your family?

All natives living with you	_____
All non-natives who got married to natives	_____
All children of natives and non-native marriage	_____
Relatives of those who married natives	_____
All who reside here are not natives	_____
Others (specify)	_____

2. How can someone who is not a community member become a member of your community or group?

3. What would you consider as community/group property? Please enumerate.

4. Can you show any proof that these are community property? If not, why would you consider these as your community property?

5. Do all members of your community have equal rights to the use of these properties? If not, why not?

6. what can community members do with community property? Please enumerate.

7. What are the restrictions/prohibitions to what community members can do with community property?

D. Land Ownership

1. Which of the following Land Classifications are you presently cultivating?

Category	Location	How Big
a. Rice Fields	<hr/>	<hr/>
b. Upland Field	<hr/>	<hr/>
c. Kaingin	<hr/>	<hr/>
d. Farm (vegetables)	<hr/>	<hr/>
e. Orchard (fruit)	<hr/>	<hr/>

2. When did you start planting/working on these lands?

	Year
a. Rice Fields	<hr/>
b. Upland Field	<hr/>
c. Kaingin	<hr/>
d. Farm (vegetables)	<hr/>
e. Orchard (fruit)	<hr/>

3. How do you consider ownership for these lands?

	Personal	Familial	Community
a. Rice Fields	<hr/>	<hr/>	<hr/>

b. Upland Field _____
 c. Kaingin _____

4. If you consider these as your personal property, can you

	Yes_____	No_____	Others_____
a. Sell these?	_____	_____	_____
b. Give away?	_____	_____	_____
c. Mortgage?	_____	_____	_____
d. Exchange?	_____	_____	_____
e. Bequeath?	_____	_____	_____

5. In the past ten years have you sold, mortgage, exchange, give away any of these?

a. Rice Fields	_____
b. Upland Field	_____
c. Kaingin	_____
d. Farm (vegetables)	_____
e. Orchard (fruit)	_____

6. How many years do you plan to use these lands?

	5 yrs	10 yrs	As long as I live
a. Rice Fields	_____	_____	_____
b. Upland Field	_____	_____	_____
c. Kaingin	_____	_____	_____
d. Farm (vegetables)	_____	_____	_____
e. Orchard (fruit)	_____	_____	_____

7. What assurance / proof do you have that you can keep working on the land you are using now?

E. Communal Titling

1. Which of these do you consider as your community property?

Category	Location	How Big
a. Forest	_____	_____
b. Mountain	_____	_____
c. River	_____	_____
d. Spring	_____	_____
e. Level Land	_____	_____

2. Do all members have the same rights to use these property? Write YES or NO on the space provide.

- a. Forest _____
- b. Mountain _____
- c. River _____
- d. Spring _____
- e. Level Land _____

3. How did the elders of the community use these lands in the last five to ten years?

- a. Forest _____
- b. Mountain _____
- c. River _____
- d. Spring _____
- e. Level Land _____

4. Have you encountered problems in your use of these land? If YES, what?

- a. _____
- b. _____
- c. _____

5. What steps have your community taken to solve the problems?

- a. _____
- b. _____
- c. _____

6. What steps have your community taken to protect these Properties?

- a. Forest _____
- b. Mountain _____
- c. River _____
- d. Spring _____
- e. Level Land _____

7. If possible, would you live your community land titled?

YES _____ NO _____

8. What problems do you see if these are titled?

- a. _____
- b. _____
- c. _____

9. What benefits do you expect your community to have if these were titled?

- a. _____
 b. _____
 c. _____

10. What will be your responsibility if these community property were titled?

- a. _____
 b. _____
 c. _____

11. If your community land were titled, who will keep/hold the title of the property?

BIBLIOGRAPHY

Bondok, Pedro
 1972

Democracy Among the Mountaineers
 Quezon City, New Day Publishers

Cole, Faye-Cooper
 1954

The Bukidnon of Mindanao
 Chicago: Chicago Natural History Museum

Doyo, Ma. Ceres P.
 1988

“Ancestral Lands: “How can you own that which will outlive you?”
 Sunday Inquirer Mag., Oct. 23, 1988, p.9-11.

Headland, Thomas N.
 1977

“Interviewing: A Method of Ethnographic Research” Technical Memo No. 52, Summer

Ike, D.N.
 1984

“The System of Land Rights in Nigerian Agriculture,” in The American Journal of Economics and Sociology, Vol. 43, No. 4 (October 1984) pp. 469-480.

Kikuchi, Yasushi
 1984

Mindoro Highlanders. Quezon City:
 New Day Publishers.

Lynch, Owen Jr.
 1982

“Tribal Land Law: A Mechanism For Upland Participatory Development.” Discussion Paper No. 8 in Participatory Approaches To Development, Seminar Series I. Integrated Research Center, DLSU. Mimeographed 27

pages.

McLachlan, Mila et. al.
1981

“Can Participation Enhance Development?”
“The NFE Exchange,” Issue No. 20,
Institute for International Studies in
Education. Michigan State U.

Noval-Morales, Daisy Y.
James Monan
1979

A Primer On Negritos Of The Philippines.
Manila: PBSP

Parel, Christina et. al.
1978

Social Survey Research Design
Quezon City: PSSC

PHILDHRRA
1978

Participatory Research: A Guidebook,
Manila: PHILDHRRA

Rutz, Henry J.
1978

“Fijian Land Tenure and Agricultural
Growth,” in Oceania XLIX No. 1 (September) pp.

West John F.
1975

“Communal Land Tenure and Land Utilization
in the Faroe Islands,” in Journal of Economic
and Social Geography. LXVI 6, Netherlands
pp. 337-348.