

What Comes After Recognition? Comparing the First Certificate of Ancestral Domain Title (CADT) in the Philippines and the Mabo Case in Australia

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ABSTRACT

In the history of humanity, indigenous peoples' (IPs) territorial claims remain to be one of the most persistently unresolved predicaments of our time. Dorothy Hodgson's (2002) comparative essay on indigenous movements in Africa and the Americas notes that "the explosion of indigenous rights movements during the past few decades has been at once a local and a global phenomenon" (p. 1040). Through the same lens, this study will look into domestic and international forces which have brought about the awarding of the first Certificate of Ancestral Domain Title (CADT) granted to the Kankanaey-Bago in Bakun, Benguet, Philippines, in 2002, and the Mabo Case which ruled in favor of the Meriam in Mer, Queensland (QLD), Australia, in 1992. This comparison offers both a measure of explanation and a means of identifying how these IPs articulated a "politics of morality." Muehlebach (2001) contests that, through a "politics of morality," indigenous people's movement can be understood in "one fairly unitary argumentative thrust."

As a result, IPs are given agency to overcome hegemonic frameworks and legitimize their land claims. This study tests this assumption through an applied examination of these two land rights cases, which intends to critically highlight that, despite their shared trajectory more than two decades ago, the relevance of their legacies can best be understood through layered complexities rather than a simplified broad rhetorical stroke.

Keywords: disenfranchisement, Australia, Philippines, 'indigenous space', politics of morality

INTRODUCTION: CONSTITUTING AN 'INDIGENOUS PLACE'

The indigenous transnational movement's history, characteristics, foundation, and growing function were elegantly elaborated by Andrea Muehlebach, in both her articles, *"Making Place" at the United Nations: Indigenous Cultural Politics at the UN Working Group on Indigenous Populations* (2001) and *What 'Self' in Self Determination? Notes from the Frontiers of International Indigenous Activism* (2003). She identifies the 'indigenous place' as:

function[ing] as a category that is open enough to encompass differing indigenous views on where they come from and who they are, while at the same time being made up of recognizable, fundamental tenets that bind international indigenous delegates together in one fairly unitary argumentative thrust. (p.416)

Arjun Appadurai (1996) however, contends against Muehlebach's assertion of overarching singular cohesive movement among IPs. His argument more sharply observes the synonymous universality and particularity of worldwide movements:

the central feature of global culture today, [namely that] sameness and difference...cannibalize one another and thereby proclaim their successful hijacking of the twin Enlightenment ideas of the triumphantly universal and the resiliently particular, (p. 43)

Thus, this study aims to foreground the specifics by which IPs invoke and legitimize their 'indigenous place' which Muehlebach notes began to be more progressively invoked during discussions in the United Nations Working Group on Indigenous Peoples (UN-WGIP). The UN-WGIP spanned for 25 years from 1982 to 2007. Muehlebach (2001) argues that the UN-WGIP, has since then been the only effective and transforming body that celebrated the activism of the transnational indigenous movement. The institution is likened to the soil from which the seeds of this movement have sprouted and spread their branches. She lauds the UN-WGIP for being a 'small revolution in the UN system.' In line with her contention, the present inquiry shall probe into the manner in which IPs achieve a 'fairly high level of success' in order to determine

system.’ In line with her contention, the present inquiry shall probe into the manner in which IPs achieve a ‘fairly high level of success’ in order to determine the basic tenets for a successful activism. The UN-WGIP’s mandate and goals were realized in 2007 with the UN’s adoption of the Declaration on the Rights of Indigenous Peoples (UNDRIP). Since then, it has been replaced by the Expert Mechanism on the Rights of Indigenous Peoples. The two cases examined here unfolded during the years when the UN-WGIP was at its most active. Tracing how they came to fruition follows T.S. Eliot’s (1942) profound reflection, *“what we call the beginning is often the end, and to make an end is to make a beginning”* (Little Gidding, 1942).¹

epistemologies dominated by notions of modernity and development, progress, and profit” (p. 417). She posits that, through a “politics of morality,” IPs are given agency to overcome hegemonic frameworks and legitimize their land claims. Three mechanisms enable the enactment of a ‘politics of morality.’ First, it requires the invocation of a cultural community whose attachment and belongingness to the land is expressed in their oral literature and forms part of their spiritual and traditional beliefs. Second, signs of destruction or disenfranchisement often become pivotal moments for IPs to launch campaigns to defend their territorial rights. Lastly, the openness of IPs to be represented by a body/individual in their endeavor to claim their land gives the IP’s claims not only a legal but also a moral backbone. (p.424)

