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# Bounded spaces of coexistence

## Land titling and settlers on indigenous domains in Mindanao, the Philippines

Irina Wenk

### Introduction and research outline

The delineation and titling of indigenous territories has become a significant component of the international struggle for recognition of and debate on indigenous peoples' rights. Initiated in Latin America and intensely discussed, disputed, and partly implemented in North America, Australia, and New Zealand, the policy reached the Philippines in the mid-1990s. In response to civil society and indigenous peoples' pressure, global development policy trends, and international advocacy, the Philippine government passed a comprehensive law on indigenous peoples' rights that is unprecedented in the modern legal history of Southeast Asia. Through the *Indigenous Peoples Rights Act* of 1997<sup>1</sup>, popularly known as IPRA, the state recognizes and pledges to promote the rights of the country's non-Islamised indigenous peoples. On the basis of this statute, indigenous groups may delineate and claim a communal title to their territory – «ancestral domain» in Philippine usage –, a so-called *Certificate of Ancestral Domain Title* or CADT. Indigenous groups herewith gain the government's recognition of their ownership rights over a delineated and thus bounded territorial space. Within that territory, the title-holding group is allowed to determine the management of natural resources according to customary law, set up struc-

tures of self-government, regulate the entry of outsiders such as settlers, and defend territorial boundaries against unwanted intruders.

In Mindanao today, the rights of indigenous peoples – collectively referred to as *Lumad* – are negotiated in the context of decades-long settler in-migration and encroachment upon their lands. The heavy influx of lowland Filipinos from other islands of the archipelago has resulted in drastic demographic and environmental transformations and numerous conflicts. For decades, the indigenous peoples have been contending with agricultural settlers and logging, mining, and agribusiness companies over access to land and natural resources, as well as political power.

Embedded in the Swiss National Centre of Competence in Research (NCCR) North-South project entitled «Research Partnerships for Mitigating Syndromes of Global Change», the Institute of Social Anthropology in Zurich is undertaking a comparative research project (directed by Danilo Geiger and Jürg Helbling) on resource conflicts between indigenous peoples and settlers in frontier regions of South and Southeast Asia. As one of six case studies<sup>2</sup>, this research examines local histories and present-day conditions of antagonistic as well as accommodative indigenous-settler relations in upland Mindanao. In addition, it tries to find out whether the delineation and titling of territories claimed by indigenous peoples has a mitigating effect on conflictual inter-

<sup>1</sup> Republic Act No. 8371.

<sup>2</sup> Three research areas are located in Northeast India (two in Assam, one in Arunachal Pradesh), one in the Chittagong Hill Tracts of Bangladesh, and one in West Kalimantan, Indonesia.

<sup>3</sup> Maps, as historically used by states (Wood 1992; Kain/Baigent 1992) and now increasingly so by indigenous peoples in acts of counter-mapping, are political documents and as such instruments of power. They are «myths» of a given sociological reality and strongly influenced by their makers. Therefore, they need to be critically interpreted, no matter what their origin (Gatmaytan 2000: 77ff.).

*Ancestral domain titles (CADT) and claims (CADC) in Mindanao, 2004 (Source: Sabino G. Padilla)*

ethnic relations.

Field data has so far been gathered during a preliminary survey of land titling activities in Mindanao and Palawan, conducted in November/December 2003, as part of an evaluation by the International Work Group for Indigenous Affairs (IWGIA) and a first phase of fieldwork between April and August 2004 in Bukidnon, Mindanao. A second, eight-month phase of fieldwork is planned between February and October 2006. The two research sites chosen are located in the uplands of north-central Mindanao in the provinces of Bukidnon and Misamis Oriental. They comprise the Matigsalug-Manobo, which already hold a CADT, and a Higa-onon community further north, which is currently in the process of delineating its territory.

