NATIVE TITLE, PRIVATE RIGHT AND TRIBAL LAND LAW: AN INTRODUCTORY SURVEY

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Filipinos of every political persuasion lament the pervasive and enduring colonial imprint on Philippine culture. Many fail to appreciate, however, that indigenous ethnic groups — or National Cultural Communities — never surrendered to the colonial invaders and to this day have chosen to retain cultural identities found only in the Philippines. The 7.5 million Tribal Filipinos comprise over 15% of the country's population. Most have distinct languages, religions, artworks, dress and custom laws. Over the centuries they have developed delicate but ecologically stable systems of swidden, forage and/or terraced agriculture. Except for the Negritos, the nation's first inhabitants, Tribal Filipinos share the same Malayo-Polynesian background common to most other Filipinos. Tribal Filipinos, however, are considered as unique because they "are more like their ancestors than other Filipinos are like their ancestors."[1]

No doubt many will be surprised to learn that the guardians of indigenous, Philippine culture are legally defined as "uncivilized,"[2] "backward people,"[3] with "barbarous practices"[4] and "a low order of intelligence."[5] These imported prejudices[6] offend nationalist Filipinos. In most tribal communities, the resulting discrimination impairs ethnic pride, disrupts the ecological balance and aggravates rampant disease, malnutrition and poverty. The legal implications and historical justifications of these attitudes and activities, however, must await future analysis. This Article focuses on the most threatening manifestation of colonial prejudice affecting Tribal Filipinos today: the ongoing loss of ancestral land.[7]

In 1913, the United States Secretary of the Interior wrote about the loss of ancestral land in his annual report to the American President. "As

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[1] Address by William Henry Scott, Cultural Center of the Philippines, January, 1975.

[2] Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 680 (1919).

[3] Hearings before the Committee on the Philippines, United States Senate, Sixty-Third Congress, Third session on H.R. 18459, pp. 346, 351. Quoted in *Rubi* at 686.

[4] United States President William McKinley's Instructions to the Philippine Commission, April 7, 1900, quoted in *Rubi* at 680.

[5] U.S. v. Tubban 29 Phil. 434, 436 (1915).

[6] For a detailed account of the impact of these imported prejudices on Tribal Filipinos, See Gowing, *Moros, and Indians: Commonalities of Purpose, Policy and Practice in American Government of Two Hostile Subject Peoples,* 8 PHIL. QUARTERLY OF CULTURE AND SOCIETY 125 (1980).

[7] Pursuant to Pes. Decree No. 410, sec. 1 (1974), ancestral lands are considered to be "all unappropriated agricultural lands forming part of the public domain" as

soon as they have cleared the land and brought it under cultivation they are driven from it by false claims of ownership on the part of their civilized neighbors."[8] In 1963, the Senate Committee on National Minorities reported that:

> The same basic problem remains after fifty years. The members of the smaller Cultural Minority groups, who once inhabited the lowlands... are in danger of being driven farther away from their present homes. The members of other larger minority groups, to this day, find it difficult to secure titles and other rights to the lands which they occupy.[9]

In November, 1981, the Catholic Bishops' Conference of the Philippines, Episcopal Commission on Tribal Filipinos was moved to exclaim:

> Our tribal and Muslim brothers are at a critical juncture in their history. Their very *survival* is under threat of a manifold attack centered at the very basis of their culture and livelihood — their *land.* (Emphasis in original,)[10]

This Article will demonstrate that these developments have not, are not and presumably will not take place in a legal vacuum. More important, it will refute the common notion that Tribal Filipinos are squaters on government land. Rather, it will be shown that Tribal Filipinos have constitutionally protected rights to possession, occupation and ownership of their ancestral lands.

The Article is an introductory survey of laws and policies which affect the tribal claim to land. It is an attempt to clear up decades of ambiguity and confusion surrounding the term "ancestral land" and the rights which it connotes. The author's prayer is that Tribal Filipinos will benefit from the remarkable array of progressive, yet unimplemented, legislation, case law and policies promulgated on their behalf.

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of March 11, 1974 which have been "occupied and cultivated by members of the National Cultural Communities" for at least ten years. The author, however, uses a more conservative definition. In this paper, ancestral land refers to areas occupied by Tribal Filipinos since at least July 4, 1955. See Com. Act No. 144 (1936), sec. 44 as amended. Original ancestral lands are lands occupied by Tribal Filipinos prior to 1850.

[8] Quoted in S. Rpt. *On the Problems of Philippine Cultural Minorities*, p. 15-16.

[9] *Id.* at 16.

[10] TRIBAL FORUM, September-October, 1981, p. 26.

I. *Tribal Filipino Overview*

Tribal Filipinos are a varied lot. Traditionally, they survive on a subsistence economy far removed from technological innovation. The inevitable shift to a cash based economy, however, is now underway in many, if not most tribal communities. This advent of "civilization" has been marked by men in *baags* listening to transistor radios and bashful children soaking their teeth with sugar coated candy. The cash economy has also, for many Tribal Filipinos, meant greater poverty and servitude by way of financial debt and tenant labor. Stories aboud in virtually every tribal community of family and friends who desperately needed cash and mortgaged or sold their ancestral estates for meager sums. Some will tell of being driven by gun from their ancestral homes. Multinational and domestic corporations, and lowland entrepreneurs in search of the Philippine dream all threaten the ancestral lands of Tribal Filipinos.

It is unwise to overemphasize the sufferings or attributes of Tribal Filipinos. As in every society, tribal communities are home to honest, hard-working citizens as well as misfits of less than reputable character. But amidst the pain and poverty, there is an ambience in most tribal communities which cannot fail to charm those in search of the indigenous, oriental Philippines.

No one knows how many Tribal Filipinos still reside on their original, ancestral grounds. It is estimated that 80% of the Igorot Tribes still cultivate the same land farmed by their ancestors centuries ago.[11] Like the Igorots, the Muslim Tribes fought the encrouchers and today, many still occupy the lands of their forefathers.[12] Other tribes in the remote uplands

[11] Interview with Carol Brady de Raedt, Cordillera Studies Center, in Quezon City, March 12, 1982.

[12] See GOWING, MUSLIM FILIPINOS (1975).

[13] Bennagen, *On the Long Road to History at Last*, PHIL. COLLEGIAN, August 7, 1980; reprinted in 2 SANDUGO 10 (March 1982).

of Palawan, Mindoro and Mindanao cultivate original, ancestral lands. But many Tribal Filipinos have been forced to relocate.

Tribal Filipinos belong to more than 100 entholinguistic groups[13] and except for the eastern Visayas, can be found throughout the archipelago. According to the 1981 Philippine Yearbook, the population of the Non-Muslim Hilltribes is 4.5 million. Specific population figures for Muslim Filipinos are more difficult to obtain. Estimates range from three to five million.[14]

The Non-Muslim Hilltribes can be classified into six major groupings.[15] The Cordillera peoples, or Igorots, of northern Luzon number over 800,000. The Caraballo Tribes inhabit the Caraballo mountain range in east, central Luzon. Their population is estimated at more than 130,000. In Mindoro, there are over 130,000 Mangyans. The Palawan hilltribes also number more than 130,000. The most widely distributed Tribal Filipinos are the Negritos who suffer additional discrimination because of their dark skin and kinky hair. The Negritos were the first inhabitants of the Philippines. From Agusan to the Cagayan Valley, they number over 130,000. The Non-Muslim Hilltribes of Mindanao fall under the generic term, Lumad, which embraces more than 2.2 million citizens.

The largest Muslim group is the Maranao who inhabit the provinces surrounding Lake Lanao in central Mindanao and number over 750,000. The Maguindanao of west, central Mindanao comprise more than a half million Filipino citizens. The Samals in Tawi-Tawi are estimated at 250,000. The Yakans of Basilan number some 200,000. The Sangils occupy the lands surrounding the Sarangani Strait. Their total population is over 77,000. Numerous smaller Muslim groups are also found throughout Mindanao and the Sulu archipelago.

The heavy concentration of Tribal Filipinos in the south bears special note. Of the conservatively estimated 7.5 million Tribal Filipinos, more than 5.2 million live in Mindanao and Sulu archipelago. They comprise over 56% of the total population. Years ago, their ancestors were the only inhabitants. Tolay, they are a diminishing majority. The continuing increase in corporate activity — both foreign and domestic — and the migratory waves of Christian Filipinos guarantee that Mindanao will continue to be a land of conflict, as well as promise, for the foreseeable future.

Most Tribal Filipinos are believed to live on lands of the "public" domain. As of 1980, classified public lands totaled 16.7 million hectares

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[14] The Moro Research Group is reported as having provided the figure of three million in a paper entitled *"The Moro People's Struggle For Self-Determination"*. The Dean of the Institute of Islamic Studies, University of the Philippines, Abdulrafih H. Sayedy believes the correct figure is approximately five million. The major Manila newspapers often cite the larger figure.

[15] TRIBAL FORUM at 3. The population breakdown of the Non-Muslim Hilltribes is taken from TRIBAL FORUM pp. 3-5; the Muslim Filipino breakdown is provided by by the Moro Research Group and quoted in Tribal Forum pp. 24-25.

or 55% of the total land area of the Philippines.[16] Exact figures are as yet impossible to obtain but a reasonable guess is that more than 7.5 million Filipinos live on these lands,[17] including at least 4.5 million Tribal Filipinos. Expressed another way, 65% of all Filipinos living on "public" land today are tribal. Twenty years ago, before the advent of large scale Christian migration, the figure was undoubtedly higher.

II. *Indigenous Custom Law*

The earliest known inhabitant of the Philippine Islands, the Tabon Man of Palawan, has been tentatively dated as having lived between 20,000 B.C. to 28,000 B.C.[18] Since all vertebrates, including human beings, "manifest in varying forms and with varying degrees of intensity, territorial behavior"[19] it is a given that prior to Ferdinand Magellan's arrival in 1521, the Filipino people had been developing indigenous property concepts for more than 21,500 years. When Magellan laid claim to the Philippine Islands, these concepts were at various stages of development ranging from primitive communal to Asiatic feudal in the Muslim south.[20] As in many tribal communities today, however, generalized patterns of territorial behavior — or ownership — existed throughout the archipelago.

"It was a widespread custom in the large islands of the Pacific that any man acquired for himself and his close kin long term rights to land which he cleared from virgin bush, at least as long as it was used."[21] The latter practice insured that the prime agricultural land would not be indefinitely idle. In addition, there was no need to record in writing the acquisition or conveyance of land. Kinship, communal affiliation and local custom were sufficient guarantors of land tenure.[22]

When describing indigenous property concepts, pre-conquest and contemporary, the use of the terms "individual" and "communal" can be misleading. The terms often "are based on the false assumption that all rights are held either by individuals or by the community. They obscure the fact that in all tenure systems there are multiple rights to all lands."[23]

> There is no land tenure system in existence today wherein all rights to any parcel of land are held by a single party ... Although it is not property but rights in relation to property that are owned, popular usage

[16] MNR Bureau of Lands figures for year end, 1980.

[17] The MNR Bureau of Forest Development Upland Development Working Group quotes the 7.5 million population estimate in its brochure, *BFD Upland Development Program* (1981).

[18] JOCANO, PHILIPPINE PREHISTORY 9 (1975).

[19] LUNDSGAARDE (ED.), LAND TENURE IN OCEANIA 2 (1974).

[20] CONSTANTINO, A PAST REVISITED 32 (1975).

[21] CROCOMBE, LAND TENURE IN THE PACIFIC 2 (1971).

[22] FERNANDEZ, CUSTOM LAW IN PRE-CONQUEST PHILIPPINES pp. 103-104 (1976) (hereafter referred to as CUSTOM LAW); MAÑALAC, THE DEVELOPMENT OF LAND LAWS AND REGISTRATION IN THE PHILIPPINES 1-5 (1960).

[23] LUNDSGAARDE, *supra*, note 19.

> speaks of property itself as being owned . . . Particularly in tribal societies, use of the word 'ownership' tends to oversimplify a complex reality and to prevent understanding the true nature of the relationship involved.[24]

Non-Western systems of ownership are among the most difficult aspects of culture for Westerners to understand.[25] Filipino lawyers versed in the intricacies of the American Public Land Act[26] can appreciate this difficulty.

