



Graduate School of Development Studies

**Otherizing the Badjao:
A Spatial Imagery of State Exclusion and Societal
Otherization**

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List of Acronyms

CRM	Coastal Resource Management
DFID	Department for International Development
ECIP	Episcopal Commission on Indigenous Peoples
FPIC	Free, Prior and Informed Consent
ICCs/IPs	Indigenous Cultural Communities/Indigenous Peoples
ILO	International Labour Organization
IPR	Indigenous Peoples' Rights
IPRA	Indigenous Peoples' Rights Act
MACOTAPADA	Maribojoc-Cortes-Tagbilaran-Panglao-Dauis
MPA	Marine Protected Areas
NCIP	National Commission on Indigenous Peoples
NGO	Non-Government Organization
NIPAS	National Integrated Protected Areas Systems
PCIJ	Philippine Center for Investigative Journalism
UN	United Nations
WWF	World Wildlife Fund

Abstract

Mobile populations such as sea nomads and their multi-local sense of belongingness have always presented as a challenge to the normative concepts of citizenship and rights couched in the hegemonic discourse of development and modernity. It is in this context that this study examines the social exclusion confronting the Badjao people, the sea nomads of the Philippines, through discourse analysis, narrative inquiry and participant observation. The study deals with State exclusion and societal otherization by analyzing how State policies establish the otherization and perpetuate the exclusion of the Badjaos and how these discursive and material exclusions are mirrored in society. A case study of the Badjao community in Bohol, Philippines underscores the main argument that both State policy/discourse and societal otherization mutually constitute the exclusion of the Badjaos. The State's framework of indigeneity and rights is exclusionist by the very fact of its modernist approach thus homogenizing all or invisibilizing some indigenous groups. The study demonstrates the diverse notion of 'territoriality' from which lies the difference between that of the hegemonic definition embedded in modernist sense of boundaries and private property and the collective sense of space among indigenous peoples. But an interesting finding in this study is that this notion of 'territoriality' is still nuanced between and among the indigenous peoples of the Philippines as the Badjaos do not have such relations with territory. The failure to recognize this nuanced sense of space has ramifications in the citizenship rights of the Badjaos. Power relations is highlighted in the geopolitical imagination behind the term 'Badjao' which lies in the fluid dynamics by and between physical, social, and symbolic spaces where State and society reify the Badjaos into a socially excluded position.

Keywords

Social exclusion, Development, Modernity, Citizenship, Rights, Power, Hegemony, Space, Otherization, Territoriality, Discourse analysis, Indigenous Peoples' Rights Act, IPRA, Indigenous Peoples, Sea nomads, Badjao, Bohol, Philippines

Chapter 1

Tensions to a ‘Sea-world without Borders’

This study deals with State exclusion and societal otherization. It analyzes how State policies establish the otherization and perpetuates the exclusion of the Badjao people, the sea nomads of the Philippines and how the discursive and material exclusions of the Badjaos generated by hegemonic discourses of the State are mirrored in society.

The following concepts: social exclusion, critique of development and modernity, citizenship and rights, power, space and otherization, were used to analyse the research findings. I have employed discourse analysis, narrative inquiry and participant observation as methods of this research. The main argument is that both the State’s policy/discourse and societal otherization mutually constitute the exclusion of the Badjaos. This study takes the concept of otherization as describing the social exclusionary process against the Badjaos with strong elements of spatial dynamics by and between State and society.

The paper is organized into the following: Chapter 1, contains the tensions providing the rationale of the study which include the research locale, research objectives and questions, current research, and methodology and methods; Chapter 2, outlines the analytical framework of the study from which analysis of the exclusion and otherization of the Badjaos is based; Chapter 3, discusses how the State establishes the otherization and perpetuates the exclusion of the Badjaos -- how they are situated on the fringes of policy highlighting two major discourses: indigeneity and rights with the concomitant exclusion of the Badjaos within these discourses as well as the accompanying material exclusions against them; Chapter 4, locates the Badjaos geographically, socially and symbolically living on the margins – how society constructs the Badjao as the other; and Chapter 5, conclusion.

1.1 Research Locale

The Badjaos are popularly known as the ‘Sea Gypsies’ of the Sulu and Celebes Sea (Toohey, 2005: 293). While they refer to themselves as ‘people of the sea’, they belong to a wider group of Sama peoples that ‘includes not only boat-dwelling and former boat-dwelling groupings but also shore- and land-based peoples’ (ibid). Historically, they held no land or other property ashore except for small burial islands, and are a highly fragmented people with no overall political unity (ibid). Numbering to about a total of 107,000 in the whole country, the Badjaos thrive on the sea, ‘traveling by boat from one island to the next in search of a fishing harvest’ (Joshua Project, 2009).

While there are specific locations where the Badjaos have been living in ‘communities on stilts,’ settling for a sedentary lifestyle, in harmony with the

land-based communities, many are still heavily reliant on the sea (NCIP¹, 2008). Torres and Gonzales (2001 in UN Philippines, 2002: 85) noted that 'Badjao communities have coalesced into larger pole house villages, where their ways are slowly being taken over by those of the surrounding shore population, and where they now live in abject poverty'. Many of these coastal settlements are dotting the Sulu Archipelago while others are scattered in many urban centres of the Philippines in search of livelihood, which more currently includes begging from pedestrians in the streets.

The Badjao is said to be the most marginalized among all the other indigenous peoples in the Philippines. Understanding this marginalization of the Badjao community initially requires the recognition of the historical context and an examination of the social exclusionary processes that Badjao people experience which stem from their social and spatial location in Philippine society. The Philippine Center for Investigative Journalism (PCIJ) reported that even given the 'high correlation between ethnicity and poverty among indigenous peoples, compounded by a long history of discrimination and prejudice,' (PCIJ, 2007) 'regrettably relations between these peoples and more powerful populations ashore (such as the Tausug and Maguindanao in the Southern Philippines) have seldom been founded on mutual respect, and everywhere the Badjao, as a sea people, have tended to be marginalized, excluded from positions of power, despised, and confined to the lowest rungs of the social ladder' (Sather in Bottignolo, 1995: vi).

The Badjaos, labelled as sea gypsies, connotes a way of life that relates to movement and homelessness and in effect results to their spatial exclusion. A study by Professor Aurora Roxas-Lim of the University of the Philippines' Asian Center says that the prejudices against the Badjao often stem from the preconception that all nomadic people are by nature shiftless, rootless, irresponsible and unreliable (UN Philippines, 2002: 86).

The Badjaos in Bohol are settled in *Barangay*² Totolan, Dauis. Totolan is a coastal village in the northern part of Dauis located on the opposite side of Tagbilaran City (capital of Bohol, Philippines), 1.5 kilometres away from the city. They are said to have migrated to Totolan, Dauis from Zamboanga, western part of Mindanao, through sail boats due to unstable 'peace and order' situation in the area. This group has established a community in the present location in the early 1980s after securing a foreshore lease which expired in 2004. They have built houses made of *nipa* (palm) huts raised above the sea water by bamboo stilts with wooden walls and galvanized iron roofing. Their

¹ National Commission on Indigenous Peoples

² A barangay is the smallest administrative division in the Philippines and is the native Filipino term for a village, district or ward. See <http://www.answers.com/topic/barangay>.

houses consist usually of one room which serves as bedroom, receiving, dining and kitchen.

At present, there are 75 households in the community and a total population of 445. Badjaos have long thrived mainly on subsistence deep sea fishing. Their elders used *bubo*, a traditional fishing method but many have resorted to compressor fishing³ and selling pearls. Majority of the population do not attend school although some interventions have been done for adult education through the NCIP and the Department of Education together with a few non-government organizations (NGOs) and religious missionaries which have marginally increased literacy rate in the area.

1.2 Research Objectives and Research Questions

Research Objectives

This study aims to fill in the gap and/or add to existing literature on the social exclusionary process confronting the Badjaos. It hopes to highlight the exclusion in development policy and how this is reflected in society's otherization of the Badjaos. It further hopes to inform policymakers of the gaps in the policy as well as those other non-State actors such as NGOs and other groups intending to provide interventions for the Badjaos.

Research Questions

Taking as case study the Badjao community in Bohol, Philippines, I want to explore the central question: How have the State and society produced and reproduced social exclusion of the Badjaos? I have two points of exploration, 1) how the State shapes the 'otherization' of the Badjaos and perpetuates their exclusion, 2) how the discursive and material exclusions of the Badjaos generated by hegemonic discourses of the State are mirrored in society.

1.3 Current Research

Although a number of studies of sea nomads in Southeast Asia have been made, the Badjaos being among these different groups, Chou (2006: 3) notes that 'there is a dearth of ethnographic studies' on them. While some existing research 'narrowly looks at the organization of sea nomads' travel routes, their techniques for spatial production of locality, and the often humdrum

³ Compressor fishing is an illegal type of fishing activity as its hazardous nature is characterized by the use of a compressor as breathing apparatus in the fishing activity of some fishers. See http://elac.org.ph/content/index2.php?option=com_content&do_pdf=1&id=10

preoccupations of small scale communities' (ibid) others like Nimmo and Bottignolo look at social change and religious phenomenon. Chou further notes that highly descriptive past and present writings, can be reread from other points of view and possibly theorized, as we see in them 'how the ideas of community, citizenship, and legal rights are reconfigured, reinterpreted, and reconceptualized in the encounter between mobile populations and nation states' (ibid).

Toohey's (2005) work *Badjao: cinematic representations of difference in the Philippines*, is distinctive. It employs media/visual analysis of cinematic representations of difference in Philippine society by looking into 'how the concept of "ethnic" difference was visually presented in Philippine commercial cinema during the 1950s' (Toohey, 2005: 281). Toohey writes that the concept of ethnic difference is 'somewhat problematic, given the multiplicity of approaches with which the concept has been applied to diverse groupings of peoples, revealing the historical conjunctures and societal tensions within Philippine colonial and postcolonial histories. But the film *Badjao* had successfully commercialized the idea and expression of ethnic conflict and difference through the deployment of conventional representations of Otherness in the visual arts' (ibid). She suggests that the 'film's interrogation of subjugation through ethnic identity and conflict contributed to the reformulation of "ethnic" difference in nationalist discourses in the decades following the Pacific War' (ibid).

Toohey has tackled therefore earlier societal tensions which highlight the *Badjao* as ethnically differentiated and confined to the lowest rung of Filipino society. I, too, locate my study within this literature that explores the social exclusionary process confronting the *Badjaos*. Because the *Badjaos* in the Philippines are a highly dispersed population, and the writings and studies of the *Badjao* I have come across with are concentrated on the *Badjao* communities in Southern Philippines, I have chosen to study the *Badjao* community in Bohol, located in Central Philippines.

1.4 Methodology and Methods

In the introduction to *Feminism and Methodology*, Sandra Harding suggests that 'a methodology is a theory and analysis of how research does and should proceed' (Harding in Brayton, 1997). This study relies on a feminist postmodern approach, a key point of which draws from the works of theorists like Foucault who emphasize locality, partiality, contingency, instability, uncertainty, ambiguity and essential contestability of any particular account of the world, the self, and the good (Anderson, 2000). Postmodernist theory drives the point that there can be no complete, unified theory of the world that captures the whole truth about it, therefore, the selection of any particular theory or narrative is an exercise of "power" — to exclude certain possibilities from thought and to authorize others (ibid). Feminist postmodernists are more inclined to take the view that gender is not *the* site but *one* site of social identity and location. Challenging the epistemic privilege claimed by feminist

standpoint theorists, ‘feminist postmodernism thus envisions our epistemic situation as characterized by a permanent plurality of perspectives, none of which can claim objectivity — that is, transcendence of situatedness to a “view from nowhere”’ (Naples and Sachs, 2000: 203).

In this study, I acknowledge being critical of the policy and view it as repressive but I believe I tread on tricky ground in dealing with the notion of power within a national policy and linking it with the experiences of a relatively powerless group of people. It is very easy to get swayed with the idea that the State with its attendant governmentality such as policy (within which it holds the power of labelling its people as indigenous or invisibilizing them as well) is the root cause of their exclusion. However, I contend that power is not solely located in the hands of the State. Power can also be found in non-state actors in society. On this ground, I am conscious that a less nuanced understanding of power bars one from recognizing other practices of exclusion existing within society that which may not stem from the State. Thus, the challenge of the research is to be more critical of the view of power, how power is exercised and unequal power relations reproduced. It required therefore sensitivity both in the treatment of texts for analysis and in the field during which articulations of power are seen – how power works, exclusions that are less familiar, community opposition or listening to what things mean to people.

Grosfoguel (2008: 3) also discusses about subaltern epistemic perspectives – knowledge coming from below that produces a critical perspective of hegemonic knowledge in the power relations involved. He notes the importance of distinguishing ‘epistemic location’ from the ‘social location,’ stressing that ‘the fact that one is socially located in the oppressed side of power relations does not automatically mean that he/she is epistemically thinking from a subaltern epistemic location’ (ibid). He further explains that ‘the success of the modern/colonial world-system consists precisely in making subjects that are socially located on the oppressed side of the colonial difference think epistemically like the ones in dominant positions’ (ibid). I had to be more cautious of the epistemic privilege of marginalized subjects – what knowledge I got from research informants, conscious whether their views reflect a certain kind of thinking and which side, if any, these are epistemically located and the fact that my own understanding of that view may also influence how such view may be taken, understood or negotiated.