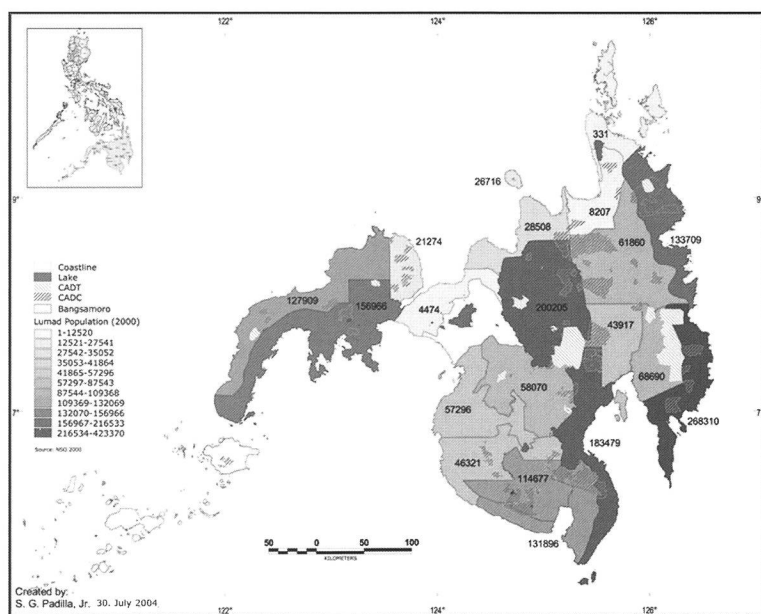
## Ambiguities surrounding the titling of indigenous territories

The delineation and titling of indigenous territories is discussed in the literature as an effective tool for political and socio-economic empowerment of indigenous peoples, for mitigating resource-

based conflicts between different user groups, and for fostering sustainable management of natural resources. Community participation in the delineation process can have useful collateral organizational effects, increase internal social cohesion and political unity, and generate understanding of vital procedures and legislation behind a delineation and titling initiative (Hvalkof 1998: 147ff.). In the Philippines, indigenous groups and their NGO-advocates increasingly use community-based maps and three-dimensional models as negotiating tools for claims to territory, i.e., to defend land and resources non-violently, to settle boundary disputes, to challenge competing claims, and to understand natural resource management issues. Furthermore, data derived from delineation, such as maps and population figures, enable indigenous peoples to balance existing official representations of, and private or government claims to, resources with minute, reliable information of a high technical level. This strategy is known as counter-mapping (Peluso 1995). The superior legitimacy of community-based maps is seen to rest upon the participatory process through which these are generated and their greater accuracy compared to government maps (Denniston 1994: 32)<sup>3</sup>.

Many indigenous groups in the Philippines now actively engage in delineating the remainders of their once vast territories and avail themselves of the tenurial security that IPRA offers.

However, criticism of the law is also being voiced, as suspicion rises about the state agenda that many suppose lies behind the statute. Left-leaning indigenous and advocacy groups from the northern Philippines, and critical social science and legal scholars denounce IPRA as the most recent state attempt to extend administrative and political control to the uplands, many of which are inhabited by indigenous peoples. Conceptually, these regions are best characterized as «frontier» areas<sup>4</sup> where the state's presence is fragile and its monopoly of violence challenged by different social actors, among them often armed insurgents. At the frontier, there-



fore, the state continues to be engaged in establishing control through territorialization, a process by which «all modern states divide their territories into complex and overlapping political and economic zones, rearrange people and resources within these units, and create regulations delineating how and by whom these areas can be used» (Vandergeest / Peluso 1995: 387). IPRA, at one level signifying the state's attempt to accommodate its indigenous peoples within the constitutional frame, is criticized for homogenizing widely differing indigenous groups and for simplifying complex resource use systems in an act of bureaucratization (Gatmaytan 2001: 44). From the vantage point of critical legal theory, the titling of indigenous territories is viewed as a process of (en)closing frontier spaces as part of a political state-building project, in which the Philippines' indigenous peoples actively engage. To analyze the consequences of this process on indigenous-settler relations is a main focus of this research.

## Preliminary results and insights

At the local level, the closure of a frontier in the service of the state's hegemonic project does not necessarily preclude positive effects for the indigenous beneficiaries. For instance, it does make titled territories less attractive for settlers to enter and may result in containing settler encroachment upon indigenous lands. There is an observable shift towards stronger regulation of land transactions and transfers, since IPRA prohibits alienating land within a titled area to non-indigenous individuals. The mortgaging of land (*prenda*), which often used to result in land transfers from indigenous owners to settlers, is thus gradually replaced by more formal lease agreements (*arrendo*). Yet resident settlers continue to alienate land once given to them by the headmen. Both parties to such transactions (resident

settlers and businessmen from nearby cities) disregard the legally chartered authority of the indigenous Matigsalug over the area.

