

Indigenous People and Contested Access to Land in the Philippines and Indonesia

ABSTRACT. To provide context to the articles and research notes in this issue, this introduction presents contrasting and converging trends in indigenous communities' troubled access to land in the Philippines and Indonesia. Moreover, it highlights the main themes discussed in this issue, in particular: histories of dispossession; state recognition of indigenous people's land rights (and its challenges); dilemmas of inclusion and exclusion; communal versus individual land ownership trends; and patterns of resistance, negotiation, and accommodation.

KEYWORDS. indigenous people · land access · Philippines · Indonesia

INTRODUCTION

As a starter, consider the following contrasting trends. First, landmark legislation in the Philippines and Indonesia has paved the way for indigenous communities to (re)claim ancestral domains that would, taken together, cover a vast part of current state land. This concerns potentially some “one-third of the land area of the Philippines”¹ through the Indigenous People's Rights Act (IPRA) of 1997 (Republic Act 8371), and a substantial part of Indonesia's “state forest” following a Constitutional Court ruling in 2013 (Safitri, this issue). In sharp contrast, the current wave of large-scale land acquisitions in the Philippines and Indonesia (for the production and export of food, animal feed, biofuels, timber, and mineral products, as well as for the creation of tourist zones and special economic zones) is accelerating the loss of indigenous communities' control over land (see Borrás and Franco 2011). Many indigenous communities still occupy what is officially state land, and they are vulnerable to state policies that apportion large chunks of these lands to investors. Moreover, discrimination and ostracism by “mainstream” society, political marginalization, poverty, low literacy rates, and the lack of know-how in navigating state processes and policies have left these communities vulnerable to investors and state officials who claim control over the

land in the name of “development.” A third trend is the increasing participation in market production by indigenous people themselves as cultivators of cash crops, which exacerbates tensions over land *within* indigenous communities. As these different trends converge, the question of how indigenous people can (re)gain and retain control over their land, and on what terms, becomes all the more relevant.

This special issue has grown out of an international conference held at the University of the Philippines (UP) Diliman on 16-17 February 2015 titled “Contested Access to Land in the Philippines and Indonesia: How Can the Rural Poor (Re)Gain Control?” The conference was jointly organized by the UP Asian Center, the UP Third World Studies Center, and the University of Amsterdam through its research program “(Trans)national Land Investments in Indonesia and the Philippines: Contested Access to Farm Land and Cash Crops.”²

From the double panel on indigenous people and commercial land claims, we selected papers with an original take on the issue and invited one more author (Paredes) to contribute. The papers on the Philippines all center on Mindanao, a region that exhibits major issues on indigenous people’s land rights; the papers on Indonesia deal with processes of state recognition of “customary land” and actual developments in Kalimantan.

The resulting selection highlights several key themes on the topic: histories of dispossession; state recognition of indigenous people’s land rights (and its challenges); dilemmas of inclusion and exclusion; communal versus individual land ownership trends; and patterns of resistance, negotiation, and accommodation. Further below, I offer some background information on each of these themes as I introduce the respective contributions. But first, a few notes on the two countries in focus.

The term “indigenous people” is contested in Indonesia but officially accepted in the Philippines (which uses the English term). Since neither country was a settler colony with a clear divide between a presumed original population and foreign settlers, the use (or non-use) of the term depends on the definition and political implications. For self-ascribed indigenous people in both countries, the term denotes that they are “indigenous” in relation to (later) settlers and to powerful outsiders who are perceived as a threat to local control over land, resources, livelihood, and culture; it also denotes that they consider themselves and their practices different from the mainstream, dominant, national society and culture epitomized by the national state (Gray 1995). The term is especially salient because of “*its reference*

to *land or territory*” as a crucial aspect of indigenous identity (36; emphasis added). Indigenous people “are almost invariably those who consider their territorial base under threat from the outside and realize that there is no room for coexistence without their own destruction” (36). In Asia at large, therefore, the term is used as part of “a political strategy for attaining collective rights to territories and cultural respect” and for indigenous people “to represent themselves through their own institutions” (45; Colchester 1995, 61).

The Philippine state adopted the term “indigenous people” with its strong territorial component³ as a key step toward state recognition of ancestral domain. The 1987 Constitution drawn up by the Aquino government after the “People Power Revolution” recognizes the “rights of indigenous cultural communities to their ancestral lands” (Article XII, Section 5). Previous (post)colonial Philippine regimes used terms that stressed cultural distinctions (non-Christian populations, tribes, cultural minorities) but not the inseparable connection to territory (Rood 1998). The Indonesian state is still hesitant to use the term. The past Suharto regime, following Dutch colonial distinctions based on race rather than ethnicity or livelihood, claimed “that Indonesia is a nation which has no indigenous people, or that all Indonesians are equally indigenous” except for people of Chinese and Arab descent (Li 2000, 149; also Nababan and Sombolinggi 2016). However, Indonesian activists are increasingly using the term in the Indonesian version of *masyarakat adat* (“custom-based communities” or “people governed by custom”; Kleden, this issue) and its related discourse of claims to territorial control. Moreover, under pressure from global indigenous people’s organizations, international institutions like the World Bank, the Asian Development Bank, and the World Wildlife Fund introduced the international discourse on “indigenous people” in Indonesia “through the financial power and operational structures of these institutions” (Persoon 2009, 202). Recent Indonesian legislation refers to *masyarakat hukum adat* (customary law communities) as clearly tied to “traditional territory” and “ancestral natural resources” with traditional legal and governance structures.⁴ By rough estimates of non-government organizations (NGOs), the indigenous population in the Philippines comprises some 10 to 20 percent of the total population of 101 million in 2015; in Indonesia, they comprise an estimated 20 to 35 percent of the total population of 250 million (e.g., Dekdeken and Cariño 2016, 252; Nababan and Sombolinggi 2016, 262).