Although there are no set standards as to how a feminist research should go about, I have drawn some elements of feminist theory proposed by Harding as guide to doing this study such as ‘removing the power imbalance between researcher and subject; recognizing the researcher as part of the research subject; acknowledging that the beliefs of the researcher shape the research; and affirming that it has a major role in changing social inequality’ (ibid).

In view of power relations, postmodern theorizing demonstrates sensitivity toward a greater multiplicity of power relations (Naples and Sachs, 2000: 203).

It is important to note what Scheyvens et al. (in Scheyvens and Storey, 2003: 139) stated that ‘fieldwork [...] can give rise to a plethora of ethical dilemmas, many of which relate to power gradients between the data collector and the data collectioned [sic]. Some feminist ethnographers have used self-reflexive techniques to reveal how power and difference construct encounters in the field’ (ibid: 204) among which are three interrelated dimensions by which power is discernible: (1) power difference stemming from different positionalities of the researcher and the researched (race, class, nationality, life chances, urban-rural background); (2) power exerted during the research process, such as defining the research relationship, unequal exchange, and exploitation; and (3) power exerted during the postfieldwork – writing and representing (Wolf 1996b: 2 in Naples and Sachs, 2000: 203).

Narrative Inquiry and Participant Observation

Not wanting to get a skewed impression nor incomplete picture of societal otherization of the Badjaos, I conducted fieldwork in the Badjao community in Bohol, Philippines. In my initial visit to the area, I immediately revealed my research purpose to establish “legitimacy” of my presence in the community for the duration of the research so it would not come as a surprise to the rest of the community members. Although not new to researchers coming to them, I was informed that I had to seek permission from the NCIP to do research in the area. My contact in the community explained that they have been previously warned by NCIP to beware of ‘researchers’ who come to the place, take pictures of the Badjao, and sell these outside of the country or use their group to look for funding and never return. Thus, I informed the NCIP of my research intention and took advantage of the opportunity to informally chat with the local staff to gather their own views on the Badjaos.

I made use of open telling of stories and conversations in drawing out stories of how the wider community views the Badjaos and thus how the Badjaos experience exclusion. My research informants include random women and men, young and old Badjaos and non-Badjaos some of whom I had repeated encounters during the course of the research. Apart from conversations and listening to their stories, I kept my eyes open for observations of community life in the area as well as to incidents outside the community that somehow relate to the Badjaos. My conversations with friends, family and other acquaintances in the various social settings that I was in during fieldwork revealed interesting notes that affirmed the nexus of inclusion and exclusion surrounding the Badjaos. I wrote down my observations and reflections in a journal which came mostly after the visits, having in mind to keep the ‘naturalness’ of the encounters and conversations. I had to rely on my memory for the most part which is a risky option. This and the selectiveness of memory characterize the partiality of my narratives of the Badjaos.

Conscious of the power relations that I was in, I grappled at different stages of the research. Starting from my positionality as a researcher, I dealt

with such simple concerns as how to introduce myself, why I chose them to be my research subject, and the concern at the back of my mind that I have some lofty ideas of sincerely doing something for people like ‘them’, who have been ‘otherized’ as ‘different’ and objectified as ‘in need of help,’ for which I myself have grown up having the same socially constructed disposition.

In the field, I had some encounters with what Guillemin and Gillam termed as ‘ethically important moments’⁴ in doing research as when some of my friends working in an NGO advocating for marine resource protection (a sensitive issue among the Badjaos as they are usually accused of employing destructive fishing methods) wanted to come along with me to the area to invite Badjao representatives to a multi-stakeholder meeting on the protection of marine sanctuaries located in the fishing grounds of the Badjaos. Although they ended up visiting the area at another time, I had to discuss this particular discomfort with my friend who graciously understood my concern. I gradually became more settled with the idea that I cannot dissociate my identity as researcher from my background. I was reminded of Abbott’s (2007: 213) realization that ‘data gathering cannot be divorced from local political realities and histories; therefore, research methods have to adapt to the specifics of that, and not the other way round’.

Going beyond the field, interpretation and analysis of data presents another exercise of power in itself hence an ethical concern. Writing and presenting the research requires introspection as to how I have approached the whole research process. The narratives – evocations of everyday life presented in vignettes of thoughts, stories, and experiences of exclusion from both Badjao informants and the wider community may be contested at different spaces and points in time but the important lesson is that cultural interpretation is no easy task, and having ‘thick descriptions’⁵ can only provide as much vignettes of life as possible but never enough, if at all, to be able to generalize.

Discourse Analysis

To give a background on the state policy, frame analysis as a discourse analytic approach is used to examine specific text, the Indigenous Peoples’ Rights Act (IPRA) of 1997 that enshrine indigeneity and other related discourses. Policy as discourse reveals constructions of citizenship, indigeneity, rights and its related concepts as well as the social reality that is consequently produced and

⁴ Guillemin, M. and L. Gillam (2004) refers to this as being able to develop a means of addressing and responding to ethical concerns if and when they arise in the research (including a way of pre-empting potential ethical problems before they take hold).

⁵ See Geertz’s understanding of ‘thick description’ — ‘an elaborate venture in’ which refers to the meaning behind an action and its symbolic import in society or between communicators. See <http://academic.csuohio.edu/as227/spring2003/geertz.htm>

reproduced by this construction by and among public actors. Examining policy as discourse establishes a framework for understanding the dynamics of social exclusion of the Badjaos within the discursive space of the IPRA taking into consideration the historical, spatial and social context. Taking policy as text may ‘yield some interesting insights, notably in the language used to describe the people who are the objects of the policy’ (Cameron, 2009).⁶

One usage of discourse analysis defines discourse as ‘an ensemble of ideas, concepts, and categories through which meaning is given to phenomena’ (Hajer 1993 in Gasper and Apthorpe, 1996: 2). Hajer (1993: 45 in Gasper and Apthorpe, 1996: 2) explains that discourses frame certain problems; they distinguish some aspects of a situation rather than others. This means that frames help us identify what we address and what we neglect. Applying this to the IPRA, the critical question is that despite being considered as a relatively inclusive legal instrument for the realization of rights of the indigenous peoples, ‘why does the issue of marginalization of the indigenous peoples persist?’ Yanow (2009)⁷ speaks of the intractability of certain issues which may require going back to how the issue or problem is perceived rather than making a calculation as to the best solution. Hence, the intractable character of the issue of marginalization of indigenous peoples is explored by arguing against how this issue/problem is viewed from the point of policy –how policy has resorted to the quest for the best course of action towards the indigenous peoples, that is, recognizing their rights through policy; instead of taking a step back and looking at the meaning-making process – how policy has viewed the indigenous peoples by examining how they are defined in the IPRA, which I further argue has framed them within a box influenced by modernist definitions.

The other usage of discourse maintains that “‘discourse” is not just a set of words, it is a set of rules about what you can and cannot say’ (Barrett 1995 in Gasper and Apthorpe, 1996: 4) which leads to the claim that “‘discourse” is “‘practice and theory” – material activity which transforms nature and society and the modes of thought that inform action...’ (Moore 1995: 30 in Gasper and Apthorpe, 1996: 4). This supports the understanding of how and why the policy is articulated in such a manner and how it reflects the pervading power relations and material conditions in the society where the policy is basically couched in. Using frame analysis, I looked into how State policy views the indigenous peoples by examining the IPRA, and drew out major discourses that reflect the existing power relations in Philippine society. Within this

⁶ Cameron, J. (2009) ‘Lectures Notes: 4223 Part B Sessions 5-11: Comparative Epistemology: Chapter 6 The Epistemology of Postmodernism and Poststructuralism, ISS: Development Research.

⁷ Yanow, D. (2009) ‘Powerpoint Presentation: 3206-0809 Session 7: Frame Analysis Part I, ISS: Research Techniques.

process, I identified the included as well as excluded discourses that shed light on the inclusiveness of the IPRA as regards the case of the Badjao.

In this chapter, I have outlined the tensions that provide the rationale of the study by describing the research locale, presenting the research objectives and questions, current research, and methodology and methods.

Chapter 2

Theorizing the Exclusion of the Badjao

The chapter presents the analytical framework of the study which is drawn from a review of literature and elaborates the key concepts applied in the analysis of how State policy establishes the otherization and thus perpetuates the exclusion of the Badjao people and how society also constructs and reconstructs the Badjao as the 'other'. It consists of the following concepts that address the different levels of analysis in the study: social exclusion, critique of development and modernity, citizenship and rights, and power, space and otherization.

2.1 Social Exclusion

Certain groups in society are deprived of advantages and entitlements because of discrimination on the basis of ethnicity, gender, class, or other social position. They are referred to as socially excluded. Social Exclusion, according to Commins (2004: 68 in Kurian, 2008: 8)⁸, 'refers to the dynamic processes of being shut out, partially or fully, from any or all of several systems which influence the economic and social integration of people into their society'. Pointing out the 'dynamic nature of social exclusion encourages a focus on processes and not just outcomes' (Wilson, 1995; Byrne, 1999 in Andersen and Siim, 2004: 118).

DFID (2005: iii) recognizes that social exclusion deprives people of choices and opportunities to escape from poverty and denies them a voice to claim their rights. Social exclusion acknowledges the different forms of 'poverties' which include persistent disadvantages and denials of entitlements in the social, cultural, economic, geographical, and political aspect (Kurian, 2008: 6)⁹. Kurian and Bedi (2004 in Kurian, 2008: 15)¹⁰ recognize that it encompasses not only lack of access to goods and services which underlie poverty and basic needs satisfaction but also, among others, lack of security, lack of justice, lack of participation and representation (ibid).¹¹

Commins notes that the process of social exclusion has been generally linked to the concept of poverty but goes well beyond it (ibid). Whereas poverty as a related notion refers only to material deprivation, social exclusion

⁸ Kurian, R. (2008) "Powerpoint Presentation: 4103-0809 Session 14: Social Exclusion and Feminist Agency, ISS: Women, Gender, Development.

⁹ ibid

¹⁰ ibid

¹¹ ibid

urges a multidimensional view of well-being which acknowledges the intersecting 'poverties' or disadvantages experienced by the socially excluded (ibid). Institutions may also perpetuate exclusion such as when state institutions deliberately discriminate in their laws, policies or programs (DFID, 2005: 3).

People may also become excluded not only on the basis of 'who they are but also on where they live, and as a result are locked out of the benefits of development' (DFID, 2005: iii). The latter form of exclusion is termed as 'spatial' exclusion. For Keith and Pile (1993: 24), 'space is produced and reproduced and thus represents the site and the outcome of social, political and economic struggle.' For example, the Badjaos geographical location has a bearing on their social location which in turn determines not only their access to citizenship entitlements and rights but also the markers of their identity.

In this sense, I would like to employ these conceptions of social exclusion to understand some facets of the discursive, material, and social exclusionary process faced by members of the Badjao community. 'By encouraging the question "who is excluding whom and how?" the concept draws attention to the role played by social and economic institutions and by political decisions in creating and reinforcing poverty and exclusion' (Andersen and Siim, 2004: 118).

2.2 Critique of Development and Modernity

Using the critique of development by Escobar and Santos, I locate the construct of otherness of the Badjaos and their resultant social exclusion within the overall space of development discourse and modernity.

Development had achieved the status of certainty in the social imaginary so much that it is difficult to conceive of reality in other terms (Escobar, 1995: 5). For Escobar, reality has been colonized by the development discourse. This development discourse traces its imaginary to the colonial discourse described by Homi Bhabha as 'crucial to the binding of a range of differences and discriminations that inform the discursive and political practices of racial and cultural hierarchization' (1990: 72 in Escobar, 1995: 9). Governed by the same principles as the colonial discourse, the hegemonic power of the Western world over the Third World achieved through the production of knowledges and exercise of power over is also embedded in the development discourse. The racial and cultural hierarchization appropriated by the West allowed for and justified the conquest and establishment of systems of administration and instruction to 'subject nations' in various spheres of activity (Bhabha 1990: 75 in Escobar, 1995: 9).

Development also carries with it the idea of modernity that treads on a linear path from traditional to modern society. Escobar recognizes modernity as a 'totalizing project' that creates uniformity and destroys difference

(Escobar, 2007). Santos (2007: xx) articulates that there is an incompatibility in the Eurocentric conceptions of cultures in relation to the worldview of the non-Western (indigenous, rural, etc.) populations. He cites as example the contrast between a notion of ‘territoriality’ as a collective of space against the Eurocentric concept of private property that pervade the development and modernity discourse espoused by many nation-states at present.