The two cases explored here shall demonstrate how IPs enacted a ‘politics of morality.’ This will be pursued by presenting oral narratives that embody the people’s deep attachment to their land, followed by a brief administrative history, highlighting the people who steered their land claim. Ultimately, the varying predicaments faced by these groups as pioneering land claimants shall help us understand the legacy they left in each of their countries’ history of territorial rights and ownership. This study aims to contribute to ongoing efforts to understand the distinct factors that shape the circumstances of IP communities, to be able to further support their cause.

PHILIPPINES: THE FIRST CERTIFICATE OF ANCESTRAL DOMAIN TITLE (CADT)

Bakun ancestral & land-based myths

The Kankanaey and Bago do not live exclusively in Bakun, they are a scattered ethno-linguistic group in the Cordillera region². On the one hand, *Kankanaey* refers to both an ethno-linguistic group and a language spoken in the region. On the other hand, *Bago*, according to Gary Pekas (2011), are a different set of people who live in Bakun and originated from the barangay³ of *Bagu*. The Bago people evolved and differentiated from the Kankanaey as they live closer to the province of Ilocos, which has different ethno-linguistic characteristics. (Pekas interview, 2011) According to Bello (1972), the Kankanaey 'as a whole remain to be fragmented into small, separate, autonomous settlements...[they are] a linguistic and cultural classification rather than a social and political one (p.105).' Vic Buaquen (2003) describes,

The Bago are hilltribe dwellers in the border regions between Ilocos and Cordillera mountains who are the offspring of intermarriages as well as product of trade between mountain tribes of the Cordillera and the Iloko of the lowlands. They have evolved their own distinct culture and dialect, which distinguish them from their neighboring tribes and other adjacent ethnic groups. (April 23, 2003, speech)

Hornedo (2012) documents the Bago as a "cultural community" with a:

boarder culture that speaks mixed Iloko-Kankanaey language called "Bago" by the lowland Ilocano. The word *bago*, which means "new or neophyte" was first applied to these people by the Ilocanos during the Spanish period when, after the Ilocanos had been Christianized, missionary work began in the inland. The newly Christianized people of the inland were then referred to as "Bago," and to this day the word has remained to designate them not as "new" Christians but as a cultural community (though not necessarily ethnically distinct. (p. 233-234)

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The Kankanaey-Bago believe *Kabunian* is responsible for man's welfare and the source of all natural beings. Incidentally, Mount Kabunian, at 1,789+ meters above sea level⁴, is located in the municipality of Bakun. The Kankanaey and Bago in Bakun are more specifically classified as Southern Kankanaey and Southern Bago. C. R. Moss (1920) recorded a Southern Kankanaey story set in a cave within Mount Kabunian which served people food on plates. While all were welcome to eat, they were forbidden to take the plates away. One day, a man defied this order. As punishment, he was turned to stone, and today, the same stone stands at the mouth of the cave with water gushing from his 'frozen mouth.' Since then, food ceased to be given. People passing through today stop by the cave to drink along the way (Moss, 1920). Hornedo (2012) summarized a recording of Kabunian's story as narrated by Lakay Arsenio Ligod in 1989:

The god Kabunian once lived on earth in a place called Kay-ang. He created many things, including the land. He had the appearance of a human and married a human by the name of Bangan, with whom he had a son. But what made him different was the speed and power with which he accomplished his work. His manner of work was indeed most unusual. He did not want humans to witness the way he worked. So he made a commandment. He punished severely those disobedient to his commandment. Final decisions were made by him. He also possessed the power to bring back the dead to life...he left the earth for the sky world when his commandment was disobeyed. After he left the earth, there was sorrow, and the decay of death, for humans do not have the power to bring back lost life. (p. 234)

These stories attest to the value of Mount Kabunian to the Kankanaey-Bago is integral, as a mountain located in their land that is named after the supreme god of almost all indigenous groups in the Northern regions. Lesser male gods called *Lumawig*, *Kabigat*, *Soyan*, *Okalan* and *Balitok* and female gods, *Moan*, *Daongen*, *Angtan*, *Bangan*, *Gatan* and *Obog* are invoked during specific rituals and offered food, chants and dances. (Bello, 1972) They are remembered as ancestors who provided them with tools for their livelihood in wet, dry, slash-and-burn farming, animal husbandry, logging, spinning of the native cloth, etc.