On the central issue of indigenous people’s contested access to land, the Philippines and Indonesia show both similarities and

differences. In both countries' histories, colonial states took control over much of the land under the principle of colonial domain; this was later adopted and extended by the respective independent regimes. The initial colonial recognition of customary land rights (hardly enforced in the Spanish Philippines compared to the Dutch East Indies) was effectively scrapped in the Philippines by the Spanish colonial Maura Law of 1894 and severely restricted in Indonesia by the independent state's Basic Agrarian Law of 1960 (Lynch 2011; Bedner 2016). The "cardinal sin of Philippine land law," says Lynch (2011, 468) was "the original colonial usurpation of customary property rights in the 1894 Maura Law," which dictated that agricultural land without valid registration would "revert" to the state (169). On its part, the Indonesian Basic Agrarian Law introduced stringent conditions on the state's recognition of *adat* communal rights to land (Bedner 2016, 65). In both countries, the state vastly increased its control over land and effectively disenfranchised many indigenous communities.

Recent state legislation on the recognition of customary land rights, in contrast, marks a major potential shift from state control over customary land *back* to private indigenous control. The possible scope is immense. Consider the area of state land (public land) which is primarily classified as "forest land," with or without actual remaining forest cover. In the Philippines, 15.8 million hectares of the total land area of 30 million hectares is classified as "forest land" (DENR 2015; GIZ 2016, 29); in Indonesia, it is some 120 million hectares of the total land area of 190 million hectares (Safitri, this issue). In the Philippines, some 5 million hectares of state land are covered (as of 2014) by 162 Certificates of Ancestral Domain Titles (CADT) under the Indigenous Peoples' Rights Act of 1997 (Ranada 2014)⁵ with many CADT applications still under process.⁶ In Indonesia, the government pledged in December 2016 to distribute 12.7 million hectares of "state forest" to indigenous communities as private "customary forests" (and to other forest dwellers as "community forests") following the Constitutional Court ruling in 2013 (Mongabay 2017). "They once were labeled [forest] squatters. But now we uphold their constitutional rights as citizens," the Indonesian Minister of Forestry and Environment said of the beneficiaries (Parina 2016). But NGO AMAN (Indigenous Peoples Alliance of the Archipelago) estimates that up to 42 million hectares of forest land might qualify for state recognition as private customary forest land (Fay and Denduangrudee 2016, 100).

In both countries, long-term pressure politics has been essential. In contrast to the Philippines, however, the democratic space for indigenous people's mobilization has opened up more recently in

Indonesia (since Suharto's fall in 1998). A Bill on the Recognition and Protection of the Rights of Indigenous Peoples is still pending deliberation in the Indonesian parliament, and the state's implementing structure for indigenous land recognition is not yet in place.

Economic liberalization and booming global demand for food, animal feed, biofuels, and mineral resources have significantly raised the commercial value of indigenous land in both countries in the last decades, attracting more foreign and domestic investors who generally find very accommodating government officials at all administrative levels (cf. Wolford et al. 2013). In contrast to the Philippines, where its 1987 Constitution allows private corporations to lease 1,000 hectares of state land at most,⁷ investors in Indonesia can gain access to huge swaths of state land (oil palm plantations of up to 100,000 hectares each, for instance) through land-use permits granted by the state, particularly in Kalimantan, Sumatra, and Papua. This land often overlaps with ancestral land. Such major investments on ancestral land are generally legitimated as harbingers of "development" in areas with "backward" populations.

A final but grim point of convergence is that many indigenous communities in both countries experience violence and repression, with contestations over land and territory a major issue. This includes intimidation, killings, forced displacements, and other forms of discrimination by police, military, and private security forces who act on behalf of investors, which may be exacerbated by militarization in areas where communist or separatist forces are active. This violence further marks the political marginalization of these communities (e.g., AMAN and AIPP 2016; Dekdeken and Cariño 2016; Dressler and Guieb 2015; Macdonald 1995; Nababan and Sombolinggi 2016; Nuraini et al. 2016; Tauli-Corpuz 2016; TEBTEBBA 2016).

The following sections discuss some major topics addressed in this collection.

HISTORIES OF DISPOSSESSION: "FRONTIER ENCOUNTERS"

Karl Gaspar (this issue) presents a history of relentless dispossession of indigenous people from their land in Mindanao, focusing on the Davao region. Many risk losing their remaining land as plantations, mines, and migrant settlers continue to encroach on their territory, and as members of their own communities start to accumulate land through informal purchase and mortgage (a form of "intimate exclusion,"

Li [2014]). The current opportunity to obtain a CADT from the Philippine state may be their last chance to keep control over their remaining land.

Gaspar's case is illustrative of dispossession among indigenous people worldwide. Geiger (2008b) uses the term "frontier encounters" to capture this process. He defines a frontier as "an area remote from political centers which holds strategic significance or economic potentials;" access to this territory is contested by local indigenous communities and outsiders (settlers, investors, and state officials) locked in relations of unequal power (94). Such outsiders have long tended to define indigenous people as "neither deserving of human compassion nor having a legal personality" (100), an attitude that "removes inhibitions against the use of deception, intimidation and violence as the most effective means of appropriating indigenous land and resources" (137). In *frontiers of settlement*, the large-scale settlement of land-poor migrant farmers (often facilitated by the state) produces conflicts over land between indigenous communities and settlers who also generally "take control of trade, lucrative extractive industries and local political institutions, and monopolize employment opportunities," (96, 97; Geiger 2008a, 4). In Indonesia and the Philippines, successive governments have sponsored frontier migration to defuse agrarian conflicts in core regions, alleviate poverty and landlessness, consolidate state control at the frontier, advance cultural assimilation, and supply labor for plantations and mines (Geiger 2008a, 12–14). Both countries have seen massive settler encroachments, as well as land grabbing and land purchase from indigenous communities under intimidating circumstances, with indigenous people moving deeper to the interior and the uplands, or turning into dependent workers and tenants for settler patrons. In *frontiers of extraction* (which often overlap with settlement frontiers), indigenous communities are confronted with outside investors who lay claim to large tracts of land to extract timber, mineral resources, and cash crops, and who recruit the workforce from indigenous or migrant populations. The formation, rise and decline of these frontiers is linked to "cyclical booms in high-priced commodities" (Geiger 2008b, 97; cf. Hall 2011).