Following this analogy, I argue that the same principles within the development discourse apply to how state policies shape otherization and perpetuate exclusion of the Badjaos from the rest of the Filipino society. Philippine history alone is replete with chronicles of specific power relations of colonization and postcolonization that entailed the supplanting of native or indigenous systems and knowledges with that of the Western. A product of this colonial project is the systematic creation of differentiation and hierarchy within Philippine society stemming from the colonial and postcolonial regime’s will to dominate. Power is exercised by the State, in parallel fashion as racial and cultural hierarchization. The State, given its constitutional supremacy vis-à-vis society and corresponding claim to sovereignty, acquires the power to define who is *in* and who is *out*, how and why, and under what conditions. When it frames, for example, the indigenous peoples within policy with explicit reference to their distinctness as a group of people within the larger society, it exercises an evaluative judgment that such group is different, therefore, the ‘other’. The State thus is the sole defining power of the quality of constituting citizenry – who is accepted as constitutive group within its geographic/spatial boundaries.

An instrumentality that facilitates the totalizing project of modernity is planning. Escobar (1992: 132) defines planning as ‘the belief that social change can be engineered and directed, produced at will’ and argued that such has long been an unchallenged concept that has lent legitimacy to the enterprise of development where programmes – though providing visibility to subjects (i.e. farmers, women, indigenous peoples), view them as development ‘problem’ making them objects of bureaucratic interventions.

Chandra Mohanty makes a critique of this representation saying that it is discursively homogenizing and systematizing oppression which finds application in the symbolic attributes of the ‘underdeveloped’ in mainstream development literature as powerless, passive, poor, and ignorant, usually dark and lacking in historical agency, as if waiting for the (white) Western hand to help subjects along and not infrequently hungry, illiterate, needy, and oppressed by its own stubbornness, lack of initiative, and traditions (ibid: 8). Neither unintentional nor innocent, this exercise of power to articulate a discursive model of the ‘cultural other’ is informed by its vested interests to uphold the imperatives of development.

2.3 Citizenship and Rights

However, the benefits of Eurocentric development, couched in the modernist notion of territoriality based on private property, are made available only to its subjects by virtue of the merits of the concept of citizenship. The liberal modern definition of citizenship constructs all citizens as basically the same and considers the differences of class, ethnicity, gender, etc., as irrelevant to their status as citizens. Multiculturalist policies, on the other hand, are aimed at simultaneously including and excluding the minorities, locating them in marginal spaces and secondary markets, while reifying their boundaries (Yuval-Davis, 1997). Moreover, redistributive, egalitarian discourse of citizenship ‘represents an expansive discourse that embraces civil, political, cultural and social rights where citizenship is deemed partly about equality of status and respect’ (Andersen and Siim, 2004: 118).

The State’s power to name who are its citizens, however, carries with it the exercise of determining who has claims to citizenship rights. There exist problematic interpretations of citizenship rights for indigenous peoples within mainstream literature that views them as distinct. More contentious is the issue of citizenship among Badjaos. This is elaborated by Santos when he contends that ‘the definition of the identity of peoples in the non-Western world and of their collective rights tends to be strictly bound to a notion of “territoriality” associated with responsibilities in relation to a territory, which is defined as a collective of spaces, human groups (including both the living and their ancestors), rivers, forests, animals, and plants... Differences between worldviews become explicit and turn into sites of struggle when the integrity of these collectives is threatened by alternative notions of relationships to territory and knowledges - such as those that are based on the right to property - or when the distinction between respect for culture and the imperative of development is used to justify the exploitation of “natural resources” by outside forces’ (Santos, 2007: 2).

The issue, therefore, is not territorial but the complex notion of integrating all aspects of groups’ life in defining their relation with ‘nature’. In other words, while the State distinguishes people from ‘territory’ defining the latter as private property, the ‘indigenous’ group whether Badjao or otherwise see their world as a complex whole, in which separation between ‘sea’ and people, culture and nature makes no sense. It is this contention which makes the concept of citizenship vis-à-vis the Badjaos important because it illuminates understanding as to “who is being excluded and how” from claim to rights and entitlements thereto.

2.4 Power, Space and Otherization

Adopting the Foucauldian notion that power resides everywhere, I would like to take into consideration the dynamics of power relations in both policy-making and societal otherization of the Badjaos. For Foucault, ‘power is both discourse and practice’ (Deflem, 1999). From his perspective, power is not

solely located in the hands of the State as to think so is to impoverish the question of power in terms of legislation, constitution and state apparatus (ibid).

Applying this to the discourse of difference in the IPRA, the State exercises its power to frame the identity of indigenous peoples as distinct from the mainstream society and uses this distinction to further different purposes at various spaces or locations and points in history. The liberal humanist technologies of power adopted by the State see difference 'as something to be accommodated, if not overcome' (Allen, 1997: 23). This prevailing discourse which stresses difference and portrays the indigenous peoples as 'culturally subordinate' highlights the need to bring into the folds of the dominant culture these differentiated groups. Moreover, Kuper and Smith (1971 in Belton 2005: 7) also demonstrate how ethnic distinctions can be understood as the product of exploitative social and economic considerations and show that social and economic relations give rise to ethnicity-generating forces. For Foucault, 'the individual, with his identity and characteristics, is the product of a relation of power exercised over bodies, multiplicities, desires, forces' (quoted in Gordon 1980: 74 in Belton, 2005). Alan (cited in Earle et al., 1994: 50-51) also 'illustrates how social forces impose themselves on identity' (Belton, 2005: 16). This discourse of difference then becomes socially accepted and internalized by the dichotomized 'dominant' and 'dominated' which is parallel to the Gramscian concept of hegemony that is, domination through consent and Bourdieu's concept of doxa, that is the naturalization of these self-evident, taken for granted, not spoken about systems of classification and domination.

While, indeed, there is power in labelling (symbolic space) the indigenous peoples as such with its attendant attributes to serve the purposes of the State, the visibility or invisibility of the 'labeled' also point to who has 'physical and social space'. Thus, the dynamics of discourse and power in the representation of reality is useful in understanding how the State uses its power to designate the 'other'.

Foucault also talks about relations between space and power. For him, space becomes 'important when it is used in and as power' (Deflem, 1999). He 'persistently explored the connections between knowledge, power and spatiality and maintained that the transition from temporal to spatial metaphors enabled a discursive shift from the realm of individual consciousness to wider "relations of power" as constitutive of social meaning' (Keith and Pile, 1993: 73). Allen (1997: 2) elaborates that 'space is related to power in that it is critical to the social production and reproduction of difference'. I shall draw on these elaborations of how space is used in power, both in categorization and confinement to a certain spatial identity, as a form of control and in terms of territories of hegemonic domination and marginalization.

Drawing from Foucauldian concept of power and knowledge and Gramsci's concept of hegemony, Said (1993) argues that as a result of this hegemony, certain cultural forms predominate over the others just as certain ideas are more influential than others – taken to mean the superiority of the Western culture over the essentialized images of the inferior Orient. Streaming from this dichotomization came 'a geopolitical imagination shaping the development discourse as the social production of space implicit in the terms – First and Third World, North and South, center and periphery – that is bound with the production of differences, subjectivities, and social orders' (ibid: 9). This, for Said, was how the development discourse resulted in concrete practices of thinking and acting through which the 'Orient' or the 'Third World' is produced (ibid), a term which he referred to as 'Orientalism'.

Other spatial theorists elaborate on spatiality or 'the ways in which the social and the spatial are inextricably realized one in the other' (Keith and Pile, 1993: 6). Soja (1989: 6 in Keith and Pile, 1993) writes that 'we must be insistently aware of how space can be made to hide consequences from us, how relations of power and discipline are inscribed into the apparently innocent spatiality of social life, how human geographies become filled with politics and ideology'. Soja and Hooper (in Keith and Pile, 1993: 184) note that 'the cultural politics of difference, whether old or new, arise primarily from the workings of power – in society and on space in both their material and imagined forms.' Bourdieu's idea that 'social space also functions as symbolic space,' (McNay, 2004: 11) can also be taken the other way around such that symbolic space also feeds into social space. This is useful in looking at the relational link between the constructed images of the Badjaos in society and their confinement to a certain physical and social location.

Ferguson and Gupta (2002: 982) note how Western political theory has conceived the State as 'possessing such "higher" functions as reason, control, and regulation, as against the irrationality, passions, and uncontrollable appetites of the lower regions of society.' They also contend that 'states represent themselves as reified entities with particular spatial properties,' what they refer to as "vertical encompassment" or the State being "above" society and "encompassing" its localities.' A whole range of metaphors and practices comprise this operation termed as 'spatialization of the State' which helps secure the State's legitimacy, naturalize its authority, and represent itself as superior to, and encompassing of, other institutions and centres of power (ibid). This conception of the State as being 'up there' is accordingly false and socially constructed. Drawing attention to this problematic construction of the 'verticality' of the State is useful in order to view the social process through which the State renders effective practices that 'alter how bodies are oriented, how lives are lived, and how subjects are formed' (ibid: 984). They also highlight that it is important to note that these do not only refer to coercive practices of the State but also to the 'implicit, unmarked, signifying practices embedded in everyday practices of State institutions' (ibid: 984). Arguing further on spatialization, Gupta and Ferguson (1992: 8) put forward that 'by always foregrounding the spatial distribution of hierarchical power relations,

we can better understand the process whereby a space achieves a distinctive *identity* as a place.’ Moreover, ‘keeping in mind that notions of locality or community refer both to a demarcated physical space *and* to clusters of interaction, we can see that the identity of a place emerges by the intersection of its specific involvement in a system of hierarchically organized spaces with its cultural construction as a community or locality’ (ibid).

I employ these geographical imagination and spatial explanations to show how space when used as power produces and reproduces difference and how space is used to impose hegemonic discourses both by State and society.

This chapter has elaborated how each concept shall be employed in building the argument that both the State’s discourses and societal exclusion are reinforcing each other in otherizing the Badjaos: social exclusion as important in drawing attention as to ‘who is excluding whom and how?’ and the role played by social and economic institutions and by political decisions in the social exclusionary process; the same principles within the critique of development and modernity apply to how state policies shape otherization and perpetuate exclusion of the Badjaos from the rest of the Filipino society; citizenship and rights illuminate understanding as to ‘who is being excluded and how’ from claim to citizenship rights and entitlements thereto; and that the fluid dynamics by and between physical, social, and symbolic spaces interact within a social exclusionary process.

Chapter 3

On the Fringes of Policy

In this chapter, I demonstrate how the State constructs exclusion against the Badjaos. It consists of two sections: a) a discourse analysis on the IPRA where I focus on two major discourses. Here, I argue that the deployment of the term ‘indigenous’ inscribed in the policy entails a relationship of power that operates not only to demarcate physical space but also social and symbolic spaces within the dynamics of claims to normative concepts of citizenship and rights of the Badjaos within the context of modernist definitions; b) an examination of the material exclusions faced by the Badjao through a discussion of selected State regulation, function and pronouncement that display both its coercive and non-coercive practices and impact on citizenship rights of the Badjaos.

3.1 Re-reading Exclusion in the Indigenous Peoples’ Rights Act of the Philippines

In 1997, the Philippines formulated a key national policy framework in the effort to uphold national unity, prospectively embodied in the Republic Act No. 8371 otherwise known as the IPRA¹². Based on International Labour Organisation (ILO) Convention 169¹³, the policy was enacted to recognize, protect and promote the rights of indigenous cultural communities/indigenous peoples in the Philippines (NCIP¹⁴, 2008: 1-25). It is an embodiment of the rights and aspirations of indigenous peoples which are as follows: right to ancestral domains, right to self-governance and empowerment, social justice and human rights, and cultural integrity (ibid). Yet, even with this strong enunciation of protection for indigenous peoples, problems of realization of its provisions still exist.

The NCIP was established in 1997 primarily to process up to two million ancestral land claims but, by the end of 1998, operational guidelines for the implementation of IPRA had not been approved and the new government of Joseph Estrada, elected in May 1998, froze the NCIP’s budget in 1999 (Clarke,

¹² See Appendix C.

¹³ Convention concerning Indigenous and Tribal Peoples in Independent Countries. See <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>.

¹⁴ Avowing the rights and welfare of the ICCs/IPs, particularly their clamour on land tenure security and the recognition of their freedom to make choices under the rubric of human rights and development, Republic Act 8371 was enacted into law on October 29, 1997, creating the (NCIP). See http://www.ncip.gov.ph/agency_profiledetail.php?id=2.

2001: 429). Apart from this problem, the inclusiveness of the IPRA is challenged on the basis of the applicability of its land-based territorial concepts vis-à-vis the Badjaos. The term ‘sea nomads’ instead of ‘sea gypsies’ have come to be the more acceptable term to refer to groups of people who practice spatial mobility to enhance their well-being and survival (Chou, 2006: 2). Chou contends that the phenomenon of sea nomadism is less known and has thus challenged the classical idea of citizenship that is defined within bounded territories and guaranteed by a sovereign state. Neofilipino writes:

The collective quandary or perplexity of the governments of the Philippines, Malaysia, Indonesia, Brunei and virtually all countries in the Asia-Pacific region, where they may appear out of nowhere from the sea, on how to deal properly with the Badjaos lies in the inherent differences between the perspectives of the land-based and those of the sea-based ethnic groups. The fundamental mistake committed by the governments . . . , in addressing the concern/issue about the Badjaos is to include the Badjaos among all other indigenous ethnic groups, that are land-based.¹⁵

The question posed here is whether ‘the inalienable human rights of the Badjao as a distinct sea-based indigenous ethnic group who look at their sea-world as “without borders” and respect for their inalienable right to freedom of movement as inherent in their privilege’ (Neofilipino, 2008), are deemed included, therefore recognized under the IPRA.