A consistent theme running through their folktales is the people's respect for the land as both their source of sustenance and desired burial ground. *Ili* is a concept referring to a lived space in the Cordillera Administrative Region (CAR), which generally refers to an ancestral domain owned by a community collective whose ownership and resources are passed from one generation to the next. While the *ili*'s value has gained a common understanding among them, inheritance claims, division among heirs, and other matters that need to be dealt with through legal means have varied across Cordillera ethnolinguistic groups. *Pakde*⁵ and *at-atoan*⁶ refer to specific sacred and communitarian places in Bakun's *ili*. These accounts about Bakun and its connection to the Kankanaey-Bago epitomize the profound bond between the land and its dwellers.

Bakun in the Cordillera Administrative Region (CAR)

The mountainous terrain of the municipality of Bakun has resulted in a history of 'being drawn and redrawn and being attached and detached from one administrative unit to another' (Bagamaspad & Hamada-Pawid, 1985, p. 114). This has been the case as its mountains have either served as boundaries or pathways between communities. *A History of the Cordillera Peoples* by Dr. Anavic Bagamaspad and Dr. Zenaida Brigida Hamada-Pawid—former chairperson of the National Council on Indigenous Peoples (NCIP) describe how

the late occupancy by the Spanish of the Cordillera...explain[s] the superficial effects of Hispanization upon them and the continuing presence of ethnic groups manifesting centuries old customs and practices. (p. 182)

It was first part of the province of Amburayan in 1900 under the American Commonwealth government, based on cartographic illustrations from the Spanish Period. It became part of Benguet, one of the sub-provinces of the Mountain Province in 1908. In 1937, Bakun was merged with its neighboring municipality, Ampusongan, and both became part of the newly instituted province of Benguet. Bakun's distance and seclusion from more populated areas in Benguet was documented by Dr. Moises Bello, an anthropologist from the University of the Philippines, who visited the town in 1957 and 1963. Bakun was referred to Dr. Bello as a field site worthy of

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study due to the difficulty of reaching it, implying its distance from other main areas in Benguet. His descriptions of the arduous trek to reach the place were not scarce.

The municipality of Bakun is part of the province of Benguet. Benguet is one of the six provinces that fall under the jurisdiction of the CAR. Executive Order 220 was signed by President Corazon Aquino on July 15, 1987 which declared CAR an autonomous region. June Prill-Brett (2004), a renowned scholar on Cordilleran studies, explains that the CAR's creation brought about legal pluralism in the country because:

in the Cordillera region, the indigenous people have participated in creating legal pluralism by adopting state regulations to gain access to some kinds of resources and, not uncommonly, by invoking customary law to justify their right to do so. (p. 688)

This law is particularly unique, as it grants CAR the right to invoke customary law to justify how they believe their land and resources should be used. Therefore, even fourth-class municipalities like Bakun are empowered to invoke their right to dictate how the land ought to be exploited.

Contesting Representations & Interests

Bakun's history of porous territorial bordering was not an impediment to the Kankanaey-Bago's ancestral domain claim (Reyes-Boquiren in Gatmaytan, 2008). The Kankanaey-Bago do not exclusively live in the municipality of Bakun. They have been and continue to dwell in different parts of CAR. Nonetheless, a group of Kankanaey-Bago inhabiting Bakun successfully acquired from the National Commission of Indigenous People (NCIP) their Certificate of Ancestral Domain Title (CADT) in 2002. A CADT refers to a title formally recognizing the right of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with the IPRA-Rule. (Isagani Cruz and Cesar Europa vs. DENR, DBM, NCIP, 2000).