Philippine social history shows, for instance, an immense migration of lowland and coastal populations since the nineteenth century (farmers, plantation workers, and entrepreneurs) "onto the archipelago's vast interior frontiers," covering millions of hectares, partly triggered by the growing demand for timber, tobacco, abaca, and sugarcane, and

leading, in turn, to a massive displacement of indigenous communities (Larkin 1982). In the process, indigenous people were subjected to the dominant property regime requiring official private land titles (Gaspar 2011, 192). Case studies show periodic waves of successive dispossession caused by migrant settlers, loggers, cattle ranchers, plantation investors, and government military in counterinsurgency campaigns, for instance (e.g., Erni 2008). With the closing of the frontier and the current wave of large-scale land investments, “there is no other place to go,” no vacant land to withdraw to, as Paredes (2013) noted for the Higaunon Lumad in the “increasingly crowded interior of Mindanao” (Paredes 2013, 168). This is leading to a “tremendous uncertainty over the use and retention of ancestral lands” (Paredes 1997, 271). Losing control over ancestral land means losing a way of life and a culture that may be a major source of identity and pride. Without it, indigenous people often find themselves incorporated into the bottom rungs of mainstream society (e.g., Eder 1987; Macdonald 1995).

STATE RECOGNITION OF ANCESTRAL/CUSTOMARY LAND AND ITS CHALLENGES

Rights are “the product of interest-driven bargaining” (Tilly 2002, 137). State recognition of indigenous people’s rights to ancestral land is a product of struggle, a product of claim-making vis-à-vis the state by self-ascribed indigenous people who (with their allies) strive for state recognition as a specific category of citizens with specific rights to the land. Once these claims are recognized by the state in the form of legal rights, however, it may be a tough deal for the interested parties to have these rights enforced. Moreover, state laws that recognize indigenous land rights may produce some unintended consequences, as we will see further below.

Myrna Safitri (this issue) highlights the obstacles that stand between legal recognition of indigenous land rights in Indonesia and the actual implementation of these laws. She shows how “government commitments, laws, and development plans” may contradict one another over the issue of indigenous peoples’ land rights, how government departments may exert conflicting authority over the issue, and how state officials at various levels may be swayed by their own specific interests. A main focus is Constitutional Court Ruling No. 35 (2013) which recognizes that indigenous people’s “customary forest” land is private land, not state land, which in turn opens the way

to effective state recognition of ancestral domains. Safitri's contribution dissects the political and bureaucratic dynamics of land-law processes and suggests the importance of political will by the state and political clout by indigenous movements to overcome the obstacles involved.

In this section, I take a closer look at the Philippines's actual implementation of the 1997 IPRA law that grants state recognition of ancestral land, reviewing positive and negative outcomes for indigenous communities involved, including challenges and dilemmas. This issue is relevant as well for Indonesian indigenous people's organizations as they debate the merits of their own draft bill on the recognition of indigenous people's rights.

On the positive side, IPRA has been "lauded for its support for indigenous peoples' cultural integrity, their right to lands and to the self-directed development of these lands" (Dekdeken and Cariño 2016, 252). It "succeeded in making IPs politically aware of their rights within Philippine society" (Castro 2000, 35). It may already empower indigenous communities through the process of applying for a CADT, which requires organizing within and between communities, networking with NGOs, revitalizing cultural knowledge and community history, and developing "a viable collective means of self-representation" (Alejo 2000, 153) that can foster "self-affirmation" (194; see also Gaspar 2011).

IPRA offers indigenous communities the only viable mechanism to protect their remaining ancestral domain (e.g., Crisologo-Mendoza and Prill-Brett 2009; Gaspar 2011; Ortega 2016, 268). The CADTs plus the requirement for investors to gain the "free and prior informed consent" (FPIC) of indigenous communities now provide these communities with the legal instruments to keep unwelcome investors out. Actual implementation encounters numerous problems, however (as will be discussed further below). Though a CADT may not prevent unwelcome investments, at least it can increase the bargaining power of indigenous communities in negotiating with investors on the terms of access or, in the worst case, on the terms of their own resettlement and compensation (e.g., Wenk and Scherler, n.d.) though major vulnerabilities remain in the enforcement of the resulting agreements. In the case of national parks, a CADT can provide indigenous communities with "greater power to negotiate with park managers and state bureaucrats" over resource access (Dressler and McDermott 2010, 356). *Vis-à-vis* settlers, indigenous communities with a CADT can now "turn back new migrant settlers" (334) and they have been observed to

develop “increased confidence . . . in dealing with settlers” on the basis of their ancestral domain right (Wenk and Scherler, n.d., 390).

Political support at local and regional levels, however, is crucial for indigenous people to get IPRA implemented in their favor. Their positioning in local power constellations is key. The Cordillera highland region where local government is supportive of indigenous people’s rights provides a positive case. In the Cordillera, indigenous people are numerically and politically dominant (in local elected office, in line agencies, and in the advocacy sector). Moreover, the region’s indigenous population counts the necessary literate people, middle classes, and intelligentsia to navigate the bureaucratic process of IPRA successfully (Crisologo-Mendoza and Prill-Brett 2009; Llaneta 2012). However, these conditions hardly prevail in other regions in the Philippines.