‘Policy makers, practitioners and researchers use “frames” and “labels” to support their analyses, and to describe to others what they do’ (Moncrieffe and Eyben, 2007: 1). While framing refers to ‘how we understand something to be a problem, which may reflect how issues are represented (or not) in policy debates and discourse’, labelling on the other hand, point to ‘how people are named/categorized (by themselves and others) to reflect these frames’ (ibid: 2). Policy makers ‘use frames and labels to influence how particular issues and categories of people are regarded and treated’ (ibid).

This section presents a re-reading of the IPRA which is ‘An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefore, and for other Purposes’ through the lens of the critique of development and modernity. It also explores how frames and labels operate within the instrumentality of the Act to reflect ‘subjective perceptions of how people fit into different spaces in the social order and of the terms on which society should engage with them in varying contexts and at different points in

¹⁵ See ‘The Badjaos – Sea Gypsies of the Planet Earth’ in http://neofilipino.blogspot.com/2008_01_01_archive.html

time' (ibid) by drawing on discourses on the indigenous peoples of the Philippines.

The Indigeneity Discourse: A Contested Field

'Indigenous' is a term applied to people – and by the people themselves – who are engaged in an often desperate struggle for political rights, for land, for a place and space within a modern nation's economy and society (Guenther et al., 2006: 17). But while some scholars would treat it as a category, others challenge the designation and rather refer to it as a field of discourse (ibid: 25). Wolfe (in Guenther et al., 2006: 25) argues that 'indigenous peoples' self-ascription has an address: their colonizers, who respond to it; thus it is not a matter of making choices in a competition between rival contents or ontologies, or even between positive and negative evaluations, rather, the field of indigeneity encompasses the competition itself, which is inseparable from the politics of territorial expropriation'. Reflecting on this point, I would like to examine whether this proposition may be observed in the framing and conception of the indigenous peoples within the IPRA.

The IPRA of 1997 (Chapter II, Sec. 3h) defines indigenous cultural communities/indigenous peoples (ICCs/IPs) as 'a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos'; it shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains).

The definition of ICCs/IPs in the Act carries the ideas proposed, more prominently that of self-ascription anchored on an-Other which is circumscribed within the politics of territoriality. The definition likewise reflects the category of indigenous peoples that is used by the United Nations (UN)¹⁶ which according to Nair (2006: 8) is problematic because it is ahistorical as it mirrors the notion of the simple and undifferentiated society in the post-industrial discourse. As the IPRA subscribes to UN conceptions of indigenous

¹⁶ For the UN Declaration on the Rights of Indigenous Peoples, see <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

peoples, it can also be reviewed on the same grounds, following the review of Nair (2006: 7-10) on the five criteria adopted by the UN to determine an indigenous community: self-definition, non-dominance, historical continuity with pre-colonial societies, ancestral territories, and ethnic identity.

The self-definition criterion has already made the space of indigeneity a battlefield for inclusion (Nair, 2006: 7). Some Southeast Asian governments have development programs targeting indigenous minorities for incorporation into the nation-state and seeking conformance by minorities to the norms of the ruling majority in the country. But in the Philippines, the estimate provided by the Episcopal Commission on Indigenous Peoples (ECIP) of over 40 distinct ethnolinguistic groups where indigenous Filipinos belong (Eder and McKenna in Duncan, 2004: 57) already presents hurdles for this policy of assimilation. Although Eder and McKenna (in Duncan, 2004: 56) cited that the Philippines holds a bright spot in Southeast Asia with respect to the treatment of its minorities, there are grounds for pessimism principally due to the continuing ability of national elites to utilize their economic and political power to pursue their own interests. By classifying minorities as “primitive” or “backward,” the ruling elites strip the minorities of political identity and discourage them from participation in larger state projects (Duncan in Duncan, 2004: 1).

Nair further states that this battlefield for inclusion ‘resembles the representational political field of nation-states where communities that were unheard of before suddenly appear and assume an identity that cries for representation.’ Eder and McKenna (in Duncan, 2004: 57) note the political activism that has spawned a variety of regional and national alliances among which include: ‘Igorotism,’ or the notion that the various ethnolinguistically distinct Cordilleran peoples share a common ‘Igorot’ identity vis-à-vis lowland Filipinos which took root, in part, in American colonial policies; or the term *Lumad* used today to refer to the approximately 18 indigenous peoples of Mindanao (Rodil 1990 in Duncan, 2004: 57); and even more recent is the general use of the Tagalog term *katutubo* to mean native or original to a place which stands for the widely heard English terms ‘indigenous people’ and ‘indigenous person.’ Yet, because of intermarriages between indigenous Filipinos and ‘lowland’ Filipinos as well as the length of residence of some lowland Filipinos in hinterland areas, it has also become increasingly difficult to specify unambiguously who is and who is not a *katutubo* (Eder and McKenna in Duncan, 2004: 57).

The non-dominance criterion implies victimhood which Nair (2006: 8) states as generally equated with indigeneity as it denotes being vulnerable, marginalized and the like. Governments actively use these derogatory labels to exclude and deny autonomy to indigenous minorities at the same time that they can claim to be developing these populations (Duncan in Duncan, 2004: 1). This strategy has historical evidence in the Philippines with the separate administrative treatment of ethnic minorities with the creation by the American colonial government in 1901 of the Bureau of Non-Christian Tribes, together

with an associated system of reservations (Eder and McKenna in Duncan, 2004: 60). Gibson and Macdonald (1986: 15-17; 1995: 349) agreed that the American regime made explicit a process that begun during the Spanish colonial era which has been theorized as part of the historical and cultural construction of difference between lowland Christian Filipinos and other kinds of Filipinos. The act however redounded to vacillating between efforts to isolate tribal Filipinos onto reservations, in the interest of protecting them from the depredations of others, and efforts to ‘advance’ them, in the interest of better incorporating them into wider Philippine society (Eder and McKenna in Duncan, 2004: 61).

Nair asserts that the historical continuity with pre-colonial societies and ancestral territories criteria lack historical sense. The ‘historical continuity with pre-colonial societies’ criterion carries the myth of the ‘untouched primitive’ as it suggests the indigenous population as being distinct from other sectors of society currently dominating in their territories. Indigenous communities, inherently linked to the process of modernization, are placed outside the sphere of modernization with the notion of preserving indigenous ways of life, art forms, food-habits, industries, all become markers of a traditional world that is free from the perils of modernization (Nair, 2006: 6). A case in point is the celebrated news about the *Tasaday* of the Philippines, ‘a group of leaf-wearing, stone-age-tool-using cave dwellers who, when they were discovered in 1971 living in a rain forest on the Philippine island of Mindanao, believed they were the only people in the world’ (Museum of Hoaxes, 2009) and whose popularity came to the fore when they were claimed to be a hoax, a group of people living in the jungle who were coerced to pose as Stone Age tribes by powerful politicians trying to muddle with land rights. Whatever the truth is about the *Tasaday*, the point remains that indigenosity is persistently grounded on being connected to pre-colonial period untouched by modernization.

As regards ancestral territories, Nair argues that very few societies in the world inhabit ancestral territories, particularly alluding to nomadism and that the creation of territories of belonging is itself a product of colonial practices that forced aboriginal communities to recede into the forests (Nair, 2006: 8). Ancestral land has been a central concern among indigenous peoples in the Philippines who have been alienated from their collective sense of ownership and customary rights to land with the advent of land tenure systems and forced to recede more into the forest with the increasing encroachment and alienation by outsiders. However, the use of ancestral territories, articulated in the definition of ancestral domain replete with land-based orientation (IPRA, 1997, Chap. II, Sec.3a-e & Sec. 4-12) as determinant of indigeneity also excludes the group of sea nomads in the Philippines who do not speak of land-based territorial concepts yet have been tagged as an indigenous people. Here, there is almost an invisibilisation of the Badjao in the realm of the indigeneity discourse. This is seen even in Eder and McKenna (in Duncan 2004: 63) who note that while there has clearly been a notable shift in government’s valuation of ethnic minorities (e.g., from “non-Christians” to ICCs/IPs), there is still the

underlying notion that they shall be brought into the fold of the dominant culture, that is, the culture of lowland Christian Philippine society. The reference to 'lowland' point to the opposite 'highland' that implies indigenous peoples living in the forest areas, land-based territories, therefore excluding the sea-based Badjaos.

As to the last criterion, Nair asserts that ethnic identity is not exclusive a marker to indigenous peoples alone hence could apply to various groups.

It can be argued, therefore, that the IPRA's conception of indigeneity is a reproduction of indigeneity concepts adhered to by the UN which is linked to territoriality and has defined the indigene as the vulnerable, marginalized primitive untouched by modernity. Territoriality has been premised on originality, one that Nair describes as a primeval quality of defense of territories against others of the same species, hence becoming a field of contestation (Nair, 2006: 8). Furthermore, aside from confining indigeneity to being 'original' in a territory, still the more latent implication is that this referred to land-based territories which have been marked with domains and boundaries. Absent in this reference is the unbounded conceptions of the Badjaos' sea-world which have implications on their claim to rights and status in society.

The Rights Discourse: Articulating a Paradox

The concept of rights has gained more currency in recent years and even more so in development literature. The IPRA as a development policy for the indigenous peoples, begins with a declaration of state policies articulating that 'the State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) reiterating those within the framework of the Philippine Constitution' (IPRA, 1997, Chap. I, Sec.2).

But the earlier framing of indigenous peoples within the IPRA, the explicit reference to their distinctness, indicate problematic interpretations of their citizenship rights. For instance, while the Act begins with an acknowledgment of rights of indigenous peoples, it immediately continues with recognizing and promoting such rights within the framework of national unity and development (IPRA, 1997, Sec.2a). This statement could be understood implicitly as articulating towards a policy of national control of resources and that the indigenous peoples' rights should not run counter to national goals. Yet the concept of indigenous peoples vis-à-vis rights involves a paradox because while 'indigenous peoples are distinguished from others based on the preeminence of rights to community ownership, the notion of rights, that is adopted by the state is modern, based on individual property rights that originated in industrial society' (Nair, 2006: 4). This means that an understanding of legitimate rights over territory by indigenous peoples requires a prior affirmation of private property rights (ibid). The notion of private property rights as a springboard for defining community ownership of rights such as the pervasive use of the rhetoric of 'ancestral domain' and 'ancestral

land' almost through-out the text characterizes the IPRA as a policy couched in a language alien to indigenous peoples.

Moreover, while the right of ICCs/IPs to ancestral domain is acknowledged, responsibilities of ICCs/IPs to their 'ancestral domains' are also enunciated such as maintaining ecological balance. Yet ICCs/IPs have long been protecting their environment within the purview of 'stewardship of creation' while outsiders like mining companies have destroyed their 'ancestral domains' in the form of development aggression – 'development' that is oftentimes sponsored by the State. While the State, through the Supreme Court, affirmed the constitutionality of the IPRA, upholding the stewardship rights of indigenous peoples over their land and resources, laws that violate the collective rights of indigenous peoples are also being implemented such as the Mining Act of 1995 which allows 100 per cent foreign ownership of mineral lands and the eviction of indigenous communities; the National Integrated Protected Area Systems (NIPAS) which provides restrictions to indigenous peoples in their own ancestral domains declared as National Parks; the Forestry Code which declares lands with 18 per cent in slope as public lands, thus making indigenous communities in mountainous areas squatters in their own lands (IPR Monitor, 2008: 3).

Behind these State policies are stories of forced eviction, displacement from economic belonging and social dislocation. Political killings of indigenous peoples and the continuing threats to indigenous leaders and community members asserting their collective rights have resulted in more conflicts, fear and mistrust among indigenous communities, weakening indigenous systems of cooperation and solidarity, at the same time, also weakening the indigenous peoples movement for the respect and recognition of their collective rights (ibid: 4). Development and resource extraction projects and military activities continue in IP territories even with the Free, Prior, and Informed Consent (FPIC) provision in the IPRA.

These violations of the collective rights of the IPs are rooted in 1) conflicting laws and policies pertaining to ownership, control, management and development of land and resources despite the repealing clause provided in Chapter XIII, Sec. 83, 2) the lack of political will on the part of the government to protect and respect the rights of indigenous peoples over the vested interest of corporations, big landlords and politicians, and 3) the absence of accountability mechanisms of the NCIP and other government agencies who have been involved in either the manipulation of FPIC, accepting bribes or being negligent in their sworn duties and obligations in upholding the rights and interest of indigenous peoples (ibid: 7).

The IPRA also recognizes the right to self-governance and empowerment (IPRA, Chapter IV, Sec. 13-20). But again, because this particular right is conditioned as should be compatible with national legal system and with internationally recognized human rights principles, the right to determine and decide priorities for development is still anchored on the prevailing State

conception and morality. The provisions become almost empty and rhetorical even when the law upholds that the indigenous peoples maintain and develop their own indigenous political structures.