> Westerners' 'rights' are not directly to land, but rather to a piece of the map. Should the map be declared 'wrong' as a result of an erroneous survey . . . we own the piece of land which corresponds to the map under the new survey, not the piece of land that we earlier demarcated by territorial signs.[27]

There is a growing concern in the Philippine legal profession about the imposition of foreign concepts which disregard intricate, indigenous custom. This is not an esoteric concern. In virtually every Tribal Filipino community, as well as many lowland villages, customary property laws determine the communal and individual right to utilize and own land. Hunter-gatherer Negritos consider "well defined forest areas as their own hunting and gathering territories."[28] Among the Islamized ethnic groups "land areas found within the territory of a community not claimed or occupied by a member of the community are considered the common property of the people living in the area; they constitute their ancestral lands."[29] These communal, territorial concepts are also recognized in the Igorot peace pacts, or *bodong*, which define communal boundaries.

In most Tribal Filipino communities, the property laws of custom are orally transmitted from generation to generation. These custom laws determine individual and communal property rights of ownership, possession, conveyance, marriage and inheritance. Among the Ifugao, "there are no laws in which geneologies and pedigrees are so important and, in the line of Ifugao reasoning, so necessary as in the property laws."[30] Not surprisingly, the disregard of ancient custom in lieu of Western land laws has caused tension, conflict and death in many tribal communities.

> As long as laws are applied to the people that originally produced them, conflict situations may be expected to remain at a minimum. However, when such laws are transported bodily to another people, problems . . . are bound to arise.[31]

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24 *Ibid.*

25 KIEFFER, CONTINUITY AND CHANGE; FROM FARM TENURE TO LAND TENURE ON JOLO: SOME ASPECTS OF CHANGE IN TAUSUG LAND LAW 10 (1978).

26 Com. Act No. 141 (1936) as amended.

27 Bohannon *'Land', 'Tenure' and Land Tenure in* BIEBUYCH (ED.), AFRICAN AGRARIAN SYSTEMS 103 (1963).

28 Maceda, *Survey of Landed Property Concepts and Practices among the Marginal Agriculturists of the Philippines,* PHIL. QUARTETLY OF CULTURE AND SOCIETY 2 (1-2): 7 (1974).

29 *Id.* at 11.

30 Lambrecht, *Property Laws of Custom among Ifugaos,* 11 SILIMAN JOURNAL 57 (1964).

31 Maceda, *op. cit., supra* at 6.

Unfortunately there is a paucity of research concerning Philippine custom law and in particular, indigenous property concepts. But lands held pursuant to "native custom and long association" are constitutionally protected and presumed to "never have been public land."[32] For this reason alone it is imperative that there be a better understanding of customary property concepts. A better understanding of indigenous custom law in general would not only help the beleaguered ethnic groups. It would provide the basis for a more culturally suited legal system, and more important, for the socio-cultural reconstruction of the Philippine nation.

> Colonial rule brought the various islands and their peoples under one government. This political integration was not accompanied by socio-cultural integration. Hence, the Filipino, like many other societies that emerged from colonial rule, enjoyed political unity ahead of nationhood. As in many Asian and African states today, the primary direction of public effort in the Philippines is the building of a Nation.
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> The key to such effort is cultural reconstruction and infusion in the direction of a national tradition .... Much work remains to be done.[33]

III. *The Spanish Era*

Magellan's claim on behalf of the Crown to all lands in the archipelago was modified over the years by the Spanish monarchs.[34] The indigenous concept of ownership by occupation and cultivation was recognized early on by the *Laws of the Indies* which governed Spanish possessions in the Philippines and elsewrere. Between 1523 and 1646 at least twenty-one laws were enacted which made clear that the distribution of land rights to loyal Spanish subjects was not to impair the rights and interests of the natives in their holdings.[35] ,

> The 'Laws of the Indies' show a continuous, consistent and conscientious purpose to protect the native inhabitants in their persons, liberties and possessions, to secure their property rights against Spanish greed and native improvidence.[36]

The Royal Decree of October 15, 1754 stated that "justified long and continuous possession" by the natives qualified them for title to their cultivated land. "Where such possessors shall not be able to produce title

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[32] Cariño v. Insular Government 41 Phil. 935, 941 (1909). See discussion *infra, The Cariño Decision.*

[33] FERNANDEZ, CUSTOM LAW, *op cit.*, note 22 at iii; See FERNANDEZ *Towards A Recognition of National Policy on Recognition of Ethnic Law Within the Philippine Legal Order,* 55 PHIL. L.J. 383 (1980).

[34] MAÑALAC, *supra,* note 22 at 6-49; *see generally* PEÑA, LAND TITLES AND DEEDS 1-130 (1975).

[35] Laws of the Indies: Book 2, Title 1, Laws 4 (1555) and 5 (1529); Book 4, Title 2, Laws 6 (1621), 8 (1523) and 10; Book 4, Title 12, Laws 5 (1532), 7 (1588), 9(1594), 14 (1578), 16 (1531, 17 (1546), 18 (1642) and 19 (1646); Book 6, Title 1, Laws 1 (1580), 15 (1574), 23 (1609), 27 (1571), 30 (1546) and 32 (1580); Book 6, Title 3, Laws 9 (1580) and 26 (1528). Compiled in "Brief on Behalf of Plaintiff in Error", Supreme Court of the United States, October Term 1907, Cariño v. Insular Government pp. 20-36 (hereinafter referred to as Petitioner's Brief).

[36] Petitioner's Brief at 20.

deeds, it shall be sufficient if they shall show ancient possessions as a valid title."[37] The Royal Cedula Circular of March 3, 1798 expounded on this principle.[38] It declared "the will of the 'Crown' as expressed in various instructions, royal edicts, orders and decrees, that the distribution of lands to *conquistadores*' discoverers, and settlers should never prejudice the natives and their land-holdings." On June 25, 1880, another Royal Decree emphasized that all persons in possession of real property were to be considered owners provided they had in good faith occupied and possessed their claimed land for at least ten years.[39]

In order to register and tax lands held pursuant to the 1880 Decree, the Spanish Mortgage Law was adopted and became effective in the Philippines on July 24, 1893.[40] The Mortgage Law provided for the systematic registration of land titles and deeds as well as for possessory claims. Under its provisions "owners who lack recorded title of ownership" could have their interests registered during a possessory information proceeding before *informacion posesoria* to qualified applicants. The *titulo* was merely a record of possession. It could be converted into a record of ownership, however, twenty years (later reduced to ten years) after its date of issue, if certain conditions were met.

Not surprisingly, most natives did not avail themselves of the Mortgage Law provisions. Abuses by public officials, a general lack of faith in the colonial government, and wide-spread illiteracy kept most people away and unaware.[41] In response, the Royal Decree of February 13, 1894 or "Maura Law" was issued.[42] This was the last Spanish land law promulgated in the Philippines. The Decree's preamble claimed that the Maura Law was intended to "insure to the natives, in the future, whenever it may be possible, the necessary land for cultivation, in accordance with traditional usages." Article 4 of the Maura Law, however, revealed a different purpose: "The title to all agricultural lands which were capable of adjustment under the Royal Decree of . . . 1880, but the adjustment of which has not been sought at the time of promulgation of this Decree . . . will revert to the State. Any claim to such lands by those who might have applied for adjustment of the same but have not done so at the above mentioned date, will not avail themselves in any way or at any time."

Four years later, on December 10, 1898, Spain ceded the Philippines to the United States via the Treaty of Paris. In Article VIII of the Treaty, Spain relinquished and ceded "all immovable properties which in conformity with law, belong to the Crown of Spain." The Treaty was explicit, however,

37 CARIÑO, *supra,* note 32 at 942; See also, MAÑALAC, *supra,* note 21 at 10-12.
38 MAÑALAC, *supra,* note 22 at 12-13.
39 *Id.* at 17-21.
40 *Id.* at 35-39; See also Chapter III "Registration Under the Spanish Mortgage Law" 50.80.
41 *Id.* at 39. CONSTANTINO, *op cit.* note 20 at 47.
42 *Id.* at 38-49.

that "the relinquishment and cession . . . cannot in any respect impair the property rights which by law belong to peaceful possession."[43]

IV. *Native Title*

A. *The Cariño Decision*—

By 1902, the new colonialists had tamed, suppressed or eliminated a majority of their more reluctant subjects and proceeded to the business of establishing a civil government.[44] On July 1, the "Philippine Bill" was passed by the U.S. Congress.[45] It extended to the Filipino people most of the constitutional guarantees found in the American Bill of Rights, including the provisions that no person shall be deprived of private property without due process of law and just compensation.[46] Section 13 provided the Insular Government, the Philippine Commission, with authority to promulgate regulations for the disposition of public lands. This included the authority to classify public land according to its agricultural character and productiveness. Section 14 authorized the government to prescribe terms for perfecting title to lands if some, but not all of the Spanish prerequisites had been complied with. Section 16 stipulated that in the granting or selling of any part of the public domain, "preference in all cases shall be given to actual occupants." Soon after the Philippine Bill was enacted, the Commission passed the Land Registration Act[47] which provided for the voluntary registration of title to land through a Court of Land Registration. Among its many duties, the Court was empowered to adjudicate conflicting claims to title.

On June 22, 1903, Mateo Cariño, an Igorot filed a petition in the Court of Land Registration asking that he be registered as the owner of a 146 hectare parcel of original, ancestral land in Benguet Province which had been used for swidden agriculture and pasture.[48] Cariño presented no documentary evidence of title other than a *titulo de informacion posesoria* obtained in 1901. He claimed that he and his ancestors had used and occupied the land since time immemorial. Cariño asserted that he had inherited the land from his father in accordance with Igorot custom and that a grant to him was to be conclusively presumed.

Although opposed by the Philippine and United States governments, the Court of Land Registration approved the petition. On appeal, the Benguet Court of First Instance reversed. This was upheld by the Philippine Supreme Court in 1906 in the case of *Cariño v. Insular Government*.[49] The

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[43] *Id.* at 82.
[44] CONSTANTINO, *op cit.* note 20 at 204-300.
[45] U.S. Act of Congress, July 1, 1902.
[46] *Id.* at sec. 5.
[47] Act No. 496 (1902).
[48] Petitioner's Brief, supra note 35 at 2-3. The Brief states that Cariño "cultivated camotes (potatoes) and palay rice and . . . pastured his cattle."
[49] 7 Phil. 132 (1906).

Court cited Article 4 of the Maura Law which purported to sever the rights of those who had failed as of 1894 to apply for title to the lands they had occupied and cultivated. Then, in a tone reflecting disdain that Tribal Filipino would even consider availing himself of the legal rights established by the Spanish, an American, Justice Charles A. Willard, writing for the majority revealed a classic colonial mentality:

> The surrounding circumstances are incomplete with the existence of a grant. It is known that for nearly three hundred years, all attempts to convert the Igorots ... to the Christian religion completely failed, and that during that time, they remained practically in the same condition as they were when the Islands were first occupied by the Spaniards. To presume as a matter of fact that during that time ... the provision of the laws relating to ... the public lands were taken advantaged of by these uncivilized people ... would be to presume something which did not exist.[50]

In other words, the right to a grant from the American Government, eight years after the Philippines was acquired from Spain, was premised on whether the applicant submitted to Spanish colonialists.

Remarkably, the decision reached the U.S. Supreme Court by writ of error. Cariño, through his attorneys, claimed that if Philippine Supreme Court decision was affirmed,

> the whole Igoot nation may be driven as 'lawless squatters' from land which their fathers held before Spanish explorers set out in quest of the Indies. So unjust and startling a result cannot be reached without a reversion to legal notions of property and social order incompatible with any stage of civilization above barbarism.[51]

The Supreme Court agreed. It reversed the Philippine decision and held that Cariño owned the land in question.[52] Justice Oliver Wendell Holmes, writing for the majority, stated that even if the petitioner's land belonged to Spain when the Treaty of Paris was signed, the new sovereign was not obliged to assert the same powers as the old sovereign. The Court acknowledged that Spanish officials would likely not have granted land registration to Benguet Igorots. But that did not mean the petitioner had lost all his rights under U.S. law. "The argument to that effect seems to amount to a denial of native titles for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce."[53]

The Court invoked the due process clause of the Philippine Bill and declared:

> it is hard to believe that the United States ... meant by 'property' only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat

[50] *Id.* at 134.
[51] Petitioner's Brief, *op cit.* note 32.
[52] Cariño, *op cit.* note 31, 41 Phil. 935.
[53] *Id.* at 939.