On the negative side of IPRA implementation are the following points of concern. First, weak political support by national and local governments (a lack of political will to implement IPRA effectively) has kept the provincial branches of the National Commission on Indigenous Peoples (NCIP) severely underfunded and understaffed. Observers have noted that the NCIP lacks capable personnel; it sometimes serves as “a dumping ground for politicians’ *protégés*” (Padilla 2008, 468); some of its personnel display an “ethnocentric mindset, disinterest” and “arrogant attitude” toward indigenous people (Erni 2008, 307). Because of this, it can take years before a CADT application is processed. Delays are also caused by tedious bureaucratic requirements, including the requirement (since 2012) of a “certification of non-overlap” of the ancestral domain with other land claims.⁸ This stands in sharp contrast with the fast-tracking of FPIC compliance certificates “for big corporations exploiting the natural resources found in IP territories” (Castro 2016). While CADT applications “languish in the NCIP,” other state agencies may reallocate the public land to investors, agrarian reform beneficiaries, beneficiaries of community-based forest management agreements, or private Torrens title applicants (Dekdeken and Cariño 2016, 254). In Palawan, for instance, indigenous communities are confronted by an aggressive state-promoted expansion of oil palm plantations on public land, while barely 25 percent of the land claimed by indigenous communities has been awarded to them so far (Dalabajan 2014, 297, 303). Though NGOs and indigenous people’s organizations support IPRA’s implementation and strengthen the political clout of indigenous communities, the two largest armed underground movements in the country tend to oppose it, either

favoring revolutionary land reform (by the Communist Party of the Philippines-New People's Army) or Muslim self-determination in Mindanao (by the Moro Islamic Liberation Front) (Padilla 2008). In the current Autonomous Region in Muslim Mindanao, the NCIP is refused jurisdiction and not a single claim for ancestral domain has been certified as of 2015 (Paredes 2015, 172).

A second point of concern is that the CADT often becomes a vehicle for investors to access indigenous land rather than a means to protect it, especially where indigenous organizations are weak. The IPRA actually "outlines the procedure by which outsiders can secure access to indigenous territories" (Gatmaytan 2005, 84–85) and a CADT attracts investors interested to strike a deal with community leaders (Borras and Franco 2011, 27). This may, in fact, be welcomed by community members for the promise of jobs, income and services. But the issue is: who is in control and who can set the terms? Some investors actively support the CADT application of indigenous communities. In the case of the vast Tampakan mining project in Mindanao on the ancestral land of the B'laan, for instance, the successive mining companies financed and facilitated the B'laan CADT application, facilitated the formation of Tribal Councils to negotiate with the company, and then influenced the FPIC process to gain people's consent (Wenk and Scherler, n.d., 396). Clientelist politicians, moreover, may also offer indigenous communities their "assistance" in formulating and implementing the management plan of the ancestral domain (van den Top and Persoon 2000, 174). There are broad parallels with the outcome of the Special Autonomy Law for Papua (2001) which recognizes, after years of ruthless, state-sponsored corporate resource extraction in Papua, the land use rights of indigenous communities and requires investors to negotiate with them for access to their land (Savitri and Price 2016). In practice, this law actually facilitates the legal land-use transfer to investors without safeguards for adequate compensation and subsistence guarantees (*ibid.*).

Third, the FPIC process is subject to abuse by investors and state agents. Consent through FPIC "can be easily 'manufactured' at any time," says Padilla (2008, 467). With mining companies in particular, the FPIC process shows "a pattern of abuse and misrepresentation that covers virtually all [researched] projects," including bribery and coercion to "engineer consent," sometimes with the support of NCIP officials (Cariño 2005, 29). Despite revised FPIC guidelines (2012) to avoid misuse, a more recent study still found "a manipulative scheme on the part of the proponents to get the 'consent' of indigenous communities"

(GIZ 2013, 4; see also Novellino 2014). Poverty and low literacy rates, moreover, make indigenous people vulnerable to company promises of access to income, water, and roads. They are hence “more amenable to giving the company their consent,” even when there are no grievance mechanisms in place once promises remain unfulfilled (Llaneta 2012).

Fourth, there is the thorny issue of “community management” of the ancestral domain after the CADT has been awarded. The “indigenous community” may not have the cohesion and overarching resource-management structures that IPRA assumes. Because “all communities are shot through with contests for power, including over land and resources,” Gatmaytan (2005) argues, IPRA’s “attempts at shifting resource control to an imagined—perhaps imaginary—‘community’ may also intensify existing tensions over resource control” (Gatmaytan 2005, 81). Moreover, indigenous resource governance structures may be limited to the level of a village or kin group, whereas CADTs are usually awarded to a “people” over a much larger territory, sometimes an entire municipality (as in the Cordillera). In such cases, local indigenous groups may become victimized by self-ascribed spokesmen who are actually “skillful manipulators with access to bureaucratic structures” (van den Top and Persoon 2000, 173; also Aquino 2004; Minter et al. 2014). Based on negative experiences, some authors argue for limiting CADT coverage to the village level (Crisologo-Mendoza and Prill-Brett 2009, 52; see also Albano and Takeda 2014).

Fifth, internal divisions and tensions may be heightened by the CADT application and FPIC processes. Communities may divide over the question whether to accept or reject mining and plantation projects. IPRA also promotes a new type of indigenous leaders with the capacities to negotiate with state officials and investors, and frictions often arise with established traditional indigenous leaders (e.g., Paredes 2016). Some observers speak of the latter as “genuine indigenous representatives” in contrast to “fake leaders” created or supported by the NCIP (Novellino 2014, 275), or “tribal *dealers*” perceived as “co-opted by big business companies and politicians” and complicit in disenfranchising indigenous communities of their ancestral land (DINTEG and KALUHHAMIN 2015, 5). Furthermore, overlapping claims by different indigenous communities can lead to (boundary) conflicts (Alejo 2000). Gender inequality may also be reinforced, where male-centered leadership gains increased authority over resource access on ancestral land (Alano 2009).

INCLUSION AND EXCLUSION: WHOSE RIGHTS PREVAIL?