Chapter V of IPRA speaks of social justice and human rights. I would like to relate this to Amartya Sen's skepticism on the intellectual edifice of rights as explained in his *Development as Freedom*. He argues first in terms of legitimacy where human rights will have to be acquired through legislation, posing the question 'how human rights can have any real status except through entitlements that are sanctioned by the state, as the ultimate legal authority'; second, the coherence critique which argues that as rights are entitlements that require correlated duties, such rights cannot really mean very much unless there are agency-specific duties characterized; third, the cultural critique which looks at the moral authority of human rights given that it is in the domain of social ethics, questioning the 'universality' of such ethics and thus asks 'what if some cultures do not regard rights as particularly valuable, compared to other prepossessing virtues or qualities' (Sen, 1999: 227-228). Thus, rights in this context become a function of a centralized state with its accompanying technologies of governmentality. While the power of the modern state is located in the ability to reach all individuals within its realm very quickly in order to demand compliance to policies promulgated by state institutions, this also suggests the possibility that the same legal and political framework can offer 'citizenship rights' (Bekerman and Kopelowitz, 2008: 7). But this struggle for citizenship rights may be based more on substantive rights rather than formal citizenship as Kabeer (2005: 3-5) argues that the notion of justice of disempowered groups is closely tied to the recognition of not only the intrinsic worth of all human beings but also recognition of and respect for their differences (ibid). But as Fraser (1997 in Kabeer, 2005: 5) points out, 'forms of injustice which are rooted in hegemonic cultural definitions which deny full personhood to certain groups' may be formalized in law or built in policy, as may be the case of IPRA.

The IPRA speaks of cultural integrity (IPRA, Chapter VI, Sections 29-37) and vows protection of indigenous culture, traditions and institutions. But relating this to how indigenous peoples are viewed as having a distinct culture that needs preserving poses a tension against identity and difference. More often than not, it becomes convenient for the State to wave the banner of promotion and preservation of indigenous cultural heritage whenever such cultural resource can be taken advantage of and appropriated in economic terms as for example the wave of eco-cultural tourism that has washed the country at present.

In a nutshell, there exist therefore certain paradoxes in the rights articulated in the IPRA. These include: 1) the promotion of indigenous peoples' rights yet the policy of national control over resources mandates that such rights should not counter national goals, 2) collective rights of the indigenous peoples versus individual property rights espoused by the State, 3) reference to responsibility of indigenous peoples to ancestral lands versus

certain national policies that did not call for equal accountability rather have historically reneged on this responsibility, 4) promotion of self-governance and empowerment for the indigenous peoples but with the expectation that such exercise shall be compatible with the national legal system, 5) rights based on recognition and respect for difference versus rights anchored on State morality, and 6) protection and promotion of indigenous culture within the State's volition and sanctions. While these paradoxes demonstrate how the State imposes its modernist morality upon indigenous peoples by defining their rights in developmental terms, they also reveal the verticality of the State because it positions itself as 'above society' that takes care of the interests of the lower regions such as indigenous peoples – an act which by itself is a spatial distribution of hierarchical power relations through the appropriation of a demarcated physical and social space to the indigenous peoples. Yet, this spatialization in State policy and its impact on social exclusion requires deeper analysis in the case of the Badjaos as will be tackled in the next section.

The 'Excluded' Sea Nomads

The articulation of the indigenous peoples' rights in policy is an outright acknowledgment of their citizenship. But the invisibility of mobile populations such as the sea nomads, who have been mostly configured as an afterthought or merely assumed as included in discourses of fixed localities with territorial boundedness, locates the issue within a political frame that missed out on a better-informed ethnographic understanding of cultures and histories that did not correlate with recently constructed political borders (Chou, 2006: 4). It is this 'mobility and sense of multi-local belonging-ness which greatly strains all interpretations and conceptualizations of citizenship within bounded territories' (ibid: 3).

In this case, the notion of citizenship should be carefully examined as to what it means and how it is experienced among various groups of excluded people. What this implies to the citizenship rights of the Badjao being sea nomads is a critical question that goes back to the inclusiveness of the language of the IPRA. As has been earlier mentioned, the "territorial unboundedness" of the Badjao has led to their exclusion from welfare and access to public services, the most practical translation of citizenship rights, and oftentimes has caused the inferior status accorded to the Badjao and their nomadic way of life.

The global discourse on indigenes, captured in the IPRA, has apparently been blindly repeated as a national narrative of 'true' expression of nationhood. But this has succeeded in adversely framing the indigene as the distinct 'other' -- separate from the majority, valorized in the pedestal of 'origin' and thus needs preservation in order to subsist within the folds of the dominant culture. The exclusion of the Badjao may have defined them 'as being on the margins of "otherness" for the culturally and politically dominant populations of the region' (Chou, 2006:2). This embodies what Kabeer was referring to as formalization in law or in policy of a form of injustice rooted in hegemonic cultural definitions that deny full personhood of certain groups.

The ‘otherness’ of indigenous peoples cannot also be assumed as homogeneous. There is a need to look into the differential experiences of indigenous peoples vis-à-vis this exclusion, in policy, as this case has presented. The excluded narrative of the Badjao, for example, requires breaking the frame of indigeneity that has long resided in territorial and private property concepts. Unless there is a shift in this perspective within the IPRA and therefore a response to the challenges posed to the prevailing discourses that are also materially obtaining within the social context, the ‘otherness’ of the indigenous peoples, including the Badjao, with all its analogous consequences will remain in its ‘otherized’ position in society – dislocated, disenfranchised, and disempowered. In this sense, it is the State that creates the construct of exclusion against the Badjaos.

3.2 Mapping Material Exclusions

This section maps out the material exclusions faced by the Badjaos through a discussion of selected state regulation, function and pronouncement that impact on the citizenship rights of the Badjaos. These signify the other practices of the State that in a way elucidate some mechanics of State spatialization – referring to both the coercive and non-coercive practices of the State and its instrumentalities. I note here tensions in the following: 1) challenging the right to settlement, 2) establishing limits to fishing ground, 3) normalizing land-based orientations in public services, and 4) assigning the Badjao as a ‘cultural artefact’.

Citizenship is as much a spatial as a social concept where representations are embedded within geographically and historically contingent spatial metaphors. Formal relations of the Badjaos with the State have been made visible through its linkage with the NCIP. The NCIP’s role as defender of the rights of the cultural ‘other’ as inscribed in the IPRA, however, reveals conflict between the national policy and local policies. The conflict with local policy reflects a misinformed and unresponsive national policy removed from local socio-political dynamics. Moreover, NCIP’s admission that its budget has been cut because other government line agencies are already doing specific work on education and health, could be taken as rationalizing government failure to extend public services to Badjaos or a display of its own helplessness as a marginalized government agency, last in line to other priorities of the government.

The IPRA itself, where citizenship rights of indigenous peoples are supposedly enshrined, remains to be a floating policy that has not trickled down to common knowledge among the Badjaos. An informant designated by the NCIP as the community’s leader narrates:

The NCIP has invited me to meetings with the representatives of the other indigenous groups in the province namely, the Eskaya and the Aetas (both land-based) for

discussions on our status and orientation on our rights as a group. I have heard of the IPRA but I am not really conversant about it. The representative of the Eskaya tribe is more knowledgeable. I just listen to their discussion and speak regarding our concern on settlement.

The other research informants confirm that they know little about the IPRA. They are aware and have availed, at best, of government services for the Badjaos such as health services and improved sanitation through construction of public toilets. The fact that they have come to expect services from the government or that they have established relations with the local NCIP office who orient them on their being part of the “indigenous peoples” of the Philippines and monitoring their status, raise questions of citizenship of the Badjaos. In view of this citizenship issue, I am reminded of a question raised by a friend during fieldwork:

Where do Badjaos really come from... if they live on the sea, what then is their citizenship?

While many of the Badjaos have come to register birth of their newborn at the municipality and registered as voters as some local politicians have reached out to them during elections, the idea that people still have to ask what the Badjao’s citizenship is already signifies a sense of otherization.

Challenging the Right to Settlement

The intention to protect the rights of the indigenous peoples is embodied in the IPRA. Yet, its role is oftentimes impinged with subsisting local realities. For instance, eviction and demolition has perennially threatened the security of the Badjaos’ settlement in the area under Proclamation No. 763¹⁷ effecting installation of ‘salvage zone or easement markers’ within the 20 meter-strip of beachfront lots in the rural barangays and three meter-strip in the urban area to guide both the property owners and the public not to build permanent structures, like buildings and perimeter fences in the ‘demarcated salvage zone.’ Also, the municipality where the Badjao settlement is located condemns their area as a ‘problem zone’ due to health and sanitation concerns.

The fact that the NCIP had to negotiate with the municipality for a relocation site for the Badjaos in the event of the planned demolition of the Badjao area displays that the spirit and intent of the IPRA is beholden to socio-

¹⁷ Under national law, ‘the bank of river and stream and the shore of the sea and throughout their entire length within the zone of three meters in urban areas, 20 meters in agricultural areas and 40 meters in forest areas along their margin are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing, salvage...’

political dynamics obtaining at the local level – one that is a microcosm of the development and modernity discourse at the national level.

Establishing Limits to Fishing Ground

Coastal resource management (CRM) planning is one mechanism by which the government's agenda for pro-poor economic growth focusing on the agriculture (including fisheries) sector is viewed to be key to addressing poverty, social inequity and environmental degradation (WWF-Philippines, 2007: 7). Declaration of marine sanctuaries¹⁸ or marine protected areas (MPAs) is part and parcel of this development planning mechanism. Marine sanctuaries have been established in many coastal municipalities in the province of Bohol, some of which are in Dauis where the Badjaos are located. Some of these municipalities are also known for its beaches and dive sites which is one of the reasons why tourism is regarded as the most important industry in Bohol (WWF-Philippines, 2007: 14). Thus, increase in fish yield is not the only benefit viewed as accruing from a marine sanctuary but also the gains of eco-tourism and tourism-related activities such as dive fees, users' fees and profits from selling souvenir items that redound to fishers and their families. CRM planning is a strategy that requires 'all stakeholders or those who stand to benefit from coastal resources cooperate to accomplish the proper management and sustainable development of these resources, involves the participation and full support of the community, government and other sectors, and which must be integrated in that it includes not only coastal area itself but surrounding environment taking into consideration those cultural, political and social factors that affect coastal residents' (One Ocean, 2000: 11).

The above articulations on CRM planning paint a rosy picture of the concept itself which confirm the hegemonic power of the Western discourse on development planning that cannot be extricated from the discourse of modernity. A closer look, however, reveals discourses with problematic assumptions especially relative to the Badjaos.

First, it is viewed as a rational and neutral act of the State to achieve economic growth (discourse of rationality or objectivity). It implies the State's paternalistic attitude towards its subjects-citizens. It places itself as representing their interests by ordering their lives and livelihood on the basis of Western capitalist criteria of rationality, efficiency and morality.

Second, it assumes away that it is an open, participatory and democratic exercise of rational decisions by all stakeholders (discourse of participation). But participation in coastal resource management planning activities in the

¹⁸ A protected area within the municipal waters where fishing is strictly regulated or entirely prohibited and human access may be restricted (One Ocean, 2000: 11).

area has eluded the Badjaos. The plan of MACOTAPADA¹⁹ to include the Badjaos as among the stakeholders to be consulted for planning of the Maribojoc Bay came more recently. However, this move was prodded more by complaints from the *Bantay Dagat* (Sea Patrol) that Badjaos are notorious illegal fishers, viewing them as a ‘collective problem’, rather than by virtue of their rights as residents and users of the marine resources of the area. Designating them as a collective problem already vitiates the equal status of each stakeholder in what is deemed to be a democratic exercise. For instance, when a staff of an NGO operating in the area for the protection of marine resources, came to their place and talked about sanctuaries, a move I reckon as an attempt for inclusion by a non-state actor towards efforts to achieve the idealized ‘environmental conservation and protection’, a day care teacher whose father is a Badjao and whose mother is Visayan²⁰ and one of the very few in the area who married a Visayan expressed:

I felt that the Badjaos were singled out again as “destroyers” of marine resources. It is as if we do not want to take care of the sea and the marine resources where we too as a people depend on.

While this reaction exhibits distrust towards efforts of inclusion stemming from defence against pejorative references against them, it also demonstrates the critical role played by social and economic institutions in reinforcing exclusion.

Third, while it aptly considers the integration of geographic, cultural, political, and social factors that affect coastal residents, it immediately presupposes that the intersections of these factors have been fully noted (discourse of integration). The case of the Badjaos presents a knotty issue against the discourse of integration. As the prime goal of setting up marine sanctuaries is to ‘set aside in perpetuity areas (i.e. MPAs) of coral reef and surrounding ecosystem as no-fishing zones, the boundaries of the MPAs need to be selected, recorded and marked’ (Hodgson, 2007).

The Badjaos have long depended on the sea for their livelihood. But the declaration of certain areas as marine sanctuaries has gradually diminished their fishing grounds. Aside from being charged and imprisoned every so often for illegal fishing for using compressors, Badjao fishers are accused of fishing in prohibited areas like the marine sanctuary even when they only pass by, just because they happen to be Badjaos. They also have to pay for berthing fees.

¹⁹ Maribojoc-Cortes-Tagbilaran-Panglao-Dauis (MACOTAPADA) is a consortium of five local government units (LGUs) committed to protect the Maribojoc Bay, a common single marine resource among these LGUs where the Badjao settlement is located.