> as public land what they, by native custom and by long association, one of the profoundest factors in human thought, regarded as their own.[54]

The Court continued:

> every presumption is and ought to be against the government in a case like the present ... When, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.[55]

The Court reasoned that although Section 14 of the Philippine Bill empowered the Philippine Government to set conditions for perfecting titles, the provision should be "confined to cases where the occupation was of land admitted to be public, and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners."[56] Finally, if there was lingering doubt about the Maura Law's effect on native titles, the Court observed that the Decree of 1880 "was not calculated to convey to the mind of an Igorot chief the notion that ancient family possessions were in danger, if he had read every word of it."[57] Rather, although there were indications that the Maura Law was intended to register all privately held land, the Decree as written did not establish that for want of registration, ownership already acquired would be lost. The Decree "should not be construed as a confiscation, but as the withdrawal of a privilege" to acquire and register title.[58]

Cariño remains a landmark decision. It establishes an important precedent in Philippine jurisprudence: Igorots, and by logical extension other Tribal Filipinos with comparable customs and long associations, have constitutionally protected native titles to their ancestral lands. A subsequent Philippine Supreme Court decision held that this includes the right to register native titles under the Torrens system.[59]

Cariño's attorneys and the American Justices, however, were not anthropologists. This might explain why there is no mention of communal ownership in the decision. As discussed,[60] the term communal can be misleading. Nevertheless, among the Igorots and other tribal groups — as well as in pre-conquest societies — communal customs determine rights to land. These customs reflect historical patterns of usage. They benefit tribal communities — and could benefit certain lowland communities as well — in that communal ownership serves as restraint on alienation. The pressures on poor farmers to sell their land after a bad harvest or during a family illness are immense. Cash alleviates the immediate suffering. But in the

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[54] *Id.* at 940.
[55] *Id.* at 941.
[56] *Id.* at 940-941.
[57] *Id.* at 944.
[58] *Ibid.*
[59] Abaog v. Director of Lands, 45 Phil. 518 (1923).
[60] *Op. cit.* note 23.

long term, loss of land ownership aggravates the misery of being poor. Poor Filipinos generally are vulnerable to these pressures. Tribal Filipinos are particularly vulnerable.[61] Most are not aware of the long term implications of selling land. Indeed, many Tribal Filipinos cannot understand how something as basic and natural as land can be sold.

Cariño's emphasis on native custom and long association, lays a legal foundation for the argument that, in terms of national law, the ancestral lands of some Tribal Filipinos are owned pursuant to private, communal title. In a legal system dominated by non-indigenous thought, however, the idea of communal ownership may trouble the traditional lawyer. But even Anglo-Saxon systems of jurisprudence provide that lands can be owned in common or jointly and severally. These concepts apply to native title. Cariño titled his land pursuant to the Land Registration Act. Its successor, the Property Registration Decree provides that "Where the land is owned in common, all the co-owners shall apply jointly.[62]

B. *The Public Land Acts and the Property Registration Decree*

Shortly after Cariño filed his petition for registration, the Philippine Commission passed the first Public Land Act[63] which among other things provided that:

> All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive and notorious possession and occupation of agricultural public land ... under a bona fide claim of ownership ... for a period of ten years ... shall be *conclusively presumed* to have performed all conditions essential to a goversment grant and to have received the same, and shall be entitled to a certificate to such land. (Emphasis supplied.)[64]

Although the concept remains intact, the provision was structurally rewritten and amended in 1919[65] and 1936.[66] Today, natural born Philippine citizens who do not already own more than twenty-four hectares of land and who have since July 4, 1945, continuously occupied and cultivated either by themselves or their predecessors-in-interest "agricultural lands subject to disposition . . . shall be entitled" to an administrative government grant of up to twenty-four hectares.[67] This method of executive recognition is the responsibility of the Bureau of Lands which issues free patents to qualified grantees. Philippine citizens who have been in open, continuous

61 Pres. Decree No. 410 implicitly recognized this fact by providing in sec. 5 that "No land granted in accordance with this Decree shall be transferred sold or otherwise alienated within a period of ten (10) years after acquisition. Many Tribal Filipinos, however, have owned their lands pursuant to native title for more than ten years.

62 Pres. Decree No. 1529, sec. 14 (4) (1976).

63 Act No. 926 (1903).

64 *Id.* at chapt. VIII.

65 Act No. 2874 (1919).

66 Com. Act No. 141 (1936).

67 *Id.* at sec. 44. See discussion *infra, The The Manahan Amendments.*

exclusive and notorious[68] possession[69] and occupation of "agricultural lands of the public domain" under a *bona fide*[70] claim of "acquisition of ownership" since June 12, 1945 are "conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title."[71] This entitlement is provided by judicial confirmation in the Court of First Instance which has jurisdiction over the affected property. In *Herico v.Dar,*[72] the Supreme Court of the Philippines recently reaffirmed that when these provisions "are complied with, the possessor is deemed to have acquired, *by operation of law,* a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain." *Herico* reaffirmed earlier rulings in *Susi v. Razon*[73] and *Mesina v. Pinela Vda. de Sonza.*[74]

The free patent and judicial confirmation provisions build on and reinforce the claim to native title.[75] Unlike *Cariño,* however, the Public Land Arts do not require that land be held by individuals under a rlaim of private ownership for "as far back as testimony or memory goes."[76] Under the current Public Land Act, occupation and possession or cultivation for thirty-seven years is sufficient.

Although the Act applies to all public land, its scope is limited to agricultural lands "which have been officially delimited and classified, and when practicable, surveyed, and which have not . . . in any manner become private property."[77] The Act's private property proviso exempts land owned pursuant to native title from the classifisation requirement. In fact, lands held pursuant to native titles are not public and technically should not fall under the Public Land Act. In order to satisfy the government's legitimate and compelling interest in knowing what lands belong to the public domain, native titles should be recorded pursuant to the Property Registration Decree. According to the Decree, the following persons may apply in the proper Court of First Instance for registration of title to land:

> Those who by themselves or their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of

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[68] If the occupation was sufficient to appraise the community that the land was for the enjoyment of the occupier, the possession is open and notorious. Ramos v. Director of Lands, 39 Phil. 175, 180 (1918).

[69] Possession need not be actual. "Possession and cultivation of a tract under claim of ownership of all is a constructive possession of all, if the remainder is not in the adverse possession of another." Ramos at 180. See Rep. Act No. 386 (1949), CIVIL CODE, Chapt. I "Possession and the the Kinds Thereof", arts. 523-61.

[70] "Good faith is always presumed." CIVIL CODE, art. 527. See also Art. 526.

[71] Com. Act No. 141. See 48(b). See discussion *infra, The Manahan Amendments.*

[72] G.R. No. 23265, January 22. 1980, 95 SCRA 437 (1980).

[73] 48 Phil. 424 (1925).

[74] 108 Phil. 251 (1960).

[75] Susi, *supra* note 71 at 427.

[76] Cariño, *op cit.* note 32 at 941.

[77] Com. Act No. 141 (1936), as amended, sec. 8.

> alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier ...
>
> Those who have acquired ownership of land in any other manner provided for by law.[78]

Native titles fall squarely within these provisions. At present, however, the registration of native titles pursuant to the Property Registration Decree is not permitted.

Prior to 1977, it was erroneously believed that ancestral lands covered by native title must first be classified by the Bureau of Forest Development as alienable and disposable.[79] Since then, the relevant provisions on judicial confirmation have been amended "in the sense that these provisions shall apply only to alienable and disposable lands of the public domain.[80] The amendment, however, should not affect native titles.

Cariño recognized that native titles were acquired prior to the existence of the Philippine Republic and the American colonial regime. Indeed, many native titles were acquired prior to Magellan's arrival in 1521. Ancestral lands covered by native title are presumed "never to have been public land."[81] Technically, the recognition of native titles should not be processed via the Public Land Act. This procedure is a governmental convenience. After all, it will be recalled that Mateo Cariño processed his application pursuant to the Land Registration Act, the legal predecessor to the Property Registration Decree.

The argument that *ex post facto* amendments to the Public Land Act preclude future recognition of native titles "seems to amount to the denial of native titles . . ' for the want of ceremonies" which for most Tribal Filipinos have never been permitted.[82]

In their struggle for survival and cultural integrity, Tribal Filipinos have generally not been aware of non-indigenous, legal procedures for the acquisition and recognition of title. Rights to land are determined by indigenous custom law. *Cariño* acknowledged this fact and by moral, customary and legal standards of justice recognized native title. In *Herico*, the Supreme Court once again implicitly reaffirmed that Tribal Filipinos own their original, ancestral lands. The Court explicitly reaffirmed that Filipino citizens, who have occupied and cultivated public, agricultural land for at least thirty-seven years, have acquired vested rights of ownership.

Cariño and *Herico* are brilliant compromises between the rights of the remote, rural poor to ownership of land and the need of the government to systematically record ownership of the Philippine frontier. The difficulty

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[78] Pres. Decree No. 1529 (1978) sec. 14 (1) and (4).

[79] See discussion *infra, The Classification of Public Agricultural Land.*

[80] Pres. Decree No. 1073 (1977), sec. 4. But see Com. Act No. 141 (1936), as amended, Secs. 44, par. (2) and 48(c). Discussed *infra, The Manahan Amendments.*

[81] Cariño, *op cit.* note 32 at 941. Accord, Herico, *supra,* note 72 at 95 SCRA 437, 443 (1980).

[82] *Id.* at 939.

of the government's administrative duty, however, should not negate pre-conquest customs which have been reaffirmed by successive Spanish, American and sovereign governments: land which has been occupied and cultivated since time immemorial is owned by the successor-in-interest. The application for recognition of title to such land is a "mere formality."[83] The lack of application "does not affect the legal sufficiency of the title."[84] Simvly put: "title over the land has vested."[85]

C. *Vested Rights and Constitutional Protection*

Vested rights are immediate, fixed rights of present and future enjoyment to privately owned land.[86] Being vested, they enjoy constitutional protection.[87] Vested rights are in contradiction to inchoate, expectant or contingent rights such as those of homestead applicants who must comply with requisite application procedures before the land becomes private in nature and the right to ownership vests.[88] One year prior to Philippine flag independence, the U.S. Supreme Court defined vested property rights as "the group of rights inhering in the citizen's relations to the physical thing, as the right to possess, use and dispose of it.... The Constitutional provision is addressed to every sort of interest the citizens may possess."[89]

Constitutionally mandated due process, however, does not prevent the government from taking the private property of Philippine citizens pursuant to eminent domain proceedings,[90] or by exercise of the police power.[91] But due process does require that before the government can legally confiscate vested property rights, it must at minimum give the owner prior notice of the confiscation plan and a meaningful opportunity to be heard before the land is taken.[92] These procedures are constitutionally mandated to "promote social justice...ensure the dignity, welfare and security of all the people...and equitably diffuse property ownership."[93] If, after the land owner has expressed his views on the proposed confiscation, the government proceeds to take the land, just compensation must be paid.[94]

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[83] Herico, *supra*, note 72 at 944.

[84] *Ibid.*

[85] *Id.* at 943.

[86] Pearsall v. Great No. R.R. 161 U.S. 646 (1895), cited in Benguet Consolidated Mining Co. v. Pineda, 98 Phil. 711, 122 (1956); Once vested, a right does not require for its preservation the continued existence of the power by which it was acquired. Donnes v. Director of Land, G.R. No. 9302, May 14, 1956, 99 Phil. 1029 (unrep., 1956).

[87] Balbao v. Farrales, 51 Phil. 498 (1928). See also Development Bank of the Philippines v. Court of Appeals, G.R. No. 28774, February 28, 1980, 96 SCRA 342.

[88] Quiaoit v. Consolacion, G.R. No. 418224, September 30, 1976, 73 SCRA 208 (1976).

[89] United States v. General Motors Corp., 232 U.S. 373, 378 (1945).

[90] Visayan Refining Co. v. Camus, 40 Phil. 550 (1919).

[91] Procter and Gamble Philippine Manufacturing Corp. v. Municipality of Jagna, Bohol, G.R. No. 24265, December 28, 1979, 94 SCRA 894.

[92] Abuan v. Valera, G.R. No. 42452, August 10, 1976, 72 SCRA 301 (1976); Luzon Surety v. Panageriton, G.R. No. 26054, July 21, 1978, 84 SCRA 148.

[93] CONST., art. III, sec. 6.

[94] CONST., art. III, sec. 1(1); CONST., art. IV, sec. 1.