“All land use and access requires exclusion of some kind,” i.e., the exclusion of *other* people from the land (Hall, Hirsch, and Li 2011, 4). Whose rights prevail? Power relations shape the rights of access and control. The contributions of Gatmaytan and Paredes (this issue) highlight power inequalities of class and ethnicity.

Augusto Gatmaytan explores class tensions among (Muslim) Maguindanao in the vast Ligawasan Marsh region in Mindanao brought about by issues of land and resource control. The region is “one of the last strongholds of the Maguindanao” after a history of displacement; it is also a base area for the militant Moro Islamic Liberation Front as well as a possible oil palm expansion area. Gatmaytan discusses how impoverished, marginalized Maguindanao farmers and fishers with insecure land rights worry about possible landgrabbing by leaders of powerful Maguindanao clans. As the farmers talked to field researchers about potential tenure models for the marsh, including ancestral domain, their concerns for elite capture stood out. The author argues that the Muslim struggle for self-determination tends to highlight tensions between the “Bangsamoro” and outsiders, but severe class differences *within*, concerning land and livelihood, need to be acknowledged and addressed by peace negotiators and academics alike.

Local elite capture is apparent in cases of ancestral domain management (e.g., Aquino 2004) and FPIC negotiations with potential investors. Fears of elite capture also inspired, in part, the rejection of two Cordillera autonomy bills, as some “tribes . . . did not want politicians identified with the autonomy drive to lord it over the region as corrupt kings” (Baguilat 2013). Differences in class, status and power are reminders that indigenous and “Moro” communities are not homogenous and that internal power dynamics influence land access and control.

Oona Paredes, in her contribution, discusses the predicament of non-Muslim indigenous people in Mindanao (Lumad) who would find themselves “second-order minorities” in the planned “Bangsamoro homeland,” which would replace the current Autonomous Region of Muslim Mindanao. Discussing the successive drafts of the Bangsamoro Basic Law (shelved since 2015), she argues that both Muslim and Lumad populations in the region are considered equally “indigenous” to the place but that the defining feature of belonging and entitlement would be membership of the Moro nation. The draft Bangsamoro Basic Law thus relegates the Lumad to an awkward, out-of-place

category and apparently denies their own right to ancestral domain under IPRA, with little legal protection against further land encroachments and disenfranchisement.

This connects to the wider issue of indigeneity and ethnicity as “justifications for exclusion” (Hall, Hirsch, and Li 2011, 6) on the grounds of “historical and affective claims to place” (10). Speaking of “troubling dilemmas,” Hall, Hirsch, and Li (2011) discuss how such exclusion may, in extreme cases, turn “into violent eviction and ethnic cleansing” (11–12). In Indonesia, for instance, indigenous Dayaks in parts of Kalimantan carried out violent attacks against migrant Madurese, killing many and expelling hundreds of thousands, in a movement of adat revival marked by “chauvinism and xenophobia” (Henley and Davidson 2007, 28). More often, exclusion of settlers “has been peaceful but persistent, as ‘insiders’ make it difficult for ‘outsiders’ to acquire or hold on to land” (Hall, Hirsch, and Li 2011, 12). But, as Paredes (this issue) suggests, equally indigenous groups may be defined as “outsiders” by rival indigenous land claimants, using competing criteria of entitlement.

Experience shows that the processes of ancestral domain formation, political decentralization, and ethnic-territorial autonomy may all involve intricate dynamics of exclusion (cf. de Zwart [2005] on the “dilemma of recognition”). In the case of ancestral domains under IPRA, migrant settlers may be protected against exclusion when they have official prior land rights there (cf. IPRA 1997, Section 56). But when they are informal settlers, their rights are more tenuous, as the previous section suggests.

Political decentralization, on its part, may favor indigenous populations with considerable local influence and political organization prior to decentralization. But they, in turn, may exclude second-order indigenous groups from their own enhanced position of power. In Indonesia, for instance, post-Suharto decentralization gave districts and villages considerable decision-making power regarding land governance and large-scale investments, which could increase successful indigenous land claims and compensation demands (von Benda-Beckmann and von Benda-Beckmann 2001; Duncan 2007, 721). This decentralization, however, also triggered an increase in the number of (smaller) districts, with dominant indigenous groups fueling “localism” and a sense of entitlement based on ethnicity (von Benda-Beckmann and von Benda-Beckmann 2001), further marginalizing settlers as well as smaller indigenous communities. In some districts of Kalimantan,

for instance, the politically powerful Dayak regained control of land lost to outsiders, but smaller, politically weaker indigenous groups that form minorities in their districts (often swidden farmers and forest-dwelling foragers) still see their interests ignored by their district governments and are still losing their land to investors without (adequate) compensation (Duncan 2007, 721). Where settler populations control the local levers of power, moreover, state decentralization may deepen the exclusion of all local indigenous groups (Geiger 2008b, 171).

An indigenous population that reaches ethnic-territorial autonomy with the advantage of lawmaking powers may “legislate a ban on outsiders owning land” as a means to redeem past injustice (Geiger 2008a, 39). But gaining some form of territorial autonomy is a tough goal to achieve for indigenous populations. It usually requires a large indigenous population over contingent territory willing to engage in a protracted military struggle against the state. In contrast, striving for the effective recognition of ancestral domain is less threatening to the state and, as it may not require the use of force, is “an option that stands open also to the less martial among the indigenous peoples”(38).

Dilemmas of exclusion are also apparent where indigenous claims for ancestral domain overlap with claims for agrarian reform or environmental protection. Recognition of ancestral land may exclude (poor) settlers, but placing the land, instead, under agrarian reform to include all land-poor categories would deny local indigenous communities their right to (full) land restitution. The goals of indigenous-rights and agrarian-reform movements may thus be at loggerheads (cf. the case of Jambi, Sumatra, in IPAC [2014]). In Mindanao, the Comprehensive Agrarian Reform Program has denied land restitution to the Lumad and Muslim communities whose ancestral land had earlier been grabbed by plantation investors, as it redistributes land to farm workers (in this case, primarily Christian migrant workers) thus formalizing the earlier dispossession (Vellema, Borrás, and Lara 2011, 309). Environmental movements and state agencies, in turn, may push for national parks that severely limit indigenous people’s access to their ancestral forests, swiddens, and other livelihood sources (e.g., Dressler and Guieb 2015). In the Philippines, progressive regulations that include local indigenous communities in park management may not be enough to protect them against exclusionary forces (Minter et al. 2014).