²⁰ The term Visayans or Bisaya refer to several ethnolinguistic groups in the Philippines.

The declaration of these marine sanctuaries signifies the State's deployment of physical boundaries in contrast to what for the Badjaos is a once vast and unbounded territory – a function of their different cosmology. Imposition of berthing fees also point to a growing commercialization of physical spaces marginalizing even more small fisherfolks like the Badjaos. This tension showcases an instance where the State neglects attention towards differences among its people in formulating policies.

Fourth, it assumes that the benefits of planning redound to all stakeholders (common good discourse). The benefits of planning, particularly in the area of eco-tourism, do not always redound to all stakeholders in this case. Some Badjaos who find alternative livelihood in selling pearls and fashion accessories have been prohibited by authorities from selling their wares or kept out of sight from tourist areas along beaches as they are referred to as 'eyesores'.

Normalizing Land-based Orientations in Public Services

Appropriation of citizenship rights of the Badjaos is further influenced by the assigned 'otherness' produced by the spatial binary – land-based and sea-based. Intersecting with this spatial binary are demeaning constructions against the Badjaos. It is interesting to note how these intersections work in different ways when applied to citizenship rights of the Badjaos. These either point towards the direction of abandonment of accountability for such group as when local chief executives deny their existence or refuse to take responsibility to secure their entitlements or on the other hand, to what Cornwall and Fujita (in Moncrieffe and Eyben, 2007: 60) explain as one of the effects of the labelling process, that is 'to domesticate a diversity of people into a category that holds within it a normative appeal for intervention on their behalf.' Relative to this explanation, one informant articulates:

It is amusing that the Badjaos are looked down by other people yet we are also given assistance by some foundation. What is it, like we are given assistance because we are looked down by others?

She mused at the irony of her statement while I came to grips with, indeed, the contradictions that this situation has revealed, signalling the complexity of the nexus of social exclusion and inclusion experienced by the Badjaos.

A case in point is the interaction between the modernist concept of development of the municipality versus and with regard to the Badjaos' toilet practices. When asked where they go to relieve themselves, a Badjao youth answers:

We do it at sea.

A Visayan woman, on the other hand, who married a Badjao and preferred a house on the shore instead of a stilt house above water relates:

I made sure my family has a toilet. The rest of the households in the area above water made a hole in a corner of their house where they defecate which goes right down in the water. Although in recent years, a communal toilet has been constructed, people still use the hole in their house or they do it at sea instead of the communal toilet.

The neighboring community along with the municipality have singled out this practice of the Badjaos as a health and sanitation concern in the area and attributed the problem to them despite the fact that a non-Badjao settlement lives alongside the Badjaos in the area. Thus, concerned groups facilitated the construction of public toilets within the Badjao community. Nevertheless, the action only succeeded in revealing the incongruity of introducing the idea of a toilet from land-based reference to a sea-oriented people because aside from such public toilets not really being regularly used by the Badjaos, these are still located above the sea with wastes similarly diffusing out to the sea below and thus defeats the purpose of the idealized notion of solid waste management.

Access to services for the Badjaos is also diminished with electrical and water connections generally being available only on land. Electrical connection stops short at the edge of the shore while for water connection, an informant notes:

We have to ride a boat to buy water from the source at the other side of the bay.

On the other hand, adhering to present health regulations that require pregnant women pre-natal check-ups and giving birth in hospitals or in health centres/lying-in clinics, a village health worker who also assists in the registration of newborn babies in the community (hence most of them have birth certificates) regularly urges other Badjaos to use the services of the health centre, as part of her job. She recalls:

Before, women gave birth at home with her mother or an older woman as the birth attendant. Bakakay, a sharpened bamboo stick was used to cut the umbilical cord of the baby from the mother. At present, I am slowly convincing Badjao women to use the services of the barangay health centre including common illnesses like fever.

This manifests the changing spatiality of birth that idealizes the hospital as the appropriate space for birthing in tune with modernist developments in health care. For Fannin (in Mitchell et al., 2004: 98-99), attention towards ‘dichotomizing spaces of home and hospital... is necessary for understanding how landscapes of social reproduction are actively created, both discursively and materially, through processes of economic transformation and the cultural mobilization of spatial metaphors.’ This idealized spatiality has come to be accepted by the Badjaos as they have been known to seek the services of the health centre and the hospital for illnesses and birthing. While the Badjaos have availed of services in these health spaces, the label “indigents” do not really offer consolation as again this is rooted in defining the Badjao as subordinate, even second-class citizen.

Assigning the Badjao as a ‘Cultural Artefact’

In the effort to drive away the perception of the Badjao community as an eyesore, the local government floated the idea to turn the Badjao settlement into a cultural heritage area where houses and boardwalks are to be improved and the culture of the Badjaos to be exhibited for tourists to see. A Badjao’s aspiration mirrors this when she shared:

I hope that people will know the real culture of the Badjaos as we are a peace-loving people. The Badjaos have a lot to show to people, our history, our stories, our dances, and many others. If only we are given the chance by other people and not discriminated.

While this note reveals a desire to shed off the negative images ascribed to the Badjao and an appeal to seeing them in a positive light, it is a perspective treading on presenting the Badjaos, in the words of Zukin (in Keith and Pile, 1993: 7), as ‘cultural artefacts to the audience’ and could lead to ‘the erosion of locality’ (ibid: 8). Moreso, this could even reinforce the stigma of difference by highlighting the Badjaos as a cultural category.

In another sense, without getting rid of its appropriation of the Badjaos as a ‘target group’ for intervention with all the trappings of the ‘collective problem’ label, it can be said that the State only becomes interested in the Badjaos as it sees them as a resource within the configuration of eco-cultural tourism development. This is reminiscent of what Santos (2007: xx) articulates as using the discourse of ‘respect for culture’ to justify the ‘imperative of development’ by taking the Badjaos as a cultural resource.

In this chapter, I have demonstrated how the State constructs exclusion against the Badjaos. Through discourse analysis on the IPRA, I have argued that the deployment of the term ‘indigenous’ inscribed in the policy entails a relationship of power that operates not only to demarcate physical space but also social and symbolic spaces within the dynamics of claims to normative concepts of citizenship and rights couched in modernist terms. By also examining the material exclusions faced by the Badjao, I have shown how certain State regulation, function and pronouncement embody both the State’s coercive and non-coercive practices and impact on citizenship rights of the Badjaos.

Chapter 4

Badjao: What's in a Name?

In this chapter, I show how the discursive and material exclusions of the Badjaos generated by hegemonic discourses of the State are reflected in society as examined in the following sections: 1) anchoring of the Badjaos' identity to the sea, 2) restricted public spaces which confirm their subordinate status, and 3) the labels that operate as essentializing markers of their identity.

4.1 Anchoring Identity to the Sea

There is a geopolitical imagination behind the term 'Badjao'. The fulcrum of the attempt to understand the exclusion of the Badjaos lies on this cloak of spatial difference that has committed their identity to the sea space and consequently to erratic mobility and territorial unboundedness separating them from the rest of the local settled population. The issue surrounding the Badjaos' question of space and its attendant power relations is very much entangled in their everyday experience of making a living, temporary shelter, survival, and other mundane preoccupations of a group of people that has chosen to settle among sedentary community; yet remaining to attach themselves to the sea and its concomitant fluidity of life-pattern and sense-making as opposed to the wider community rooted in fixed localities.

The Badjaos presently settled in Dauis have come a long way from a few families traversing the sea from Zamboanga, a province in Mindanao, South of the Philippines to Bohol in Central Philippines in their sail boats, going where the tide and wind take them. This migratory nature fermented the notion of the sea, to the Badjaos, as their world without borders. The original families have not gone back to where they came from. They have migrated from one coastal town after another in search of better fishing grounds. Finally settling in the present area, they have built a community of their own on stilts above water amidst other communities.

This attachment to the sea and their 'sea-home' find articulations in the following:

“As with everyone, there are many types of “why” to answer and one of them refers to one's identity, why one is different from the other group of people. In the following origin myth, the Sama Dilaut attempt to explain their sea orientation in the context of the wider world:

In the beginning only one man and one woman lived on Earth. Eventually, they had two children. One child was thrown into the sea and his offspring became the Sama Dilaut. The second child was thrown onto land and his offspring became the land people. Other children born to the couple were thrown in the four cardinal directions and their descendants populated the rest of the world.”
(Nimmo 2001: 140 in Revel, 2005: 31)

[Foreword]

This is the story of the Badjaos
A pagan tribe that roams the seas
Deep to the south of the Philippines
They live upon the sea
And find refuge in its vastness.
It is also the story of the Tausugs
The proud and fearless race of Moros
Who live upon the land ...
Here are two peoples
Geographically the same
And yet forever to be divided
By custom and by faith
This is a moment ...
In the ever-changing present
An unchangeable moment
That today joins the past.

*-Badjaos: Cinematic Representations of Difference in the Philippines
(Toohey, 2005: 281)*

Citing further notes on this seemingly pre-determined confinement of the Badjaos' identity to the sea:

If we are to be taken out of the water, we would die; we don't know how to make any livelihood on land; it is as if we couldn't breathe if we are out of the water. (Chieftain, Badjaos in Totolan, Davao, Bohol, Philippines)

After we got married, my husband and I tried for sometime to live in the uplands and earn a living through farming. However, it did not last long. I found out that it was difficult for my husband to adapt to farming. He had no rudimentary knowledge on farming. One time, we were clearing an area for planting when I saw my husband cutting trees including those fruit-bearing trees like the cacao. I realized it was not working so we decided to return to the sea. We went back to the coastal area where my husband lived and from there raised our children through fishing. (A Visayan married to a Badjao)

Questions raced through my head as I tried to make sense of these articulations: Is this acceptance of their innate dependence to the sea a form of essentialist self-categorization or a product of hegemonic encroachment into the psyche of Badjaos by mainstream sedentary society which confines them to such differential spatial identity? Or yet, is it a site of resistance, to claim that this is where they belong, to the sea?

However, that this confinement to the sea as 'their physical space' arguably influences their sense-making, for example the Badjaos' dependence on the sea for livelihood, is not the issue. Rather, it is the circulation of certain pejorative references attributed to their specific location that is the problem. As earlier mentioned, a case in point is the toilet practices of the Badjaos. One infor-

mant shares an oft-cited tale regarding discrimination against the Badjaos where she herself had personally encountered:

I was once asked by somebody whether it was true that the Badjaos defecate at the same place [referring to the sea] where they bathe and get their food. For me, this is a very insulting myth. In defence, I had to reply that she should not believe anyone unless she has seen them doing it with her own eyes.

This calls to mind issues raised by Gupta and Ferguson (1992: 11) regarding the meaningful association of places and peoples. The prevailing pejorative has been spun out of the habit of naturalising ‘the association of a culturally unitary group (the ‘tribe’ or ‘people’) and its territory (ibid). This means that the naturalized links between places and peoples have pervaded both the Badjaos’ sense-making; at the same time, such name-calling and negative representation has also been constructed and maintained by the majority group in society which results to identity of the Badjaos confined to the ‘messiness’ of living on sea.

4.2 Restricted from Public Spaces

Conversations with the local NCIP revealed their view of the NCIP’s mandate to protect and ensure the welfare of the Badjaos. One of the highlights of the conversation points to the Badjaos’ practice of begging in streets and in ships around port areas. They narrate:

The Badjaos in Totolan originate from Mindanao particularly Zamboanga, Basilan, Sulu, and Tawi-tawi. The Badjao community here in Totolan is different from those in Mindanao as many of them are well-off but the well-off Badjao affiliate themselves with the more powerful Tausug group. The Badjaos in Totolan are not well-off that is why some of them resort to begging. The Badjaos have picked up that practice from the locals since in Mindanao, begging is not a practice and it is scorned off by the leaders. The Badjaos may have observed the practice of pious Bobolano Christians in the church area where they give alms to beggars, so it might have occurred to them that it was an easy way to get money. But we have tried to urge the Badjaos not to go into begging.

This sympathetic elaboration from NCIP is resounded in the policy of ‘tolerance’ adopted by the city where the Badjaos ply their trade of peddling pearls and begging. A city official is noted to have called for a bit of tolerance over the Badjaos, ‘himself saying that their only sin is being borne Badjaos’ (Chiu, 2006). This statement came at the height of the concern raised by locals and tourism industry workers who called for government to find ways to control if not totally ban the Badjaos from the streets who are referred to as ‘tourism eyesores, horde of beggars, some capitalizing on infants and minors or peddling pearls and fashion accessories in designated tourist spots’ (ibid).

At closer inspection, the policy of tolerance assumed by city authorities stems from what Said (1993: 138) terms as ‘power moral’ which point to ‘ideas about what “we” do and what “they” cannot do or understand as “we” do’.

This tolerance carries with it ‘biological determinism and a moral-political admonition’ (ibid: 145) against begging and “intrusive” peddling which confines them to a subordinate social status and a ‘designation of a limited geographical space’ (ibid: 147) to the Badjaos in the city’s public spaces.