Just compensation in expropriation proceedings is defined by the Real Property Tax Code as "the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the provincial assessor, whichever is lower.[95] The assessor's figure, however, cannot be arbitrary or capricious; otherwise, it will be subject to judicial review.[96]

D. *The Classification of Public Agricultural Land*

Lands owned by Tribal Filipinos pursuant to *Cariño* are "presumed . . . to never have been public land."[97] These native titles vested long before the alienation of public land was limited to agricultural property. The Public Land Acts, however, are limited in coverage to "agricultural public land." The legal significance to Tribal Filipinos of this limitation should be minimal. The primary occupation of most Tribal Filipinos is agriculture. As such, a large portion of their lands necessarily have been devoted to agricultural purposes. Logic, common sense and the Real Estate Tax Code dictate the conclusion that these lands are agricultural in nature. The Tax Code defines agricultural land as:

> Land devoted principally to the raising of crops such as rice, corn, cane, tobacco, coconut, etc., or to pasturing, dairying, inland fishery, salt making, and other agricultural uses, including timber and forest lands.[98]

The Royal Decree of 1881 was the first official attempt to classify disposable public land. As discussed earlier, however, the Spanish colonialists recognized the existing property rights of native inhabitants.[99] These lands were not considered to be government-owned. In 1902, the Philippine Bill[100] authorized the colonial government to classify public lands according to "agricultural character and productiveness" and to "make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands.[101] Timber lands could not be sold or leased until the Forestry Bureau certified that "said lands are more valuable for agriculture than for forest uses."[102] The Bureau of Public Lands was authorized to "summarily determine by inquiry of the Chief of the Bureau of Forestry, and from available land records" whether public lands were subject to encourage settlement throughout the country.

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95 Pres. Decree No. 464 (1974), sec. 92.
96 Ang Eng Chong v. Collector of Customs, 23 Phil. 614 (1912); Maribojoc v. Guzman, 109 Phil. 833 (1960).
97 Cariño, *op cit.* note 32 at 941.
98 Pres. Decree No. 464 (1974), sec. 3(c).
99 See discussion *infra, The Spanish Era.*
100 U.S. Act of Congress of July 2, 1902, (PHILIPPINE BILL 1902).
101 *Id.* at sec. 13.
102 *Id.* at sec. 18.
103 Act No. 926 (1903), sec. 2.

In 1908, the Philippine Supreme Court ruled that "public lands which are not timber or mineral lands are necessarily agricultural public lands whether they are used as nipa swamps, manglares, fisheries or ordinary farm lands." *Mapa v. Insular Government.*[104] Ten years later, in *Ramos v. Director of Lands,*[105] the Supreme Court expanded on the definition and said that the "presumption should be, in lieu of contrary proof, that land is agricultural in nature."[106]

It appears, however, that during the ensuing years, there was a profound but gradual change in public land policy. Contrary to the rulings in *Mapa* and *Ramos,* the Forestry Bureau began to presume that lands were to be classified as agricultural only if the Director of Forestry did not consider them to be forest. In other words, the *Ramos* presumption was inverted. Public lands were presumed to be forest unless classified as agricultural. This unheralded policy shift towards a pro-forest presumption was undoubtedly spurred on by the tendency within all bureaucracies to expand their scope and authority to the widest possible limits. Originally, the presumption served to provide the colonial governments with greater control over the disposition of allegedly public land. The presumption shifted the burden to applicants for recognition of title to establish that their lands were agricultural. Failure to overcome the burden, meant failure of the application, at least insofar as the statutory land laws were concerned.[107] Several Supreme Court decisions reinforced the pro-forest presumption by demurring to the Forestry Bureau in controversies involving the classification of public land.[108] In 1966, the Court of Appeals, *in Vicente v. Director of Forestry,* went so far as to say that the *Mapa* and *Ramos* precedents were no longer controlling because they were decided when "there was no fixed and definite system of classification of public lands. Hence, the courts were free to decide . . . whether the land involved in a case brought before them belongs to one category or another, depending on the proof submitted."[109] The appellate court reasoned that:

> Since the enactment of the second Public Land Act on November 29, 1919 . . . the decisions holding that a certain area may be agricultural, mineral or forest lands according to their evidence have lost their force and efficacy because said act expressly vested in the Chief Executive the power to classify lands of the public domain.[110]

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[104] 10 Phil. 175, 182 (1908).

[105] 39 Phil. 175 (1918). See also Ankron v. Government, 40 Phil. 10 (1919). "It is a matter of public knowledge that a majority of the land in the Philippine Islands are agricultural lands." *Id* at 16.

[106] Ramos, *supra* at 186.

[107] Failure to meet the statutory burden, however, would not affect native title and the legal right to its recognition.

[108] Suarez v. Reyes, G.R. No. 19828, February 28, 1963, 7 SCRA 461 (1963); Republic of the Philippines v. De la Cruz, G.R. No. 35644, September 30, 1975; Director of Lands v. Abanzado, G.R. No. 21814, July 15, 1975.

[109] 10 C.A. Rep. 182, 189 (1966).

[110] *Id.* at 190.

Subsequent Supreme Court decisions, however, have not adopted the *Vicente* rationale. One reason is obvious. The Forestry Bureau was, and the Bureau of Forest Development is, an executive branch of government. Since the Philippine Bill of 1902 was enacted, the power to classify lands of the public domain has always vested in the Chief Executive, who has power of review over his subordinate. To hold that the legislature, by the second Public Land Act, banned the Supreme Court from any review of the executive's classification of "public" land, is in effect to abdicate the judiciary's role in the constitutional process of checks and balances.

The Court of Appeals was also premature in sounding the death knell for *Mapa* and *Ramos*. In *Director of Forestry v. Muñoz*,[111] the Supreme Court cited *Ramos* as support for the proposition that "before private interests have intervened, the government may decide for itself what portions of the public domain shall be set aside and reserved as forest land."[112] The clear implication is that once private interests have intervened, the government's classification powers are subject to limitation.

Traditionally, the Bureau of Forestry's classification was dependent on the analysis by professional foresters of the bio-physical factors existing in a given area such as slope, soil type, susceptibility to erosion, watershed proximity, etc. In the mid-70's, however, on the basis of a study conducted in 1954 by a professor of forestry,[113] it became national policy that for environmental reasons, a minimum of 42%, or 12,600,000 hectares of the nation's total land area must be retained for forest purposes. In response, the Revised Forestry Code established new land classification criteria.[114] The main criterion is that "No land of the public domain 18% in slope or over shall be classified as alienable and disposable" i.e.; agricultural.[115] The rationale is that approximately 42% of the nation's total land area is above 18% in slope. Additional criteria prohibit the classification of land less than 18% in slope as alienable and disposable. Those include "areas less than 250 hectares which are far from or not contiguous with any certified alienable and disposable land" and "areas previously proclaimed by the President as forest reserves."[116]

The criteria represent a dramatic departure from previous standards which gave primary consideration to prevailing local factors rather than standardized national ones. The criteria have been increasingly challenged:

> Viewed from the context of present technologies and development planning and needs, segregation based on the Forestry Code does not pro-

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111 G.R. No. 24796, June 28, 1968, 23 SCRA 1184 (1968).

112 *Id.* at 1199.

113 Address by Edmundo V. Cortes, Institute on the Legal Aspects of the Management and Development of Energy and Nathral Resources, University of the Philippines Law Center, in Quezon City, May 3, 1982. The article was written by Valentine Sajore and published in 1974 by FORESTRY LEAVES.

115 *Id.* at sec. 15. See discussion *infra The Manahan Amendments.* Land which rises 18 meters every 100 meters is 18% in slope.

116 *Id.* at sec. 16.

> vide adequate criteria for determining how lands can be economically exploited without endangering the eco-system while at the same time maintaining their production over a sustained period of time.[117]

In fact, pursuant to presidential directive, the 18% slope criterion will become irrelevant. Those directives instruct "the Ministry of Natural Resources to proclaim the remaining unsurveyed and unclassified lands of the public domain as forest lands."[118] Over seven million hectares are affected, or more than 23% of the nation's total land area.[119]

Traditionally, proclamations classifying public lands have been "subject to private rights."[120] It is expected that the pending proclamation will contain the private rights proviso. This will be a recognition of constitutional due process.[121] Indeed, the classification of public land should have no effect on the constitutionally protected, vested titles of long term occupants of public agricultural land in general and the native titles of Tribal Filipinos in particular. Long ago, these lands ceased to be of the public domain. The Revised Forestry Code acknowledges this fact by its recognition that private, titled rights of ownership exist within the forest zone.[122]

Qualified long term occupants, however, who by operation of law have acquired private title to agricultural lands located within unclassified portions of the public domain, or portions which have been inappropriately classified as forest, find it difficult, if not impossible, to acquire formal recognition of title in practical, non-theoretical terms unless they can surmount the classification hurdle. These same concerns affect Tribal Filipinos who, pursuant to custom and long association, as well as the Public Land Acts, hold native titles to their ancestral land. A classic example of the problem is that the centuries old, privately owned rice terraces of Northern Luzon, are classified as government forest land.[123]

The overboard classification scheme clashes with both the 1935 and 1973 constitutional provisions on private property and the government's taking of land. The classification criteria in Sections 15 and 16 of the Revised Forestry Code, in effect, authorize the Bureau of Forest Development to administratively cancel titles which are constitutionally protected, and in many cases have been held for centuries. The Revised Forestry Code fails to provide a mechanism for the adequate recognition and protection of the property rights of Philippine citizens whose titled lands either adjoin or are surrounded by the government forest zone. The inescapable conclusion is that Sections 15 and 16 are unconstitutional.

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117 Concepcion, *A Position Paper on Identification and Evaluation of Prime Agricultural Lands* 3 (1981).

118 Address by President Ferdinand E. Marcos to the *Batasang Pambansa,* January 20, 1982. The directives were not implemented as of June, 1982.

119 Bureau of Lands, *op cit.* note 16.

120 See discussion *supra, Private Right.*

121 CONST. (1935), art. III, sec. 1; CONST., art. IV, sec. 1.

122 Pres. Decree No. 705, sec. 3.

123 Proc. No. 217 (1929), establishing the Cordillera Forest Reserve.

E. *Colonial Attitudes and Indigenous Kaingeros*

Besides the imported prejudice against Tribal Filipinos, there exists a parallel prejudice towards swidden agriculture, or *kaingin* as it is known in the Philippines The widespread, colonially inspired hostility towards swidden agriculture is an oft cited justification for the refusal to recognize tribal ownership of land. This prejudice is reflected in the Revised Forestry Code which provides that the penalty for *kaingin* making "shall be imprisonment for not less than two (2) years nor more than four (4) years and a fine equal to eight (8) times the regular forest charges due on the forest products destroyed."[124]

Kaingin agriculture has for centuries sustained millions of Asia's poor. Today, virtually every Tribal Filipino community practices some form of *kaingin* agriculture. *Kaingins* are usually made on sloping lands which are cleared by burning back and cutting off the vegetative cover. Unlike fixed hillside farming, the cleared area is planted during one growing season to a wide variety of crops. Ideally, it is then left to fallow for several years before the cycle is repeated.

Kaingin first came under attack as being the primary cause of forest destruction by Western colonialists who rarely, if ever, had encountered similar farming practices in their temperate zone nations.[125] In the Philippines, *kaingin* making was first denounced by the Spanish and then the Americans who enacted prohibitive laws which proved to be unenforceable.[126] Today, *kaingin* agriculture is still lumped into one category: destructive.

A recent publication, *Adaptive Strategies and Changes in Philippine Swidden-based Societies,* asserts:

> It is crucial and humane that a better understanding of the shifting cultivator (or swiddener) replace the stereotypes of him that are widely held in the Philippines and elsewhere. The shifting cultivator and his practices have a poor image, especially among foresters and lumbermen who transmit the image to other sectors of society.[127]

A more humane and productive — both environmentally and economically attitude towards *kaingin* agriculture would distinguish between *kaingins* made by inexperienced, migrant poor and those made by environmentally astute, indigenous *kaingeros* whose swidden systems have for centuries thrived among lush, forested slopes. An initial step might be "to recognize ...the wealth of accumulated experience and knowledge of the local inhabitants."[128] This information should then be recorded, analyzed and

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124 Pres. Decree No. 705, sec. 69.