COMMUNAL OR INDIVIDUAL?

Emil Kleden's paper highlights an ironic historical twist: as indigenous peoples' organizations in Indonesia gradually achieve success in gaining state recognition of adat communities with *communal* rights over their land, Dayak villagers in Kalimantan are moving, instead, toward the *individual* titling of their land under pressure of market and state forces. Kleden's findings in Kalimantan illustrate a larger trend. The intensive NGO advocacies for the recognition of indigenous communal land rights may well be overtaken by reality, both in Indonesia and the Philippines. Below, I discuss several related points.

The distinction between "communal" and "individual" land tenure marks a fundamental contrast in the discourse of NGOs and state officials who are supportive of indigenous people's land rights: the assumed distinction between indigenous, communal, non-capitalistic, environment-friendly "forest" dwellers on the one hand and non-indigenous, individualistic, market-engaged, profit-oriented farmers on the other. Communal land tenure is assumed to be inherent to indigenous society; ideally, it safeguards ecological sustainability, preserves local indigenous culture rooted in territory, and protects against dispossession by capitalist forces. Alternatively, individual land ownership signals vulnerability to predatory capitalism and environmental destruction, and loss of indigenous culture (Li 2010).

This discourse has considerable weight in indigenous rights advocacy even if it doesn't easily match reality. The "communal fix," i.e., discourse that highlights indigeneity as the "permanent attachment of a group of people to a fixed area of land" marked by "collective, inalienable land-tenure regimes" (Li 2010, 385) helps to legitimize land rights specific for indigenous communities. Communal tenure is also perceived as "more egalitarian . . . than individual title" as well as more politically expedient; the territory is also easier to demarcate (Hall, Hirsch, and Li 2011, 45). Connecting communal tenure with indigenous environmentalism, moreover, facilitates support from (inter)national environmental advocacy networks. In the Philippines, furthermore, the assumption of customary communal resource management by indigenous communities partly justifies the allocation of large ancestral domains. The large scope of many of the domains covered by CADTs also provides the recipient communities with more political clout compared to individual titles.

Critics argue that communal resource management over large indigenous territories is assumed rather than proven, and that the communal model is often imposed from above. The discourse reflects “environmental populism” (Aguilar 2005, 129) and, in the Philippines, a “basic anti-establishment stance” of major indigenous people’s advocacy organizations that brought their own “assumptions regarding (communal) indigenous tenure” to the drafting of IPRA, according to Gatmaytan (2005, 83). As Gatmaytan noted for the Adgawan Manobo in Mindanao, “assumptions of communal tenure and of the indigenous peoples’ inherent ecological sensitivity and resistance to capitalism are simply not true . . . even as their culture remains comparatively vibrant” (87). IPRA does recognize customary individual or kin-group property rights within ancestral domains (NCIP 1998, 2, 44), but assumes that “the community, as a group, owns the resources and unappropriated land within its territory” (Gatmaytan 2005, 80).

Reality on the ground is, then, much more complex than the discourse suggests. Case studies in the Philippines show that many indigenous communities practice various property rights regimes under customary law: individual land rights for fields on which farmers invested much labor (and capital) for improvements, such as the rice terraces of the Cordillera; family-/clan-based rights for swidden fields, with individual usufruct rights; and community- or family-/clan- based rights to forests (or forests are considered open access, without owners) (e.g., Crisologo-Mendoza and Prill-Brett 2009; Prill-Brett 2003; Zialcita 2005; for Indonesia, see von Benda-Beckmann and von Benda-Beckmann [2006]). Kin-based land rights are collective rights but not necessarily *communal* rights, i.e., rights vested in the community, whether a village or beyond (Zialcita 2005).

Second, the discourse fails to capture the pervasive, ongoing individualization of land rights by members of indigenous communities themselves, leading to a further shrinking of the available collective/communal land, as Kleden (this issue) argues for Kalimantan, Indonesia. In the Philippines, too, case studies show how members of indigenous communities are “privatizing indigenous corporate property” (Crisologo-Mendoza and Prill-Brett 2009, 53), eventually accepting “individual ownership of . . . standing forest” in certain cases (Albano and Takeda 2014, 15) and striving for individual land titles within their ancestral domain (Schippers 2010, 225). As the case studies note, this results in the “demise of open-access forest land” (Sajor 1999, 139); a significant decline in the common practice of “free usufructory access to idle swiddens” and the transformation to individual rights to swiddens

(Sajor 1999, 139; Erni 2008, 326); an individualization of resource tenure for commercially valuable resources like timber and rattan, now “linked to landownership” (Gatmaytan 2005, 76); and individual land sales to outsiders (*ibid.*; Gaspar, this issue). In many cases in the Philippines, we see that indigenous people are striving to formalize their individual land claims by applying for a land tax certificate through the municipal land tax declaration system (e.g., Albano and Takeda 2014).