4.3 Essentializing Markers of Identity

Growing up on the island, I have come across references to the Badjaos living off-shore which I believe have remained and pervaded people’s perceptions. I would recall how people would be teased that they look like Badjaos whenever they dye their hair copper as many of the Badjaos’ hair have turned copper from being almost entirely at sea and in the sun for long hours; or instances when people kid around during swimming to dive like a Badjao which point to the practice of the Badjaos, especially children begging, of skilfully diving for coins that people drop from ships in the port area. I have not realized the profound impact of these naturalized, taken for granted and essentializing perceptions against this group of people (reminiscent of Bourdieu’s doxa) until such time when I came to question what it is with the Badjaos that the majority in society so grossly negate their existence. I tried to be open again to the current references against the Badjaos that are circulating in the area in order to note the prevailing people’s perception.

At the start of the research period, my husband brought me to a nightly event in the city in commemoration of the Blood Compact²¹. We were with friends who were members of a local rock band that was going to play in the music festival. I happen to talk to one of the guys who hail from a place that is adjacent to the Badjao settlement. I told him I am doing research among the Badjaos near his home and casually asked for his impression towards the Badjaos. Though not specific whether he was referring to the outer physical appearance or to their sanitation practices as a community, he quickly replied, “*Mga bulingon* (dirty).” Another comment relayed to me in another event during which a band’s performance did not turn out well was, “*Mura mog mga Badjao!* (You are like Badjaos!),” referring to the fracas of instruments that the band created. This connotes the same “noise” that Badjaos make when they imitate the Christian practice of carolling during Christmas season using improvised instruments made of plastic liquid containers.

In another occasion, I also happen to have informal conversation with a local fisheries council official. I knew him from a few years back when I was part of a legislative research team for the city’s marine resource protection program. I broached to him the subject of the Badjaos thinking he might have encounters with the Badjaos as they are fisherfolks. Asking for his impressions on the Badjaos, he blurted, “*Mga Badjao? Angay na sila pamatyon!* (The

²¹ An International Treaty of Friendship between a local chieftain and the first Spaniards who came to the Philippines.

Badjaos? They deserve to be killed!).” But he immediately explained that the Badjaos are stubborn illegal fishers and have always been linked with theft of machines of motorized fishing boats.

This note took an interesting turn when a friend who works as a volunteer researcher for MACOTAPADA expressed her interest to go with me to the Badjao community. Complaints from other fisherfolks and the sea patrol against the Badjaos as notorious illegal fishers have become one of the issues and concerns of MACOTAPADA. Thus, it has planned to include the Badjaos among the stakeholders of the Maribojoc Bay to be consulted for its development plan. The compounding turn occurred when she called me up one day telling me that somebody had broken into their house in Panglao, a neighboring town after Daus where the Badjaos live, and stole her laptop and some cash. The police had told her that one of the suspects is a Badjao. Reiterating her intention to join me in my next visit to the community, she added that she also wanted to get clues as to her stolen laptop while in the area. I felt sorry for her loss but I was bugged by the thought of her going with me to the area with such purpose. To my mind, I asked whether it occurred to her that talks about the Badjaos as “thieves” are affirmed with this incident. Meanwhile, a lawyer friend who also learned of the robbery expressed how her heart went out to the Badjaos as people’s immediate and usual reaction is to believe that the Badjaos are guilty whenever they are accused of any misdeed. She reasoned:

I would understand if what was accused of as stolen by a Badjao is a motorboat machine as it is more likely to be used by a Badjao but if it was a laptop that was stolen, it was more unlikely as a Badjao would have scarce knowledge on what a laptop is.

This incident, among others, signifies the convergence of State (police, sea patrol and the law) and society (NGO and individuals) in excluding the Badjaos. One informant shares an agonizing sentiment that she says has come to describe the discrimination against the Badjaos:

Kung mangawat, dakepon; kung manglimos, dakepon; kung managat, dakepon. (If we steal, we get arrested; if we beg, we get arrested; and even if we just go fishing, we too get arrested).

A compassionate address alluded to their ‘hand to mouth existence’ as described by my co-instructor in the University when I asked for her reflections after joining me in the Badjao community during fieldwork:

From the eyes of someone like me who’s viewed the world through rose-colored lens, the brief encounter with the Badjaos right in their own community has snapped me out of my naïveté and has brought me to the real world of human strife, a life where survival for daily existence is the name of the game. Where three square meals is reduced to just once in a day or nothing at all when fishing isn’t good and when begging is no longer enough. Where Badjao children go to nearby public schools in empty stomachs or stay at home, or beg in the streets just to be able to buy a shirt on their backs and fend for themselves.

The struggle of the Badjaos for survival is so much felt as their struggle for acceptance in the society where they are trying to belong. A society which turn blind eyes and deaf ears to the begging and tugging of these Badjaos at the hem of skirts and shirts of people they call 'Bisaya'.

Except for this, “dirty,” “thieves,” and “beggars” were to be the prevailing and recurrent labels against the Badjaos from among the people that I have interacted during fieldwork. The crudity of the language is a telling marker of the reified perceptions against them that have run around the place every time one speaks of the Badjao.

The stigma of labels against the Badjaos has reinforced the frame of difference that has earlier signified Badjao identity with the “socially dislocated”. The above stories and ordinary conversations demonstrate the power of description and relations of power at different sites (between the Badjao community and the wider community including the State) where dynamics of spatialities has given way to a social image of a people viewed as a “collective problem”. Thus, in the same thread, this socio-political construction of the Badjao becomes a ‘spatial incarceration of the native’ (the Badjao) which remains to be contested within the relations of culture, power, and space (Appadurai 1988 in Gupta and Ferguson, 1992: 17).

Chapter 5 Conclusion

This study has aimed to fill in the gap and/or add to existing literature on the social exclusionary process confronting the Badjaos. Having examined how State policies generate discursive and material exclusions against the Badjaos with the use of discourse analysis and how these hegemonic discourses of the State are mirrored in society through narrative inquiry and participant observation, this study underscores the main argument that both the State's policy/discourse and societal otherization mutually constitute the exclusion of the Badjaos.

First, I argue that by using discourse analysis, I highlight the notion of 'discourse as practice' in showing how policy, the IPRA, is a slice of the reality of indigeneity and rights-claiming biased towards the dominant majority's modernist view of the world that has been created and recreated by the dynamics of power relations obtaining within the larger social context. Any policy should stand to benefit from engaging in the meaning-making process – taking a step backwards by looking at how it has framed its "subject for intervention" before going into the quest for the best course of action. With the aid of frame analysis and using the critique of development and modernity, I have demonstrated how the same principles within the development discourse apply to how state policies shape otherization and perpetuate exclusion of the Badjaos from the rest of the Filipino society. This has been explored in the demerits of the IPRA which has been largely romanticized as providing a space for indigenous peoples in society by inscribing their rights.

I have shown the difference in the notion of 'territoriality' between that of the hegemonic definition embedded in modernist sense of boundaries and private property and the collective sense of space among indigenous peoples. However, extending further Santos' notion of 'territoriality', I argue that this is still nuanced between and among the indigenous peoples of the Philippines. The land-based indigenous peoples' sense of territoriality, though hinged on collective space, still carries concepts of boundaries and fixity; the Badjaos, on the other hand, is a group of people who do not have such relations with territory. The failure to recognize this nuanced sense of space has ramifications in the citizenship rights of the Badjaos.

The State's framework of indigeneity and rights which revealed certain paradoxes is exclusionist by the very fact of its modernist approach; thus homogenizing all or invisibilizing some indigenous groups, is inherently part of it. It has peremptorily vitiated the rights of the indigenous peoples; even moreso those of the Badjaos whose collective rights have not only been impaired with the imposition of individualistic notions of private property rights but also because of the prevailing land-based territorial references to rights and entitlements.

The hegemonic developmental discourses also reveal the verticality of the State because it positions itself as ‘above society’ that takes care of the interests of the lower regions such as indigenous peoples – hence a spatial distribution of hierarchical power relations through the appropriation of a demarcated physical and social space to the indigenous peoples. These have been elucidated in some mechanics of State spatialization – referring to both the coercive and non-coercive practices of the State and its instrumentalities as noted in the material exclusions against the Badjaos. The threat of eviction from their settlement, the declaration of marine sanctuaries, the commercialization of physical spaces, the changing spatiality of birth that idealizes the hospital as the appropriate space for birthing in tune with modernist developments in health care, the appropriation of the Badjao as a ‘cultural artefact’, all signify the State’s deployment of boundaries which runs counter to the Badjaos’ different sense of space and worldview and showcase how the State neglects attention towards differences among its people in formulating policies.

Second, I also argue that there is a geopolitical imagination behind the term ‘Badjao’ which lies in the fluid dynamics by and between physical, social, and symbolic spaces within a social exclusionary process. Through the notion of spatialization, the State and society converge in otherizing the Badjaos, invisibilizing, condemning and maintaining them in a socially excluded position. That the State and society actually express the same views against the Badjaos and thus otherize them in the same manner is no less than exhibited in two aspects of social exclusion against the Badjaos revealed in this study: developmental (exclusion from welfare and access to public services) and social location (the inferior status accorded to the Badjaos). These are further revealed in society’s perceptions of the Badjaos articulated in the following: 1) anchoring of the Badjaos’ identity to the sea, 2) restricted public spaces which confirm their subordinate status, and 3) the labels that operate as essentializing markers of their identity.

Thus, while the State’s power to impose discursive and material exclusions against its citizens may not be monolithic or total, it does play a key role in generating and reinforcing exclusion as when it summarily categorizes the Badjaos as a social problem therefore a subject of social intervention. This narrative and prejudicial labelling have been oft-repeated among other institutions, organizations, communities and individuals in society which have reified the pejorative perceptions on the Badjaos and thus in turn limit the Badjaos’ mobility in the social space.

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Appendices

A. Coordination Matrix between Research Questions and Methods

Research Questions	Information set	Concepts	Data Gathering Methods
How does the State shape the 'otherization' of the Badjao and perpetuate their exclusion?	<p>State Exclusion <i>The state exclusionary policy</i></p> <ul style="list-style-type: none"> ○ <i>Indigeneity discourse</i> ○ <i>Rights discourse</i> ○ <i>The 'Excluded' Badjaos</i> <p>Material Exclusions</p> <ul style="list-style-type: none"> ○ <i>right to settlement</i> ○ <i>limits to fishing ground</i> ○ <i>public services</i> ○ <i>the Badjao as a 'cultural artefact'</i> 	<p>Social Exclusion</p> <p>Critique of Development and Modernity</p> <p>Citizenship and rights</p> <p>Orientalism</p> <p>Power, Space and Otherization</p>	<p>Discourse analysis on the IPRA</p> <p>Literature review</p> <p>Secondary data</p>
How are the discursive and material exclusions of the Badjaos generated by hegemonic discourses of the State mirrored in society?	<p>Societal Otherization</p> <p><i>1) anchoring of the Badjaos' identity to the sea</i></p> <p><i>2) restricted from public spaces</i></p> <p><i>3) the labels that operate as essentializing markers of their identity</i></p>	<p>Social Exclusion</p> <p>Critique of Development and Modernity</p> <p>Citizenship and rights</p> <p>Power, Space and Otherization</p>	<p>Narrative Inquiry: <i>Story-telling</i> <i>Casual conversations</i></p> <p>Participant Observation</p> <p>Literature review</p> <p>Secondary data</p>

B. Guide Questions for interviews/conversations (*during the actual fieldwork, these gave way to the more open telling of stories and casual conversations with topical themes guiding the course of the story-telling and conversations*)

1. Can you briefly narrate how the Badjaos have come to settle in this area?
2. How has it been living here?
3. How have you been received/treated by the non-Badjao residents in the area?
4. Can you remember a particular occasion on which you felt you were treated differently/unjustly?
5. What problems/challenges have you encountered upon settling in the area? At present?
6. In your opinion, do Badjaos consider themselves as Filipino citizens? How are these manifested/expressed?
7. Do you know/heard of the Indigenous Peoples Rights Act (IPRA)? What do you think of this policy/legislation? Does this have anything to do with the Badjaos? In what way? How responsive is this policy to the indigenous peoples? To the Badjaos? How has this helped the Badjao? Not helped?
8. Do you have any relations with the city government of Tagbilaran and the municipality of Dauis? Please describe these relations. Are you happy/not happy with these relations? Why?
9. Do you have any relations with the NCIP? Please describe these relations. Are you happy/not happy with these relations? Why?
10. What for you are the three most serious problems in your area? Why do you think so?
11. Have there been instances when your rights individually and collectively have been disrespected?
12. How do you deal with/convey/redress your grievances whenever these incidents happen?
13. Were these responded to by the concerned authorities/persons? In what manner?
14. How do you see the future of your community? Hopeful/not hopeful? Why?

D. The Indigenous Peoples' Rights Act (IPRA) of 1997

S. No. 1728

H. No. 9125

Republic of the Philippines
Congress of the Philippines
Metro Manila
Tenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday the twenty-eighth day of July, nineteen hundred and ninety-seven

REPUBLIC ACT NO. 8371

AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I
GENERAL PROVISIONS

SECTION 1. Short Title. - This Act shall be known as "The Indigenous Peoples Rights Act of 1997".