125 Reed, *Swidden in Southeast Asia,* 1 LIPUNAN JOURNAL 24 (1965).

126 *Ibid.*

127 OLAFSON (Ed.) 1 (1981). See *Kaingineros The Boat People of Philippine Forestry,* Phase I Report, Population Center Foundation, May 1980.

128 Chambers, MANAGING RURAL DEVELOPMENT: IDEAS AND EXPERIENCE FROM EAST AFRICA (1974).

applied. "Only few in-depth studies have been done on indigenous and economically non-destructive knowledge and technologies in shifting cultivation as a possible basis for technology innovation and recommendation."[129]

> Indeed, we have much to learn from our indigenous ethnic Filipino culture. The experience of our upland ethnic brothers has been a product of rhythm and harmony with Mother Nature. Their pattern of cultural organization is an example of co-evolution between a social system and a bio-physical system.[130]

The simple fact is that environmental degradation is not the inevitable consequence of *kaingin* agriculture.

Kaingin making by traditional practitioners may be the best way to utilize the vast, marginal areas of poor soil but abundant vegetation common throughout the Philippines. The thin, tropical topsoil in these areas will be depleted by permanent field agriculture. But if the fallow period is long enough, ecologically sound *kaingin* systems are not only viable but practical.[131]

The erroneous classification of ancestral clearings, however, causes the fallow period to shorten. Failure to recognize native title serves as notice to outsiders that ancestral lands are open for exploitation. The resulting corporate activity, and migration by lowland Filipinos unfamiliar with the fragile terrain, not only results in forest destruction by the inexperienced, it forces indigenous occupants to make *kaingin* on smaller and smaller portions of their ancestral estates. This in turn causes the fallow period to shorten. As land grabbing intensifies, the thin, tropical topsoil becomes depleted by overuse. The end result is that environmentally astute Tribal Filipinos not only suffer hunger, malnutrition and the loss of their ancestral lands, they are branded as agents of forest destruction.

F. *Taxation, Mortgages and Foreclosures*

According to the Revised Forestry Code, any public official who issues a real property tax declaration on public lands not classified as alienable and disposable is liable to be imprisoned from two to four years and to be permanently disqualified from holding public office.[132] This provision does not apply if "the property is titled or has been occupied and possessed by members of the National Cultural Minorities prior to July 4, 1955."[133] It is widely known, however, that municipal governments through-

129 Payuan. *In-Depth Study of Indigenous and Ecologically Sound Knowledge and Technologies of Kaingin Farmers as Basis for Technology Packaging and Recommendation in Other Swidden Areas,* Appendix A 3 (1980).

130 Sajise, *Some Facets of Upland Development in the Philippines* 1 PESAM BULLETIN No. 1 (1981).

131 Grandstaff, *The Development of Swidden Agriculture* 9 DEVELOPMENT AND CHANGE No. 4 (1978).

132 Pres. Decree No. 705 (1975), sec. 75.

133 *Ibid.*

out the country collect real estate taxes from both indigenous and migrant occupants of the "public" domain.

Although observed in the breach, the Forestry Code's provision on the payment of real estate taxes bolsters the claim to native title. The tax provision is implicit recognition that unlike lowland migrants, who only recently entered into the classified forest zone, Tribal Filipinos are a unique class of occupants with corresponding obligations and privileges. The obligation is "the duty of all persons...owning or administering real property" to pay real estate taxes."[134] The privilege is to be recognized as owners of private property.

This recognition occurs in many ways. Several government and quasi-government agencies reinforce the widespread belief that private ownership of "public" land is established by the payment of real estate taxes. Tax receipts serve as the official documents of recognition. Conveyance of "public" land covered by real estate tax receipts is often recorded with the provincial Register of Deeds.[135] In addition, the documents of conveyance must pass through the local office of the Bureau of Internal Revenue which will determine whether a capital gains tax should be levied.[136] Government controlled banks, such as the Philippine National Bank, the Rural Bank and the Development Bank of the Philippines, not only mortgage lands alleged to be of the public domain, they also foreclose on these lands if the mortgage payments are not made.[137] The Rural Bank is authorized to grant loans "on the security of lands without Torrens titles where the owner of private property can show five years or more of peaceful, continuous and uninterrupted possession in the concept of owner."[138] The five year requirement is usually established by real estate tax receipts covering the land to be mortgaged. When foreclosure is necessary, the right to use the "public" mortgaged land is sold by the lending institution.

In essence, many Tribal Filipinos possess every attribute of title to their ancestral lands but one. They pay taxes on the land. They mortgage it. They sell it. They inherit it. Indeed, they own it. The only thing lacking is a certificate officially acknowledging ownership. But according to well established precedent, acquiring the certificate is a "mere formality" which does not affect the title.[139] This legal observation may not be widely known

[134] Pres. Decree No. 464 (1974), sec. 6.

[135] Interview with officials of Provincial Assessor's Office, in Bontoc, October 17, 1981 and Puerto Princesa, March 29, 1982.

[136] Interview with officials of BIR District Office, in Bontoc, October 17, 1981. BIR Central Office, in Quezon City, 1981-2.

[137] Interview with officials of PNB and Rural Bank, in Bontoc, October 12, 17, 1981.

[138] Rep. Act No. 720 (1952), sec. 5 as amended by Pres. Decree No. 122 (1973), sec. 2. Sec. 95(a) par. 4 of the Rural Banks' Revised Rules and Regulations, as amended authorizes the use of the following as collateral: "Untitled private lands where the owner can show 5 years or more of peaceful and continuous possession in the concept of owner."

[139] Herico *op cit.*, note 72 at 22.

among Tribal Filipinos. It is, however, widely understood. Pursuant to "custom and long association", Tribal Filipinos know that they own their ancestral land.

6. *The Manahan Amendments*

The ongoing, unabated loss of ancestral land prompted Senator Manuel P. Manahan, the Chairman of the Senate Committee on National Minorities, in 1964 to write:

> Because of the aggressiveness of our more enterprising Christian brothers in ... places inhabited by members of the National Cultural Minorities, there has been an exodus of the poor and less fortunate non-Christians from their ancestral homes ... to the fastness of the wilderness where they have settled in peace on portions of agricultural lands, unfortunately, in most cases, within the forest zones. Because of the grant of pasture leases or permits to the more aggressive Christians, these National Cultural Minorities who have settled in the forest zone ... have been harrassed and jailed.[140]

To address the problem, Senator Manahan successfully sponsored amendments to the Public Land Act. Today, Section 44 of the Public Land Act provides that a Tribal Filipino who has "continuously occupied and cultivated 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 a free patent of up to 24 hectares.[141] (Emphasis supplied.) A new paragraph in Section 48 states that Tribal Filipinos "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"[142] shall be "conclusively presumed to have performed all conditions essential to a government grant and are entitled to a certificate of title."[143] (Emphasis supplied.) The amendments' rationale is to give Tribal Filipinos "a fair chance and equal opportunity" to acquire title to public lands.[144]

Eighteen years after their enactment, neither amendment has been implemented. Concern over the constitutionality of acknowledging title to lands not certified as alienable and disposable prompted the Directors of Land and Forestry to refer the matter *in consulta* to the Secretary of Justice. Without ruling on the question of constitutionality, the Secretary opined in 1966 that by complying with the amended provisions, tribal occupants shall enjoy preferential rights to acquire the land after its classification and release as alienable and disposable.[145] Since it has been long established that the

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140 S. No. 416, 5th Cong., 2nd Sess. (1963), Explanatory Note.
141 Com. Act No. 141 (1936), as amended, sec. 44, par. (2).
142 *Id.* at sec. 48 (c).
143 *Id.* at sec. 48 (b).
144 S. No. 416, *supra* note 140.
145 Sec. of Justice Op. dated July 26, 1966.

prior occupants have preferential rights to occupied public lands,[146] the Secretary's opinion was, in effect, that the Manahan amendments had no legal significance. The inference drawn from the ruling by the Bureaus of Land and Forest Development was that although tribal occupants of forest land may not acquire title, their occupation and possession is legally recognized.[147]

Neither the Supreme Court nor the Court of Appeals have ruled on the constitutional question raised by the phrase "disposable or not." The 1935 Constitution provided that only "agricultural land" could be alienated.[148] The Bureaus of Land and Forest Development have interpreted the word "agricultural" to be synonymous with the words "alienable and disposable." As discussed, the Director of Forestry is authorized to classify lands as alienable and disposable.[149] Such classification transfers jurisdiction of the land from the Bureau of Forest Development to the Bureau of Lands which can then alienate the land to private citizens and corporations through a variety of different administrative schemes.[150] Neither the 1935 nor the 1973 Constitution, however, require that public land be declared alienable and disposable prior to alienation. The constitutional requirement is simply that the land be "agricultural."[151] But assuming *arguendo,* that a declaration of alienability and disposability is constitutionally mandated prior to the Manahan amendments' implementation, Presidential Decree No. 410 eliminates the barrier. The Decree declares "all unappropriated agricultural lands forming part of the public domain... and cultivated" by Tribal Filipinos since 1964 as "alienable and disposable."[152]

The Manahan amendments legislatively strengthen the overall claim to ancestral land. It must be stressed, however, that the constitutionally protected right of qualified Tribal Filipinos to native title does not rest on these welcome, albeit unimplemented, amendments to the Public Land Act.

H. *The Ancestral Land Decree*

When it was enacted in 1974, many concerned Filipinos hoped that Presidential Decree No. 410 would alleviate the increasingly severe problem of ancestral land security. The Decree applied to 27 provinces. The Panay and Negros provinces, as well as Abra, Benguet, Quezon and the Camarines were excluded. Agricultural lands which have been occupied and cultivated

146 See *infra* note 190.

147 Pres. Decree No. 705 (1975), sec. 53 gave official sanction to the inference insofar as the jurisdiction of the Bureau of Forest Development was concerned.

148 CONST. (1935), art. XII, sec. 1.

149 *Supra* page 285.

150 Com. Act No. 141 (1936), as amended.

151 CONST. (1935), art. XII, sec. 1; CONST., art. XIV, sec. 8. See Pres. Decree No. 464 (1974), sec. 3 for a definition of "agricultural" land. Quoted *infra* page 283.

152 Pres. Decree No. 410 (1974).

by Tribal Filipinos since 1964 are declared as alienable and disposable. Ancestral lands are defined as "lands of the public domain that have been in open, continuous and exclusive occupation . . . under a bona fide claim of acquisition and ownership according to their customs and traditions for a period of a least thirty years."[153] Ancestral lands are to be subdivided into five hectares family plots. Individual titles are to be given.[154]

The Decree excludes from coverage areas reserved for public or quasi-public purposes. The Ministry of Natural Resources implementing order, in turn, excludes forest reserves, watersheds, National Parks, wildlife sanctuaries, national historic sites, and other forest areas essential to scenic, recreation, fish or wildlife purposes.[155] In case unexempted ancestral lands are identified, the implementing order establishes a cumbersome titling procedure. A representative from the Bureaus of Land and Forest Development, the Commission on National Integration,[156] the Department of Agrarian Reform[157] and a concerned *datu,* chief or elder are authorized to investigate the claim. Their report is then to be submitted to the concerned Regional Land Director who will order a survey and subdivision of the identified land. Next a census will be taken and occupant-cultivators will be organized into a farmer's cooperative. Failure to join the cooperative precludes the issuance of Land Occupancy Certificates. After a final survey is conducted, the Certificate will be used to apply for free patents pursuant to the Public Land Act.

Eight years after promulgation, no Tribal Filipino has acquired title pursuant to the Ancestral Land Decree.[158]

I. *Native Americans and Aboriginal Title.*[159]

Most Tribal Filipinos are of the same Malayo-Polynesian background as westernized Filipinos. The only significant exceptions to this general rule of thumb are Negritos and Filipinos of Chinese ancestry. Spanish law never distinguished Tribal Filipinos from their conquered countrymen.[160]

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153 *Id.* sec. 1.

154 *Id.* sec. 3.

155 MNR Gen. Adm. Order No. 1 (1974).

156 Now Pres. Assistant on National Minorities.

157 Now Ministry of Agrarian Reform.

158 The Bulletin Today reported in a front page story on April 4, 1982 the President's interest in activating the Commission on the Settlement of Land Problems. The Commission was established pursuant to Exec. order No. 561 (1979). It succeeded the defunct Presidential Action committee on Land Problems (PACLAP) which was created by Pres. Decree No. 832. According to the Bulletin Today, the President was quoted as saying that "Land problems are frequently a source of conflict among small settlers, land owners and members of cultural minorities." Failure to address the problems "will breed social unrest." The Commission is intended to provide an expeditious mechanism for the settlement of land problems.