In the Philippines, as in Indonesia, this trend toward indigenous claims to individual land ownership is fueled by the increasing incorporation of indigenous families into the market economy. Indigenous people are increasingly attracted to the cultivation of lucrative cash crops, in particular tree crops, to improve their livelihood (e.g., Montefrio 2016). As they plant rubber, cacao, coffee, and fruit trees, as well as oil palm (and market vegetables in the Cordillera highlands), investing growing amounts of capital, “the push toward individual ownership is strong” as the farmers seek “to ensure sole and continuous land use to recoup expenses” (Crisologo-Mendoza and Prill-Brett 2009, 53). Moreover, under customary law, trees are owned by those who plant them, and a commercial tree lot precludes use by others for an indefinite period of time. Thus, as Li (2014) also found among indigenous highlanders in Sulawesi, “when they started to plant tree crops” in common land, this turned their land “into individual property” (7). Market production, land improvements, and increasing land scarcity, in turn, increase the risk of landgrabbing, also by fellow indigenous persons, and this gives an added incentive for indigenous people to formalize their individual land claim (e.g., Prill-Brett 2007). As this is done on kin-based, communal, or open-access forest land that may be the common pool for swidden land and forest resources, this trend also “eliminates the channels through which equitable use of common property resources is ensured” (Crisologo-Mendoza and Prill-Brett 2009, 56). If other rights holders do not protest this individual land appropriation, “they will eventually find themselves excluded from any future use of this common property” (53). As land for swiddening becomes scarcer, swiddeners are in turn pressured to lay individual claim to the remaining land before it is taken by others.

RESISTANCE, NEGOTIATION, AND ACCOMMODATION

Albert Alejo (this issue) starts out with the question: “Can an economic zone coexist peacefully and productively with a tribal community . . . [or] do their interests always have to clash?” He continues: “Is the overlap of their boundaries an inevitable arena of conflict, or could it also be a veritable zone of partnership?” And: “Is legal battle the only nonviolent platform for settling land disputes?” These questions came up as Alejo witnessed the protracted, unresolved conflict between the Subanon indigenous people of Zamboanga City and the Zamboanga City Special Economic Zone Authority and Freeport, whose claimed territories overlap to a large extent. Alejo then presents a personal account of a joint study tour of representatives of the Subanon, the Ecozone, and other stakeholders to the economic and freeport zones of Subic and Clark where Ayta indigenous communities reached joint management agreements that seemed at least partly successful. Discussing reasons, methods, doubts, and challenges in the efforts to bridge divides and move beyond contentious stalemates, the author contributes to debates on alternative forms of engagement. As an applied anthropologist, he also reflects on the role of NGOs and fellow-academics supportive of indigenous causes. “What is the quality of our intervention? . . . Are we sources of conflict, or resources for peace? Do we bring in new ideas or do we just harden old positions? Can we open up new spaces for reflective dialogue?”

Considering the bigger picture, the reactions of indigenous communities to large-scale investments can take at least four different forms: resistance to the investment (open and organized, or covert “everyday” types); withdrawal to non-contested land; acquiescence and accommodation; and negotiations and mobilizations for better terms of inclusion in the investment (cf. Borrás and Franco 2013; Hall et al. 2015).

Flight, withdrawal, accommodation, and conflict avoidance have long been survival strategies of indigenous communities vis-à-vis external land encroachers, in particular when these communities comprise vulnerable dispersed groups of semi-nomadic hunter-gatherers and swidden farmers without a warrior tradition (e.g., Eder [1987] for the Batak of Palawan; Erni [2008] for the Buhid Mangyan in Mindoro).

In contrast, widespread organization, mobilization, and open resistance by Philippine indigenous people against large-scale investments and in defense of ancestral domain became most prominent in

indigenous societies with the following conducive features (exemplified by the Philippine Cordillera highland region): a majority population of indigenous sedentary farmers, clear boundaries marking indigenous territories (in the Cordillera partly a legacy of American colonial officials who considered Cordillera society worthy of protection), a persistent “warrior tradition” that “defended these territorial boundaries from encroachment” (Rood 1998, 140), a relatively high educational level of the indigenous population due to Christian mission schools, and indigenous dominance in all elected government positions. The successful Cordillera protests against the large-scale Chico river dam project in the 1970s–1980s offered a model for other indigenous communities in the country (*ibid.*). People of the Cordillera “were the first Asians to take part in the international indigenous movement,” and the Cordillera Peoples Alliance became “one of the best-organized indigenous bodies in the world” (Gray 1995, 44). The current United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, is an indigenous leader from the Cordillera.

The fourth type of reaction, negotiations and struggles for better terms of inclusion, has become particularly prominent in recent times. In Indonesia, the state’s massive allocation of land-use permits for large-scale plantations on *de facto* indigenous/customary land (in particular since Suharto’s New Order regime) prompted many investors to somehow negotiate with local indigenous communities to gain their consent and prevent disruptive local protests and sabotage. The investors combined policies of attraction and repression, offering promises of jobs, roads, electricity, and schools while keeping security forces at hand. But unfulfilled promises have often led to open, collective protests to pressure companies to honor the negotiated terms of inclusion—protests that are widespread in the plantation regions of Kalimantan and Merauke (Papua) (Colchester and Chao 2013; Savitri and Price 2016). In the Philippines, IPRA requires investors in a titled ancestral domain to gain the consent of local indigenous communities, and the mechanism of the FPIC process invites negotiations with the company over the conditions for consent. Wenk and Scherler (*n.d.*) call this process “actively negotiated dependence” (393; cf. the term “compromise” as used by Côté and Cliche [2011, 129]). Holding a CADT can at least enhance the bargaining power of indigenous communities in the negotiation process (Alejo, *this issue*; Tadem 1996).

Indigenous communities are often divided, however, on whether to resist or concede to investments on their land, and on what terms in case they concede. When Philippine Environment Secretary Gina Lopez, for instance, ordered major mine closures in 2017, indigenous representatives from mining regions either opposed the mine closures (citing loss of royalties, jobs, scholarships and health services) or supported them (citing environmental gains) (Adorador 2017; Avendaño and Gamil 2017). Investors may actively promote such divisions by attracting and co-opting initial resisters, using corporate social responsibility programs as a tool of appeasement (cf. Rutten et al. 2017). In the Philippines, divisions may deepen when members of indigenous communities join either police auxiliary forces or underground communist forces (e.g., the New People’s Army) (DINTEG and KALUHHAMIN 2015). In one case, the opposing parties (belonging to two different tribes) announced a “tribal war,” then had the New People’s Army and government military stepping in as well (Rodil 1994, 66–68). As Alejo (2000, 27) noted, such divisions within and across indigenous communities are themselves produced by the “promise—and threat—of development.” This has a longer history: many indigenous communities in the Philippines are stratified because of long-term interactions with the state and the market, and their members experience “ambivalence, if not disagreement, over values and goals” (Duhaylungsod 2001, 618). Comparable changes are apparent in Indonesia.