SEC. 2. Declaration of State Policies. - The State shall recognize and promote all the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
- b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall recognize, respect and protect the rights of ICCs/ IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
- d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of Human rights and freedoms without distinction or discrimination;
- e) The State shall take measures, with the participation of the ICCs/ IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that

members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities. Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

CHAPTER II DEFINITION OF TERMS

SEC. 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:

- a) Ancestral Domains - Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;
- b) Ancestral Lands - Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;
- c) Certificate of Ancestral Domain Title - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;
- d) Certificate of Ancestral Lands Title - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;
- e) Communal Claims - refer to claims on land, resources and rights thereon; belonging to the whole community within a defined territory;

- f) Customary Laws - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;
- g) Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;
- h) Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;
- i) Indigenous Political Structures - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, or any other tribunal or body of similar nature;
- j) Individual Claims - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;
- k) National Commission on Indigenous Peoples (NCIP) - refers to the office created under his Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;
- l) Native Title - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;
- m) Nongovernment Organization - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;

n) People's Organization - refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;

o) Sustainable Traditional Resource Rights - refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and

p) Time Immemorial - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

CHAPTER III RIGHTS TO ANCESTRAL DOMAINS

SEC. 4. Concept of Ancestral Lands/Domains. - Ancestral lands/ domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

SEC. 5. Indigenous Concept of Ownership. - Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

SEC. 6. Composition of Ancestral Lands/Domains. - Ancestral lands and domains shall consist of all areas generally belonging to ICCs/ IPs as referred under Sec. 3, items (a) and (b) of this Act.

SEC. 7. Rights to Ancestral Domains. - The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a) Right of Ownership - The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

b) Right to Develop Lands and Natural Resources. - Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and

the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

c) Right to Stay in the Territories. - The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

d) Right in Case of Displacement. - In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed;

e) Right to Regulate Entry of Migrants. - Right to regulate the entry of migrant settlers and organizations into the domains;

f) Right to Safe and Clean Air and Water. - For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;

g) Right to Claim Parts of Reservations -The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service; and

h) Right to Resolve Conflict. - Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

SEC. 8. Rights to Ancestral Lands. - The right of ownership and possession of the ICCs /IPs to their ancestral lands shall be recognized and protected.

a) Right to transfer land/property. - Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

b) Right to Redemption. - In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a nonmember of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have

the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.

SEC. 9. Responsibilities of ICCs/IPs to their Ancestral Domains. - ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

- a) Maintain Ecological Balance. - To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;
- b) Restore Denuded Areas. - To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and
- c) Observe Laws. - To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

SEC. 10. Unauthorized and Unlawful Intrusion. - Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

SEC. 11. Recognition of Ancestral Domain Rights. - The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/ IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

SEC. 12. Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496. - Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/ IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this section shall be exercised within twenty (20) years from the approval of this Act.

CHAPTER IV RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

SEC. 13. Self-Governance. - The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, prac-

tices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

SEC. 14. Support for Autonomous Regions. - The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need.

The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordilleras to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.

SEC. 15. Justice System, Conflict Resolution Institutions, and Peace Building Processes. - The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

SEC. 16. Right to Participate in Decision-Making - ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

SEC. 17. Right to Determine and Decide Priorities for Development. - The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

SEC. 18. Tribal Barangays. - The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.

SEC. 19. Role of Peoples Organizations. - The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

SEC. 20. Means for Development/Empowerment of ICCs/IPs. - The Government shall establish the means for the full development/ empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

CHAPTER V SOCIAL JUSTICE AND HUMAN RIGHTS

SEC. 21. Equal Protection and Non-discrimination of ICCs/IPs. -Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

SEC. 22. Rights during Armed Conflict. - ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into the armed forces, and in particular, for use against other ICCs/IPs; nor recruit children of ICCs/ IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

SEC. 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment. – It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to employment, medical and social assistance, safety as well as other occupationally -related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall, within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by laws applicable to workers in general. ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' organizations. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

SEC. 24. Unlawful Acts Pertaining to Employment. - It shall be unlawful for any person:

a) To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and

b) To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

SEC. 25. Basic Services. - The ICCs/IPs have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to, water and electrical facilities, education, health and infrastructure.

SEC. 26. Women. - ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

SEC. 27. Children and Youth. - The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

SEC. 28. Integrated System of Education. - The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/ IPs.

CHAPTER VI CULTURAL INTEGRITY

SEC. 29. Protection of Indigenous Culture, Traditions and Institutions. - The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

SEC. 30. Educational Systems. - The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or private cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of

teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

SEC. 31. Recognition of Cultural Diversity. - The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.

SEC. 32. Community Intellectual Rights. - ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

SEC. 33. Rights to Religious, Cultural Sites and Ceremonies. - ICCs/IPs shall have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and, the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the ICCs/IPs concerned to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

- a) Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and
- b) Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.

SEC. 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies. - ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

SEC. 35. Access to Biological and Genetic Resources. - Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

SEC. 36. Sustainable Agro-Technical Development. - The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the big-genetic and resource management systems among the ICCs/IPs shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.

SEC. 37. Funds for Archeological and Historical Sites. - The ICCs/ IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.

CHAPTER VII NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)

SEC. 38. National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP). - To carry out the policies herein set forth, there shall be created the National Commission on ICCs/ IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.

SEC. 39. Mandate. - The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

SEC. 40. Composition. - The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommenders submitted by authentic ICCs/ IPs: Provided, That the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras, Region II, the rest of Luzon, Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That at least two (2) of the seven(7) Commissioners shall be women.

SEC. 41. Qualifications, Tenure, Compensation. - The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bonafide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners shall be members of the Philippine Bar: Provided, farther, the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.

SEC. 42. Removal from office. - Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

SEC. 43. Appointment of Commissioners. - The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

SEC. 44. Powers and Functions. - To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

- a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended;
- b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
- c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;
- d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;
- e) To issue certificate of ancestral land/domain title;
- f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs;
- g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;
- h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;
- i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;
- j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;
- k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;

- 1) To prepare and submit the appropriate budget to the Office of the President;
- m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;
- n) To decide all appeals from the decisions and acts of all the various offices within the Commission;
- o) To promulgate the necessary rules and regulations for the implementation of this Act;
- p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and
- q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

SEC. 45. Accessibility and Transparency. - Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.

SEC. 46. Offices within the NCIP. - The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided:

- a) Ancestral Domains Office - The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral lands/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with a master plan as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs or their ancestral domains and to assist the ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;
- b) Office on Policy, Planning and Research - The Office on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs;

c) Office of Education, Culture and Health - The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and rented rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of available appropriation, a special program which includes language and vocational training, public health and family assistance program and rented subjects.

It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession.

Towards this end, the NCIP shall deploy a representative in each of the said offices personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and preserve historical and archeological artifacts of the ICCs/IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;

d) Office on Socio-Economic Services and Special Concerns. - The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;

e) Office of Empowerment and Human Rights - The Office of Empowerment and Human Rights shall ensure that indigenous sociopolitical, cultural and economic rights are respected and recognized. It shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all levels of decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations, are protected and promoted;

f) Administrative Office - The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services. It shall also administer the Ancestral Domains Fund; and

g) Legal Affairs Office- There shall be a Legal Affairs Office which shall advise the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

SEC. 47. Other Offices. - The NCIP shall have the power to create additional offices it may deem necessary subject to existing rules and regulations.

SEC. 48. Regional and Field Offices. - Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field offices shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field offices, the NCIP shall establish field offices in said provinces.

SEC. 49. (office of the Executive Director. - The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to existing rules and regulations.

SEC. 50. Consultative Body. - A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP from time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.

CHAPTER VIII DELINEATION AND RECOGNITION OF ANCESTRAL DOMAINS

SEC. 51. Delineation and Recognition of Ancestral Domains. -Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the scope of the territories and agreements/ pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the right of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

SEC. 52. Delineation Process. - The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

a) Ancestral Domains Delineated Prior to this Act.- The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ancestral domain program prior to the enactment of this law. ICCs/IPs whose ancestral lands/domains were officially delineated prior to the enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;

b) Petition for Delineation. - The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;

c) Delineation Proper. - The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned;

d) Proof Required. - Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (1) of the following authentic documents:

- 1) Written accounts of the ICCs/IPs customs and traditions;
- 2) Written accounts of the ICCs/IPs political structure and institution;
- 3) Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
- 4) Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
- 5) Survey plans and sketch maps;
- 6) Anthropological data;
- 7) Genealogical surveys;
- 8) Pictures and descriptive histories of traditional communal forests and hunting grounds;
- 9) Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
- 10) Write-ups of names and places derived from the native dialect of the community.

e) Preparation of Maps. - On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;

f) Report of Investigation and Other Documents. - A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP;

g) Notice and Publication. - A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspaper and radio station are not available;

h)Endorsement to NCIP. - Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains

Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below.

i) Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies. - The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified Thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed;

j) Issuance of CADT. - ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census; and

k) Registration of CADTs. - The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.

SEC. 53. Identification, Delineation and Certification of Ancestral

a) The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;

b) Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;

c) Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this Act, including tax declarations and proofs of payment of taxes;

d) The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;

e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language

of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;

f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcelary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.

SEC. 54. Fraudulent Claims. - The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.

SEC. 55. Communal Rights. - Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provided, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act. No. 386, otherwise known as the New Civil Code.

SEC. 56. Existing Property Rights Regimes. - Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

SEC. 57. Natural Resources within Ancestral Domains. - The ICCs/ IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the

NCIP may exercise visitatorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

SEC. 58. Environmental Considerations. - Ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

SEC. 59. Certification Precondition. - All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or –controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

SEC. 60. Exemption from Taxes. - All lands certified to be ancestral domains shall be exempt from real property taxes, special levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes or upon titling by private persons: Provided, That all exactions shall be used to facilitate the development and improvement of the ancestral domains.

SEC. 61. Temporary Requisition Powers. - Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three (3) years after its creation, the NCIP is hereby authorized to request the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (1) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.

SEC. 62. Resolution of Conflicts. - In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper

parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen(15) days from receipt of a copy thereof

SEC. 63. Applicable Laws. - Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs.

SEC. 64. Remedial Measures. - Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the "common good." The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided further, That the action for cancellation shall be initiated within two (2) years from the effectivity of this Act: Provided, finally, that the action for reconveyance shall be within a period of ten (10) years in accordance with existing laws.

CHAPTER IX

JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS

SEC. 65. Primacy of Customary Laws and Practices. - When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

SEC. 66. Jurisdiction of the NCIP. - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

SEC. 67. Appeals to the Court of Appeals. - Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

SEC. 68. Execution of Decisions, Awards Orders. - Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

SEC. 69. Quasi-Judicial Powers of the NCIP. - The NCIP shall have the power and authority:

a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

- b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;
- c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and
- d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

SEC. 70. No Restraining Order or Preliminary Injunction. - No inferior court of the Philippines shall have jurisdiction to issue an restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

CHAPTER X ANCESTRAL DOMAINS FUND

SEC. 71. Ancestral Domains Fund. - There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of One hundred thirty million pesos (P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten million pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may deem appropriate. Thereafter, such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments and grants in the form of contributions, and such endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof.

CHAPTER XI PENALTIES

SEC. 72. Punishable Acts and Applicable Penalties.- Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years

or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

SEC. 73. Persons Subject to Punishment. - If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office..

CHAPTER XII
MERGER OF THE OFFICE FOR NORTHERN CULTURAL COMMUNITIES
(ONCC)
AND THE OFFICE FOR SOUTHERN CULTURAL COMMUNITIES (OSCC)

SEC. 74. Merger of ONCC/OSCC. - The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the positions of Staff Directors, Bureau Directors, Deputy Executive Directors and Executive Directors, except positions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filling up of the newly created positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement or gratuity, they shall have the option to select either such retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally, That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.

SEC. 75. Transition Period. - The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

SEC. 76. Transfer of Assets/Properties. - All real and personal properties which are vested in, or belonging to, the merged offices as aforesaid shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents relating to the operations of the merged offices shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force and effect unless otherwise terminated, modified or amended by the NCIP.

SEC. 77. Placement Committee. - Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The Placement Committee shall be composed of seven (7) commissioners and an ICCs'/IPs' representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

CHAPTER XIII FINAL PROVISIONS

SEC. 78. Special Provision. - The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its town site reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or acquired through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.

SEC. 79. Appropriations. - The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

SEC. 80. Implementing Rules and Regulations. - Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

SEC. 81. Saving Clause. - This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.

SEC. 82. Separability Clause. - In case any provision of this Act or any portion thereof is declared unconstitutional by a competent court, other provisions shall not be affected thereby.

SEC. 83. Repealing Clause. - Presidential Decree No. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 84. Effectivity. - This Act shall take effect fifteen (15) days upon its publication in the (official Gazette or in any two (2) newspapers of general circulation.

Approved,

JOSE DE VENECIA, JR.

Speaker of the House of Representatives

ERNESTO M. MACEDA

President of the Senate

This Act, which is a consolidation of Senate Bill No. 1728 and House Bill No. 9125 was finally passed by the Senate and the House of Representatives on October 22, 1997.

ROBERTO P. NAZARENO

Secretary General

House of Representatives

LORENZO E. LEYNES, JR.

Secretary of the Senate

Approved: Oct 29 1997

FIDEL V. RAMOS

President of the Philippines