159 The author wishes to acknowledge his reliance in this section on Newton, *At the Whim of the Sovereign: Aboriginal Title Reconsidered* 31 Hastings L.J. 1215 (1980).

160 Brief for the United States and the Insular Government, Supreme Court of the United States, October Term 1907, Cariño v. Insular Governfent, p. 49. See also Gowing, *op cit.* note 6.

During the American regime, government policy towards Tribal Filipinos was consistently made in reference to native Americans.[161] Tribal Filipinos were not only of different racial stock than the Americans, they posed special problems in terms of culture, pacification and economic development. The American distinction was couched in paternalistic language. The policy of segregation, however, "heightened existing divisions between a 'national majority'. . and a 'national minority'."[162] It institutionalized and nurtured the development of an arrogant, widespread and enduring prejudice which to this day disdains indigenous, Philippine culture. Nevertheless, from a legal point of view, certain benefits can be drawn from the comparison to native Americans. The American judiciary has struggled for more than two hundred years with the ancestral land claims of indigenous Americans. Many of the decisions rendered support the Indian claim to land. Some of the decisions are part of the Philippine common law. All are of persuasive value in the Philippine context.[163]

For the purposes of this brief discussion, there are five key concepts which determined the Indian ancestral claim to "aboriginal title"[164]: discovery, extinguishment, recognized title, taking and the trust theory. In 1823, a dispute between non-Indian successors to original grantees of Indian land reached the Supreme Court in the case of *Johnson v. M'Intosh*.[165] The narrow issue was whether land grants in 1775 by two Indian nations to a private party nullified a latter sale by the same tribes to the United States government. Faced with the task of reconciling the rights of Indians and the government to alienate tribal land, the Court defined the rights of each. The discoverer of new territory was deemed to have obtained the exclusive right to acquire Indian land and extinguish Indian titles.[166] The mere acquisition of the right, however, did not extinguish Indian claims to the land. Rather until the discoverer by purchase or conquest exercised its right, the concerned Indians were recognized as "the rightful occupants of the soil with a legal as well as a just claim to retain possession."[167] Once the sovereign exercised its right, it gained an "absolute title" unrestricted by Indian rights. The *Johnson* discovery doc-

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[161] See Rubi, *op cit.* note 2 at 694-700; U.S. v. Tubban, *op cit.* note 5. The U.S. Government entered into at least one "treaty" with Tribal Filipinos, the "Bates Agreement". U.S. Senate Treaty with Sultan of Sulu Document 136, 56th Congress, 1st Session (1900). The treaty was unilaterally abrogated by U.S. President Theodore Roosevelt on March 21, 1904. It was formally renounced by the Sultan in March 22, 1915. See HAYNES, THE FATE OF THE SULU ISLANDS AND THE SULTANATE (3d ed.) 192; Gowing, *op cit.* note 6.

[162] *Parallels in Igorot and Muslim History*, 1 SANDUGO 10 (1981).

[163] U.S. v. Bustos, 37 Phil. 731 (1918); In re S'hoop 41 Phil. 213 (1920).

[164] The term "aboriginal title" is used in United States Supreme Court decisions to refer to the original, ancestral lands of native Americans. Aboriginal title is conceptually similar to native title. Both can be held by native inhabitants even though the government is not yet aware of the specific titles. Both are accorded constitutional protection.

[165] 21 U.S. (8 Wheat.) 543 (1823).

[166] *Id.* at 587.

[167] *Id.* at 574.

trine was a compromise. It protected Indian rights to their native lands without having to invalidate the government grants which many U.S. citizens used to trace their titles.[168]

Later decisions qualified the *Johnson* doctrine. Indian titles were deemed not to be extinguished if the sovereign merely granted the land to another.[169] Extinguishment by conquest was only justifiable after a confrontation initiated by native Americans.[170] Finally, native titles, if ratified by the sovereign, were inalienable to third parties.[171] For a third party to acquire a fee simple absolute it was, therefore, necessary for both the aboriginal, title and the government title to be conveyed.[172]

Compensation for taking of aboriginal lands under the fifth amendment due process clause of United States Constitution is perhaps the most important judicial development concerning land claim disputes between the government and native Americans.[173] The Supreme Court held in three cases that the government's confiscation of tribal land was a compensable taking.[174] In a fourth decision, the Court awarded compensation for land taken pursuant to an executive order even though the Indian claim had previously never been recognized. *United States v. Alcea Band of Tillamooks.*[175] The Court concluded that "the Indians' right of occupancy has always been sacred; something not to be taken from him except by consent, and then upon such consideration, as should be agreed upon."[176]

The *Tillamooks* precedent was subsequently modified by *Tee-Hit-Ton Indians v. United States.*[177] In a decision which was not only unexpected and damaging but also analytically unsound,[178] the *Tee-Hit-Ton* Court conceded that aboriginal title carried with it rights of occupancy. But then, the Court proceeded to declare that the extinguishment of these rights did not require compensation under the due process taking clause unless Congress had recognized the Indian claim by treaty or otherwise.[179]

A new generation of public interest lawyers in the 1960's and 1970's spurred on Indian attorneys to press claims which avoided the *Tee-Hit-Ton* rule. Third party trespassers on unextinguished, aboriginal land were sued.[180]

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168 Cohen, *Original Indian Title* 32 MINN. L. REV. 48-49 (1947).
169 Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).
170 *Id.* at 545-7.
171 Mitchell v. United States, 34 U.S. (9 Pet.) 711 (1835).
172 *Id.* at 746, 756. Discovery gave the sovereign an "ultimate reversion in fee" subject to the tribes "perpetual right of occupancy."
173 Newton, *op cit.*, note 159 at 1228-9.
174 United States v. Klamath & Moadoc Tribes, 304 U.S. 119 (1938); Shoshone Tribe v. United States, 299 U.S. 476 (1937); United States v. Creek Nation 295 U.S. 103 (1935).
175 329 U.S. 40 (1946).
176 *Id.* at 52 (quoting Minnesota v. Hitchcock, 185 U.S. 373, 388-89 (1902)).
177 348 U.S. 272 (1955).
178 Newton, *op. cit.* note 159 at 1217.
179 348 U.S. at 288-91.
180 See, e.g. United States v. Southern Pac. Transp. Co. 543 F. 2d 676 (9th Cir. 1976); United States v. Atlantic Richfield, Co., 435 F. Supp. 1009 (D. Alaska 1977).

The trust relationship doctrine is also being used but as a source of tribal rights against the government. Traditionally, the courts cited the trust relationship theory as a source of federal power over Indian affairs.[181] Trust theory exponents concede that the government can extinguish aboriginal title without having to pay compensation. They argue, however, that the doctrine requires the federal government as fiduciary to act in the tribe's best interest, and to be accountable for failure to do so. There are indications that many of these cases will be successful.[182]

As noted, American Indian land law is premised on racial and cultural distinctions which, except for the Negritos, are inapplicable to Tribal Filipinos. The rationale in the Philippine context, therefore, for use of the discovery doctrine is limited. The concept of extinguishment is more relevant. Although there is no legal precedent since Philippine independence in 1946 for extinguishing native titles by conquest,[183] extinguishment for consideration may have applicability. The *Tillamooks'* concept of recognized title is inconsistent with the holdings in *Cariño* and *Herico* which do not look to the government for acknowledgement of title, but rather focus on long term occupancy. The taking clause of the fifth amendment to the United States Constitution consists of virtually the exact language found in the Philippine Constitutions: "Private property shall not be taken for public use without just compensation.[184] This language "carries with it all the applicable jurisprudence of English and American constitutional cases." *U.S. v. Bustos.*[185] All lands titled pursuant to *Cariño* and *Herico* are "no longer of the public domain."[186] They are private property and if taken for public use, the owners must be justly compensated. Finally, a Filipino version of the trust theory is enshrined in the 1973 Constitution which stipulates: "The State shall consider the customs, traditions, beliefs, and

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[181] See, e.g. Lone Wolf v. Hitchcock, 187 U.S. 553, 567 (1903) (treaty abrogation power); United States v. Kagama, 118 U.S. 375, 377-78 (1886) (plenary power doctrine); Fort Berthold Reservation v. United States, 390 F. 2d 686, 691-70 (Ct. Cl. 1968) (good faith may convert a taking into an act of guardianship).

[182] See Edwardsen v. Morton, 369 F. Supp. 1358 (D.D.C. 1973). Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians,* 27 STAN. L. REV. 1213 (1975).

[183] In Mindanao, the American conquerors extinguished tribal claims to land as well as tribal lives in the Battles of Bud Bagsak (1913) and Bud Dajo (1906). Gowing, *op cit.* note 6 at 142 describes the Battle of Bud Dajo as an "unnecessary and dishonorable an engagement as ever the U.S. Army fought." The famous American writer Mark Twain expressed his shame with biting satire:

> There, with six hundred engaged on each side, we lost fifteen men killed outright, and we had 32 wounded. The enemy numbered 600, including women and children, and we abolished them utterly, not even a baby to cry for his dead mother. *This is incomparably the greatest victory ever achieved by the Christian soldiers of the United States.* Twain *Comments on the Killing of 600 Moros,* in COOPER (ED.), 12 PROSE WRITERS, 162-163 (1967).

[184] U.S. CONST. amend v; CONST. (1935), art. III, sec. 1; CONST. (1973), art. IV, sec. 1.

[185] *Op cit.,* note 163 at 740.

[186] Cariño, *op cit.,* note 32 at 941; Herico, *op cit.,* note 72 at 443.

interest of national cultural communities in the formulation and implementation of state policies."[187]

V. THE FOREST ZONE

A. *Private Right*

Many Tribal Filipinos have been driven away from their original ancestral homes and have resettled on land appropriately classified as forest. Most are eligible for title to these lands pursuant to the amended Public Land Act.[188] At minimum, however, their property rights are safeguarded by the concept of "private right" which is defined in the Revised Forestry Code as follows:

> Private right means or refers to titled rights of ownership under existing law, and in the case of national minorities to rights of possession existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds, and old clearings.[189]

The recognition of private right reflects a long established legal precedent: prior occupants of public land have first priority to any titles, leases or permits subsequently applied for which cover the occupied parcel.[190] Except for the definition, however, there is no explicit reference to private right in the Revised Forestry Code. This omission hampers efforts to ensure that the private rights of forest occupants are protected. It also makes it difficult to know when Tribal Filipinos acquire private "rights of possession." The 1964 amendment to the Pasture Land Act[191] and Presidential Decree No. 1414, imply that private rights accrue immediately, regardless of the length of occupation, whenever an application to utilize forest land occupied by Tribal Filipinos is made. The Revised Forestry License Regulations reinforce this presumption by echoing the Revised Forestry Code: private right "shall mean or refer...in the case of cultural minorities, to rights of possession existing at the time a license is granted.[192]

The Manahan amendments vest title in Tribal Filipinos residing on agricultural lands within the forest zone for more than thirty years or since July 4, 1955, a period of twenty-seven years.[193] Presidential Decree No. 410 defines ancestral lands as "lands of the public domain" occupied and cultivated by Tribal Filipinos for thirty years.

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187 CONST., art. XV, sec. 11.

188 Com. Act No. 141 (1936), as amended by Rep. Act No. 3872 (1964), secs. 44 and 48 (b) & (c).

189 Pres. Decree No. 705 (1975), as amended by Pres. Decree No. 1559 (1978), sec. 3 (mm). See *infra*, note 89.

190 Royal Decree of October 15, 1974; U.S. Act of Congress of July 2, 1902. sec. 16; Com. Act No. 141 (1936), as amended, sec. 95. Accord, CIVIL CODE, art. 429, Rep. Act No. 3985 (1964). Pres. Decree No. 1414 (1978), sec. 3 (g).