Indigenous activists debate whether negotiated settlements between indigenous communities and investors should be rejected or supported. Some contend that capitalist engagement should be denounced because of the specter of environmental destruction, commodification and dispossession of indigenous lands, and the transformation of “communal” societies into communities of individual profit seekers. Others argue that outside NGOs, especially at national and international levels, are imposing their own values and interpretations on indigenous people, speaking on behalf of them instead of empowering them to speak for themselves (e.g., Alejo 2000). They argue for NGOs “to enable, rather than constrain, diverse local indigenous aspirations” (Astuti and McGregor 2017, 462) and to take self-determination literally: “we must mean letting people make their own choices on how to deal with local specificities of capitalism” (Wenk 2010, 407).

Considering the wider political arena, political opportunities for recognizing and enforcing indigenous people’s land rights have improved in both countries in the last decades, with more government openings

toward indigenous movements. In the Global South at large, democratization, the expansion of the NGO sector, the rise of indigenous and environmental movements and discourses, and domestic-international advocacy alliances that conquered “the moral high ground” with “the paradigmatic shift to conservation and sustainable development,” resulted in a “tangible empowerment of indigenous communities, as material resources and credibility became available to them to an extent never known before” (even though the overall balance of power is still heavily skewed against them) (Geiger 2008b, 167).

In the Philippines, indigenous organizations like the Cordillera Peoples Alliance have worked together with the state to formulate IPRA. The IPRA law and its implementing structure, in turn, promote local-level cooperation between indigenous communities, supportive NGOs, and state officials of the NCIP to process ancestral domain claims. The Philippine partylist system, moreover, allows for some representation of indigenous people’s interests in Congress through the partylist group *Katribu Indigenous Peoples*. Meanwhile, the massive National Convergence of Indigenous Peoples’ Protests held in Manila in 2015, with some two thousand indigenous people and advocates from across the country, shows the opportunity (and continuing need) for nationwide pressure politics to protest ongoing violations of indigenous people’s rights.

In Indonesia, current President Joko Widodo (elected into office with strong NGO support) showed he was committed to supporting indigenous people’s demands, agreed to form an Indigenous Peoples’ Task Force, communicated with indigenous people’s organizations, but is slow to address most points on the indigenous people’s agenda (Nababan and Sombolinggi 2016; Safitri, this issue). The NGO AMAN, founded in 1999, is a major driving force behind state policy initiatives and implementation. For instance, AMAN drafted the Bill on the Recognition and Protection of the Rights of Indigenous Peoples (still pending), pushed for the Constitutional Ruling in 2013 that recognized customary forest land as private land, pressured for its implementation and, for lack of government action, intensified its campaign of mapping adat territory through its Ancestral Domain Registration Agency; it also began to “develop and test procedures for recognition [of customary forest] in specific sites, with the backing of supportive district officials” (Fay and Denduangrudee 2016, 101; Astuti and McGregor 2017; Mongabay 2017). In both countries,

maintaining political opportunities conducive to the recognition of indigenous people's rights requires hard work by civil society.

In short, the contributions in this collection capture a wide range of issues regarding indigenous people's tenuous and contested access to land in the Philippines and Indonesia. We hope the collection will contribute to further debates on trends, policies, and advocacies. Our sincere thanks go out to the authors for their participation and patience, and to the editors of *Kasarinlan* for their expert support. ❁

NOTES

1. As mentioned by Zenaida Brigida Hamada-Pawid, former Chair of the National Commission on Indigenous Peoples (quoted in Llaneta 2012).
2. The research program "(Trans)national Land Investments in Indonesia and the Philippines: Contested Access to Farm Land and Cash Crops," based at the University of Amsterdam, The Netherlands, and coordinated by Rosanne Rutten and Gerben Nooteboom, is financed by the Netherlands Organisation for Scientific Research (NWO), WOTRO Science for Global Development Programme.
3. The Indigenous Peoples' Rights Act (1997) defines "indigenous peoples/indigenous cultural communities" as follows: "A group of people or homogeneous societies identified by self-ascription and ascription by others, who have continually lived as organized communities on community-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, become historically differentiated from the majority of Filipinos." They also include descendants of indigenous peoples who themselves "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 the ancestral domains" (IPRA 1997, Chapter II, Section 3h).
4. The Indonesian government uses the following definition: "A Customary Law Community [*masyarakat hukum adat*] is a group of people who for generations have lived in a certain geographical area in the Republic of Indonesia because of ties to ancestral natural resources and have traditional governance institutions and an indigenous legal structure in their traditional territory" (Law 39/2014 on Plantation Development, article 1(6); quoted in Fay and Denduangrudee 2016, 95).
5. Though many CADTs "face the problem of overlapping land titles" and less than a third has yet reached the last phase of registration with the Land Registration Authority (TEBTEBBA 2016).
6. The awarding of CADTs under IPRA 1997 was preceded by the issuance of Certificates of Ancestral Domain Claims by the Department of Environment and Natural Resources, following its Department Administrative Order No. 02, series of 1993.
7. According to the 1987 Constitution, Article XII, Section 3.

8. See the Joint DAR-DENR-LRA-NCIP Administrative Order No. 01-12 (JAO 01-12), issued in 2012. <http://ncipr1.com/wp-content/uploads/2014/11/joint-dar-denr-lra-ncip-administrative-order-no-01-series-of-2012-.pdf>.

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