Of crucial relevance in regard to titling indigenous territories is the question of who belongs to the beneficiary «community» and is sharing in the territory. That is, who has the right to remain there, and who does not? In an important respect, titling is the sealing-off of permeable boundaries and involves exclusion of rival claimants. Largely unrecognized by both indigenous and advocacy proponents of the IPRA, lowland Filipino settlers constitute up to 40% and sometimes even a majority of the inhabitants within today's «indigenous» areas. Therefore, in a majority of cases, titling does not mean bounding ethnically homogeneous enclaves but distinctly heterogeneous spaces. This hardly resembles the image of strongly integrated indigenous communities specified in IPRA. Lack of information on the delineation process has led many settlers to refuse inclusion in the census, as they fear being thrown out of the area once a title is awarded. Unless properly managed – by actively involving settlers in a delineation process, specifying their rights and responsibilities as residents of a titled «indigenous» territory, and negotiating use of natural resources under new legal conditions – indigenous titling activities are likely to provoke discontent or even resistance on the part of settlers. Attempts to exclude settlers from claimed territories – even if radical local activists perceive the latter to be the exclusive property of indigenous peoples – are hardly feasible for reasons of both practice and principle. After all, indigenous-settler coexistence has become «the reality that people need to encompass within their imaginaries» (Howitt 2001: 240). There are increasing attempts on the indigenous side to clarify the status of disputed land holdings with a resort to legal means and to find acceptable solutions through pragmatic accommodation. Some indigenous groups also attempt to buy back land from settlers. However, the option of protecting and defending their territory through legal

<sup>4</sup> «Frontiers» are regions of front-line contact between expanding states and the original inhabitants of a territory and can be seen as zones where the state or actors operating in accordance with the state substantially influence local tribal societies without exerting complete control over them. The frontier is a geographical space with unique political, sociological, and cultural characteristics and, above all, a political fact – whether in colonial history or in state-building processes of modern developing countries. For a detailed introduction to the frontier concept as it shapes the analysis of this research project, see Geiger (2002).

means on the basis of IPRA has not replaced violence as a means of defense directed against unwanted intruders. In the uplands of Mindanao, where the state has, since the late 1970s, enlisted indigenous groups in counter-insurgency operations against the communist underground (the New Peoples' Army or NPA), the interests of indigenous CADT-holders run in a significant, but hardly coincidental way, parallel to those of the government. Both desire to rid themselves of the presence of communist rebels who operate in the forest hinterlands. Many indigenous uplanders hold grudges against the insurgents because of the latter's excesses, including killings of indigenous leaders and general disrespect for the indigenous peoples' culture. Meanwhile, the state cannot contain the challenge that the NPA presents to its authority in the country's peripheral regions. Encouraged through IPRA's provisions to «regulate» the entry of outsiders according to «customary law» (the statute remains ambiguous with regard to resort to violence but clearly prohibits the «death penalty») and backed up with arms and ammunition, indigenous title-holders engage the NPA in violent encounters as part of their territorial defense.

There is still a long way to go before indigenous peoples acquire the capacity to defend their territories without aligning with either one or the other protagonist in the Philippines' low-key civil war. One conclusion clearly emerges: if titled indigenous territories in Mindanao are to become more than just a launching pad for military-backed vigilante groups, the issue of territorial defense must be addressed transparently as part of a comprehensive delineation initiative by indigenous claimants, NGO supporters, and international donors. Group alignments of all stakeholders and possible non-violent mitigation strategies should be openly discussed during negotiation rounds as part of local peace initiatives. In a conflict-ridden, violence-prone, and heavily militarized region such as Mindanao, initiating such a process would signify a crucial and long overdue local

effort to address the impact of the region-wide conflict on indigenous peoples and the areas they inhabit.

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Irina Wenk studied social anthropology, political science and international law at the University of Zurich. Her dissertation project is part of the Swiss National Centre of Competence in Research (NCCR) North-South Individual Project 7 «Environmental Change and Conflict Transformation» under the lead of the Swisspeace Foundation. Since May 2003, she is working at the Institute of Social Anthropology, University of Zurich, as project collaborator. Her main research focus is indigenous peoples' rights and land rights, frontier development and conflicts in indigenous areas as well as colonial and post-colonial pacification processes. Regionally, her main focus is on Philippines.

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