191 Rep. Act No. 3985 (1964). See discussion *supra Certification*.

192 DNR (Forestry) Adm. Order No. 11, sec. 2 (1970).

Coupled with the Pasture Land Act amendment, Presidential Decree No. 1414(g), the Public Land Act and the Revised Forestry License Regulations, these provisions support the argument that Tribal Filipinos who have for thirty years or more occupied and/or cultivated public land — regardless of the classification — have vested rights to indefinite possession. This position is reinforced by preliminary research which indicates that since 1931, every proclamation reserving lands of the public domain, for forest or other purposes, has contained the proviso "subject to private rights, if any there be."[194]

Approximately ten million of the sixteen million hectares under Bureau of Forest Development jurisdiction are covered by concessions such as timber licenses and pasture leases.[195] On August 17, 1970, the Secretary of Agriculture and Natural Resources issued a Memorandum on private rights which referred to a Memorandum of the President issued ten days earlier.[196] The President had stressed the need for strict compliance with government policy that the right of timber concessionaires are subject to the existing rights of Tribal Filipinos and small settlers.[197] The Secretary ordered the Director of Forestry as follows:

> In order to forstall serious conflicts of rights between timber concessionaires and the said cultural minorities and small settlers you are hereby directed to do the following:
> 1) Incorporate in any timber license issued by the government the condition that the concessionaires shall respect the existing rights to any area within the concession granting.
> 2) For those to whom licenses has been granted an appropriate circular shall be issued calling attention to the policy and enjoining them to observe it strictly.[198]

The Director in turn issued a Circular which contained the definition of private rights now found in the Revised Forestry Code. The definition ends by excluding "production forests inclusive of logged over areas, commercial forests and established plantations of forest trees and trees of economic value."[199]

The Revised Forestry Code does not define the terms used in the exclusion clause. Based on the Secretary's Memorandum, however, it is certain that timber concessions are subject to private rights. This is confirmed by the Revised Forestry License Regulations.

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193 Rep. Act No. 3872 (1964).

194 A listing of post-1931 proclamations containing the private rights proviso is available from the author. Prior to 1931 public land proclamations intermittently carried the proviso. These pivate property rights would be accorded some constitutional protections. See *supra, Vested Lights and Constitutional Protections.* See also, note 89 *supra.*

195 Address by Director Cortes, *op cit.,* note 113.

196 This information is contained in Forestry Circular No. 32 (1970).

197 *Ibid.*

198 *Ibid.*

199 *Ibid.;* Pres. Decree No. 1559 (1978), sec. 3 mm.

> The grant of any license under this Order shall be subject to the private rights of cultural minorities ... within the concession or licensed area, as evidenced by their occupation existing at the time the license is issued by the Government, or other muniments of title, and the area on which such private rights exist be deemed excluded from the concession or licensed area, and logging operations shall be allowed only if covered by express outhorization from the licensing authority.[200]

Since prior occupants have priority rights to utilize government lands which are subject to allocation, it follows that all ten million hectares of forest concessions, such as pasture leases, agro-forest farms and minor forest product permits, are also subject to private rights. Section 95 of the Public Land Act,[201] the amended Pasture Land Act,[202] Presidential Decree No. 1414 and the Revised Forestry License Regulations[203] reinforce this presumption. Indeed, the terms used in the private rights exclusion clause may be without legal significance.

Ominously, if resources for identifying private rights, "are inadequate", the prospective license may be authorized to identify them.[204] This, of course, creates a serious conflict of interest. A prospective timber licensee will not want his concession to be encumbered by private rights. As a result, if BFD resources are inadequate, the private rights of Tribal Filipinos are not likely to be recognized or protected. The prospective licensee has little, if any, incentive to identify, let alone, inform, concerned Tribal Filipinos.

Once the agreement is executed, aggrieved parties have one year to assert their adverse claim.[205] Any claim or protest filed after the one year period will not be entertained. But oftentimes, timber concessionaires, pasture leasees and other recipients of forest permits do not immediately begin to exploit their licensed areas. Assuming that adversely affected Tribal Filipinos know of the agreement within one year of its execution, they would in most cases not be aware of the appeal procedure. Indeed, many tribal communities, in view of their past experiences with land grabbers, as well as their different cultural orientation, would see little option but to retreat yet again. For communities with nowhere to retreat, desperate defensive measures are increasingly seen as the last remaining option.

Finally, a constitutionally suspect, 1978 amendment to the Revised Forestry Code casts doubts on the legal efficacy of private rights. It provides that Tribal Filipinos "shall whenever the best land use of the area so demands as determined by the Director, be ejected and relocated to the

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200 DNR (Forestry) Adm. Order No. 11, sec. 3 (c) (1970).
201 Com. Act No. 141 (1936).
202 Rep. Act No. 3985 (1964).
203 DNR (Forestry) Adm. Order No. 11 (1970).
204 *Id.* at sec. 3(c).
205 *Id.* at sec. 63.

nearest accessible government resettlement area.[206] The amendment makes no reference to constitutionally protected native titles or to agricultural lands within the forest zone which due to occupation and cultivation for thirty years or more have ceased to be of the public domain.

B. *Social Forestry*

Traditionally, as the ejectment amendment indicates, many foresters adhere to an unofficial policy that the best way to protect the forest is to remove the forest occupants. These foresters view the forest

> in terms of logs and lumber and the money generated therefrom and in the process fail to consider and instead deliberately ignore the fact that there are people, millions of lives affected by whatever is done to the forest.[207]

But in the face of an alarming annual deforestation rate of 7,000 square kilometers and with less than 100,000 square kilometers of forest remaining,[208] traditional views are under increasing challenge. The stark fact is that the Philippine forest is likely to be consumed by the year 2000 unless appropriate measures are taken. The formulation of a more humane policy towards the estimated 7.5 million occupants within the BFD classified forest zone is one such measure. The policy is called "social forestry."

It is difficult to pinpoint when the nation's forestry sector first became sensitive to the welfare of forest occupants. A comprehensive, institutional recognition of the potential and concerns of forest occupants, however, is a recent development. The shift is reflected in the BFD's "Policy Directions for the Eighties" which were issued by Director Edmundo V. Cortes. The new policy includes efforts to "Draw more active citizen involvement in the forest conservation program" and to "Develop forests in a manner which will benefit the rural communities and a greater number of citizens."

From one perspective, the Revised Forestry Code is seen as officially inaugurating the BFD's social forestry program in 1975. It provides that

> Kaingineros, squatters, cultural minorities and other occupants, who have entered into forest lands before May 19, 1975, without permit or authority, shall not be prosecuted.[209]

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206 Pres. Decree No. 1559 (1978), sec. 53.

207 Address by Vicente C. Magno, 71st Anniversary and Alumni Homecoming of the University of the Philippines Los Baños College of Forestry, in Los Baños, Laguna, April 23, 1981.

208 Business Times, November 17, 1980, reprinted in ISTF News, March, 1981.

209 Pres. Decree No. 705 (1975), as amended by Pres. Decree No. 1559 (1978), sec. 53. An unofficial inauguration may have been held when the first communal forest was established on April 7, 1907 in Rosario, La Union. Communal forests can be utilized by the lessee community for non-commercial purposes. As of January, 1982, BFD records indicate that there are 1097 communal forests. The vast majority, 964, were established prior to independence in 1946. In addition there are 141 communal pastures covering 29,553 hectares. Available information does not indicate how many leases remain operational. See BFD Social Forestry Policy Analysis, Institute of Phil.

(Pursuant to presidential directive, the "amnesty" will be extended to December 31, 1981.[210]) The BFD has institutionalized two social forestry programs since the Revised Code was enacted. Both programs include provisions for land security. Under the Communal Tree Farm Program, the BFD and the local municipality enter into 25-year renewable lease agreements on behalf of volunteer, local participants who are allocated a minimum area of two hectares. The thrust of the CTF program on *kaingin* control. In the recent past, participants in the FOM program acquired one or two year renewable permits for up to seven hectares of their old clearings. FOM permits, however, will soon be transformed into twenty-five-year renewable "certificates of stewardship."

The changeover from short term permit to long term contract is a belated institutional recognition that human beings lack motivation to make sustainable, long term improvements on land which may be taken away the following year. Before committing large amounts of time, labor and cash, people need assurance that they, their children and their grandchildren will have an opportunity to profit from the investment.

The pending changes in programming are the result of an ongoing policy reformulation within the Ministry of Natural Resources, the parent agency of the BFD. Natural Resources Minister, Teodoro Q. Peña, who completes his inaugural year in July, has said that "social forestry will be the hallmark" of his administration. At present, high level policy studies and discussions are underway. The eventual outcome will be an "integrated social forestry" program which will provide long term land security via the certificates of stewardship. The program may also include an unprecedented degree of flexibility and community participation.[211] In view of existing budgetary limitations, however, it is unlikely that more than a small percentage of forest occupants will benefit from social forestry programs requiring a substantial, government appropriation.

Although at least 65% of the people residing within the BFD version of the forest zone are Tribal Filipino, as of now, no social forestry program is designed to recognize and reflect the unique factors found in tribal communities. A promising economical prototype, however, does exist in the communal ancestral land lease which utilizes and promotes existing social cohesion. At present the BFD has entered into two, twenty-five year, renewable, ancestral land lease agreements. The first is a successful 14,740 hectare agreement with the Ikalahan Tribe of Nueva Vizcaya which was

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Culture, Ateneo de Manila, forthcoming summer 1982; Inventory of Social Forestry Projects, Integrated Research Center, De La Salle University, forthcoming summer 1982. See also *infra* notes 145 and 147.

210 Address by President Marcos, *op cit.*, note 118.

211 The BFD Upland Development Working Group is formulating pilot social forestry, participatory project designs which will be operationalized in selected sites nationwide. At present, various case studies of ongoing social forestry projects, governmental and private, are being conducted. A historical analysis of social forestry policy and an inventory social forestry projects are to be completed this year. See *supra*, note 209.

signed in 1974.[212] The second is a 1,340 hectare agreement signed in December, 1981, with the Gubatnon Hanunoo Mangyans of Southern Mindoro.[213]

> In essence the Hanunoo lease is an agreement by the environmentally astute tribe to protect, preserve and promote the forest — at no charge to the BFD — in return for long term land security and the right to utilize forest products for noncommercial purposes. The BFD sets the area's outer boundaries; the Gubatnon leadership, as is traditional in most tribal communities will be responsible for the area's inner boundaries.[214]

The ancestral land lease is a win-win-win situation. The tribal community wins because it acquires long term legal security over its ancestral land. The BFD wins because its limited manpower and financial resources are augmented by the lessees' reforestation and protection efforts. And the Philippine nation wins because a small portion of its indigenous heritage is protected in an environment which reinforces culturally appropriate development.[215]

VI. ACCOUTREMENTS TO NATIVE TITLE AND PRIVATE RIGHT

A. *Certification*

In 1964, an amendment to the Pasture Land Act[216] was passed which provided that no pasture lease shall be granted within the forest zone in provinces which, according to the last official census are inhabited by Tribal Filipinos, unless certification was obtained from the Commission on National Integration,[217] that "no member of the national cultural minorities actually occupy any portion of the area applied for under pasture permit or lease." This provision was expanded upon by Presidential Decree No. 1414 which provides in Section (g) that "no such forest license, permit or lease shall be granted without prior inspection being made and without the issuance of a Certification by PANAMIN" that no member of the National Minorities actually occupies or possesses or has a claim to all or a portion of the area applied for. Neither law requires that there be a minimum period of occupancy or possession before certification is required. But over the years

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212 DANR (Forestry) Memorandum of Agreement No. 1 (1974).

213 MNR (Forestry) Memorandum of Agreement, December 3, 1981.

214 Lynch, *Tribal Minorities: It's Still A Long Road To Agrarian Freedom For These Filipinos,* 1 PHILIPPINE UPLAND WORLD 15 (1982).

215 The first draft of a proposed "Forestry Act of 1982" contains a chapter on "Community Forestry" which would provide for the institutionalization of communal land leases. Chapt. 4, sec. 116-122. The draft was composed by senior forestry officials and other experts.

216 Rep. Act No. 3985 (1964), sec. 1, amending Com. Act No. 452 (1938), sec. 3.

217 The Commission was established pursuant to Rep. Act No. 1880. Its authority and functions were subsequently transferred to the Presidential Assistant on National Minorities by Pres. Decree No. 719. See Rep. Act No. 3852 (1964); Pres. Decree No. 690 (1975); Pres. Decree No. 1017 (1976), unpublished. See also Exec. Order No. 697 (1981) (creating Ministry of Muslim Affairs).

the requisite certification has frequently not been obtained. As a result, the legality of many forest concessions is in doubt.[218]

B. *Conveyance*

In 1903, the Philippine Commission declared that land grants from Tribal Filipinos were void without government consent.[219] This law was an off-shoot of a legal principle enunciated on behalf of American Indians in the 1835 U.S. Supreme Court decision of *Mitchell v. U.S.*[220] The Philippine version was amended, modified and upheld over the succeeding years. Today, Section 120 of the Public Land Act provides that:

> Conveyance and encumbrance made by persons belonging to the so-called non-Christian Filipinos or national cultural minorities, when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument or conveyance is written. Conveyances and encumbrances made by illiterate non-Christian or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by the said literate non-Christian shall not be valid unless duly approved.[221]

Similar provisions have been consistently upheld by the Supreme Court; conveyances made in violation are "null and void."[222]

VII. TRIBAL RESERVATIONS

When the United States assumed sovereignty, the idea of establishing reservations for non-westernized Filipinos was introduced. The abuse and suffering inflicted on native Americans, who all too often had been herded onto barren, public wastelands, was perhaps not known to the American administrators.[223] President James McKinley was in a better position to know of the government's broken promises, massacres and systematic attacks on Indian culture. Nevertheless, in 1900, McKinley wrote to the Philippine Commission:

> In dealing with the uncivilized tribes of the Islands, the Commission adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government and under which many of these tribes are now living in peace

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[218] According to the 1981 Philippine Yearbook, Tribal Filipinos are located in every region of the country except for the Eastern Visayas and the provinces of Cavite, Batangas. Marinduque, Albay, Catanduanes and Sorsogon. *Batas Pambansa* Blg. No. 818, now pending, would expand the law to include all public lands. If passed no titles in the affected provinces could be legally issued without prior certification.

[219] Act No. 718 (1903).

[220] 34 U.S. (9 Pet.) 711 (1835).

[221] Com. Act No. 141 (1936), as amended. See also Act No. 2874 (1919), Sec. 118, ADM. CODE OF MINDANAO AND SULU, Secs. 145-6.

[222] Mangayao v. Lasud, G.R. No. 19252, May 29, 1964, 11 SCRA 158, 163; See Porkan v. Yatco, 70 Phil. 161 (1940); Porkan v. Navarro, 73 Phil. 698 (1942); Cunanan v. Court of Appeals. G.R. No. 25511, September 28, 1968, 25 SCRA 263. But see Mabale v. Apalisok, G.R. No. 46949, February 6, 1979, 88 SCRA 234. Failure to raise minority status in lower court estopped petitioner from raising it at appellate level.

[223] For an historical account from the viewpoint of an American Indian, See BROWN, BURY MY HEART AT WOUNDED KNEE, 1970; DELORIA, BEHIND THE TRAIL OF BROKEN TREATIES, 1974.

> and contentment, surrounded by civilization to which they are unwilling or unable to conform. Such tribal governments should, however, be subjected to wise and firm regulation ... constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.[224]

The earliest judicial recognition of tribal reservations occurred in the infamous 1919 case of *Rubi v. Provincial Board of Mindoro*.[225] Provincial governors had been authorized to resettle Tribal Filipinos residing within their provinces, whenever it was deemed "necessary in the interest of law and order to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board."[226] The governor of Mindoro introduced and the provincial board passed a resolution which would relocate approximately 15,000 Mangyans on an 800 hectare tract of land near Naujan in northeast Mindoro. Several Mangyans relocated on the reservation, however, claimed that they were being held against their will. They filed application for *habeas corpus* with Philippine Supreme Court.

In a decision fraught with imported prejudice and faulty logic, the Court denied the applications and declared the law providing for forced resettlement as constitutional. In a blistering dissent Justice P. M. Moir wrote: "History teaches that to take a semi-nomadic tribe from their native fastness and to transfer them to the narrow confines of a reservation is to invite disease, suffering and death."[227]

By the time *Rubi* was decided, the colonial government had established twelve "non-Christian tribe" reservations pursuant to proclamation or executive order of the American Governor-General. Prior to July 4, 1946, a total of fifty-six reservations were proclaimed in the following provinces: Cotabato,[228] Paragua (Palawan)[229] Ambos Camarines,[230] Antique,[231] Rizal,[232] Davao,[233] Nueva Ecija,[234] Tarlac,[235] Surigao,[236]

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224 Quoted in Forbes, 2, THE PHILIPPINE ISLANDS, Appendix VII (1928).

225 Rubi, *op cit.*, note 2. The Court acknowledged that "Philippine organic law... recognize[s] a dividing line between the territory not inhabited by Moros or other non-Christian tribes, and the teritory inhabited by them." *Id* at 681.

226 *Id.* at 669.

227 *Id.* at 732.

228 Exec. Order No. 93 (1908).

229 Exec. Order No. 13 (1912); Exec. Order No. 22 (1912); Exec. Order No. 33 (1912); Exec. Order No. 15 (1917); Proc. No. 515 (1932).

230 Proc. No. 1 (1913); Exec. Order No. 14 (1917).

231 Exec. Order No. 99 (1914); Exec. Order No. 17 (1914).

232 Exec. Order No. 122 (1914); Proc. No. 423 (1931).

233 Exec. Order No. 12 (1915); Exec. Order No. 13 (1915).

234 Proc. No. 26 (1924).

235 Proc. No. 69 (1927); Proc. No. 70 (1927); Proc. No. 218 (1929); Proc. No. 380 (1931); and Proc. No. 576 (1933).

236 Exec. Order No. 7 (1920).

Zambales,[237] Bataan,[238] Isabela,[239] Agusan,[240] Ilocos Norte,[241] Nueva Vizcaya,[242] Mindoro,[243] Pampanga,[244] Negros Occidental,[245] Tayabas (Quezon),[246] Misamis Occidental,[247] Zamboanga,[248] Mountain Province (Bontoc, Kalinga and Ifugao),[249] and Iloilo.[250] These reservations ranged in size from 2.28 hectares in Baliwasan, Zamboanga to 4,982 hectares in Margosatubig and Pagadian, Zamboanga. More than 22,000 hectares were reserved.

Since 1946, seven more reservations have been established by presidential proclamation pursuant to Section 84 of the Public Land Act.[251] They cover a total land area of more than 27,700 hectares. The largest reservation is for the Tasaday, Blit and Manobo Tribes in South Cotabato.[252] It consists of 19,249 hectares. Whenever PANAMIN certifies that a majority of Tribal Filipinos on any given reservation have "advanced sufficiently in civilization" each male member over eighteen years of age or the head of a family may obtain "by title or gratuitous patent" up to four hectares of reservation land.[253]

More than 41,000 hectares of land have been set aside for the *exclusive* use of Tribal Filipinos since the island of Dalahican, in the Province of Paragua (Palawan) was proclaimed as the first tribal reservation on March 4, 1912. In addition, since 1975, PANAMIN has endorsed requests for an additional twenty-one reservations to the Bureau of Forest Development. These requests are still being processed.[254]

At least 8,000 hectares of land "reserved for the exclusive use"[255] of Tribal Filipinos, however, have been subsequently proclaimed as no longer

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237 Proc. No. 105 (1927); Proc. No. 138 (1927); Proc. No. 556 (1933); Proc. No. 639 (1933); Proc. No. 97 (1936).

238 Proc. No. 139 (1927); Proc. No. 326 (1930); Proc. No. 498 (1932); Proc. No. 700 (1934); Proc. No. 318 (1938).

239 Proc. No. 174 (1928).

240 Proc. No. 256 (1929), Proc. No. 37 (1936).

241 Proc. No. 349 (1930), Proc. No. 389 (1931).

242 Proc. No. 417 (1931).

243 Proc. No. 596 (1933); Proc. No. 682 (1934); Proc. No. 809 (1935); Proc. No. 843 (1935); Proc. No. 41 (1936); Proc. No. 369 (1939).

244 Proc. No. 601 (1933); Proc. No. 602 (1933).

245 Proc. No. 714 (1934).

246 Proc. No. 723 (1934); Proc. No. 818 (1935); Proc. No. 467 (1939).

247 Proc. No. 807 (1935).

248 Proc. No. 841 (1935); Proc. No. 236 (1937); Proc. No. 614 (1940).

249 Proc. No. 28 (1936); Proc. No. 160 (1937).

250 Proc. No. 136 (1937).

251 Proc. No. 762 (1961), 57 O.G. 5378; Proc. No. 472 (1965), 61 O.G. 8154; Proc. No. 132 (1966), 63 O.G. 528; Proc. No. 549 (1969), 65 O.G. 5252; Proc. No. 834 (1971), 67 O.G. 3486; Proc. No. 995 (1972), 68 O.G. 2944; Proc. No. 1122 (1973), 69 O.G. 2928-1.

252 Proc. No. 995 (1972).,

253 Com. Act No. 144 (1936), as amended, sec. 84.

254 Address by Deputy Executive Director for Operations, Fernando F. de los Santos, *Participatory Approaches To Development: Panamin Experience.* Integrated Research Center, De La Salle University, Manila, November 21, 1981.

255 Com. Act No. 144 (1936). as amended, sec. 84.

part of the tribal reservations.[256] In addition, land within many tribal reservations has been occupied and even titled to Christian Filipinos. This illegal encroachment has been extensively documented at the Paitan, Oriental Mindoro[257] and Pili, Camarines Sur reservations.[258] The illegal settlers encroached on both sites after the reservations had been proclaimed and acquired free patents at Paitan and Original Certificates of Title at Pili.

VIII. CONCLUSION

The Filipino people have been developing indigenous property concepts for more than 22,000 years. Pre-conquest societies acknowledged an individual's ownership of long term rights to cultivated land. The Spanish monarchs repeatedly recognized this indigenous custom and ordered that native property rights be protected. The North Americans, likewise, recognized that long term possession and cultivation — as well as custom and long association — results in the acquisition of constitutionally protected ownership. The Supreme Court of the Philippine Republic has reaffirmed that many Tribal Filipinos within the "public" domain are not squatters. They own their ancestral lands. Nevertheless, Tribal Filipinos are not able to record their native titles pursuant to the Property Registration Decree because of statutory misinterpretations and unconstitutionally overbroad provisions in the Revised Forestry Code concerning the classification of "public" land. Attempts to protect tribal lands by qualified restrictions on conveyance and the issuance of government concessions have proven inadequate. The end result is that tribal lands continue to be usurped at an increasing and alarming rate. This in turn disrupts the environmentally stable agricultural systems of many Tribal Filipinos and thereby increases forest denudation.

But if Tribal Filipinos acquire individual titles, ancestral lands will still be usurped. Different cultural orientations, coupled with the ongoing shift to a cash-based economy, make Tribal Filipinos easy prey to various interests. Communal titles would mitigate this problem. An absolute moratorium on the conveyance of tribal lands to those outside the local community until at least the year 2000 should also be considered.

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256 Proc. No. 16 (1934) revoked Exec. Order No. 14 (1917); Proc. No. 650 (1934) revoked Exec. Order No. 13 (1915); Proc. No. 717 (1934) revoked Exec. Order No. 17 (1914); Proc. No. 147 (1953) revoked Proc. No. 28 (1936); Proc. No. 22 (1954) revoked Exec. Order No. 7 (1920); Proc. No. 74 (1954) revoked Proc. No. 515 (1922); Proc. No. 196 (1955) revoked Proc. No. 714 (1934); Proc. No. 197 (1955) revoked Exec. Order No. 99 (1914). Proc. No. 95 (1927) amends Exec. Order No. 12 (1915); Proc. No. 762 (1941) amends Proc. No. 26 (1924); Proc. No. 403 (1968) amends Proc. No. 139 (1927); Proc. No. 982 (1972) amends Exec. Order No. 122 (1914).

257 Development Academy of the Philippines, MINDORO CULTURAL COMMUNITIES PROJECT *Mangyans and their Land Problems*, 135-62 (1974).

258 Camara (Assemblyman), SEVENTH PETITION AND MEMORANDUM IN SUPPORT OF THIS AND PRIOR SIX PETITIONS BEFORE THE OFFICE OF THE PRESIDENT, submitted June 9, 1981.

Tribal Filipinos residing within the properly classified forest zone who are not qualified to acquire title are protected by private right. In addition they may desire to strengthen their legal claims to land by acquiring certificates of stewardship from the Ministry of Natural Resources' Bureau of Forest Development. In view of limited government resources, however, it is likely that only a small number of forest occupants will be able to enter into these agreements. Culturally appropriate, economical social programs, which harness tribal expertise in return for land tenure guarantees, promise an effective and affordable alternative.

In the final analysis there is no hope for the future of tribal citizens unless their historical and legal claims to land are meaningfully recognized and protected.