Being the Philippines' first ancestral domain claimants was made possible by the Bakun Indigenous Tribal Organization (BITO). BITO is a registered entity with the Securities and Exchange Commission, entrusted

with the mandate to represent the Kankanaey-Bago of Bakun, beginning with their CADT application. This organization came about as a result of the Bakun people's concerted efforts to gain greater autonomy in managing their land on account of the deluge of extractive corporations that have entered their community. The organization's efforts in leading "activities like creating sustainable livelihoods and community-based businesses that do not harm or threaten Bakun's ancestral domain" (ADB, 2002, p. 17) proved instrumental in consolidating their authority to represent the Kankanaey-Bago.

Gold Star mining was the earliest to enter Bakun. Its operations began in 1956 in the barangay of Gambang, a resource-rich area that has historically attracted mining corporations (Sinumlag, 2011). This was followed by two hydroelectric power dams, which started in 1985. Bakun Grid is operated by the Hydro-Electric Company (HEDCOR) and generates 11,000 kilowatts while Bakun A/C Hydro is managed by Aboitiz Equity Ventures and Pacific Hydro Ltd., a multinational corporation. Another entity whose presence in Bakun was challenged by BITO was Dalton Pacific's operations in 1997 in the same barangay. An article by Maurice Malanes (2011), *Bakun: It takes a mountain village* describes the people's strong will to preserve their livelihood and culture amidst these infrastructural projects,

the mining company's proposed entry created conflict in the community. To help resolve the conflict, Vice Mayor Tirso Bayawa invited representatives from the Mines and Geosciences Bureau of the Department of Environment and Natural Resources, the company, the municipal and barangay governments, and the affected community...The opposition argued well its position against the company's plans...The council of elders weighed the benefits of what the mining firm promised and what the farmers were getting from their vegetable crops...The company soon packed up and left. (2000)

Nelson Mendoza, one of BITO's members, regrets how the 1995 Mining Law restricts affected IP as it is significantly 'in favor of a company that acquires better rights in the use of materials, forestlands, and water in the area' (Sanchez, 2001).

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BITO's reputation in the community, however, is not unanimously favorable within and outside Bakun. A case study by Titia Schippers (2010) describes how,

the discourse of indigenous people's rights eventually became an arena in which a power struggle was played out between BITO and the municipal council, both belonging to the indigenous community. (p. 220)

Further, Follosco (2011) scathingly describes BITO's quest for Bakun's CADT as a,

...plan [] prepared, thrusting the people of Bakun into a process alien to most of them. Their indigenous system of *tongtong* or dialogue aided in the crafting of their vision, the identification of their problems, the prioritization of their plans for the future and forced them to codify their indigenous knowledge, systems and practices. (p. 31)

One of BITO's project managers was described by Gary Pekas in an interview as the,

key to most funding for BITO. Long before the Indigenous People's Right Act (IPRA), he (Project Manager) has been involved in many IP rights advocacy fora. His being 'centrist', or devoid of perceived leftist leanings was perhaps relevant [as well as his] eloquence in English put him way ahead of other 'centrist' IP representatives in the Philippines. UN agencies certainly invited him many times, locally and overseas. [This] is a privilege not accorded the more militant IP voices. (Interview, March 11, 2011)

Gary Pekas worked with the NCIP from 1997 to 2001 and was the author and sole researcher of Bakun's Ancestral Domain and Sustainable Development and Protection Plan (ADSDPP) commissioned by the NCIP in 2004, four years after Bakun was granted its CADT. When asked about the power struggle that has been ensuing in the community, Mr. Pekas' testifies that one such figure is:

(name concealed) XXX was active in local politics, even ran for a post in local government but lost. During his campaign, one issue raised against him was the funding BITO received for various projects that were supposedly misappropriated. The main opponents of the CADT were his political rivals. [On one hand,] the issue they raised was not against the CADT per se, but rather the supposed lack of consultation prior to its issuance. On the other hand, the 'lack of consultation' may be interpreted as the refusal to participate by these opponents because of their differences with BITO. (personal communication, March 11, 2011)

A study sponsored by the International Fund for Agricultural Development (IFAD) similarly observed that:

The CADT boundaries nearly coincide with those of the local government unit, and the democratically elected leaders of the local government have overlapping responsibilities with BITO, deriving their 'representation' roles on different grounds of legitimacy. (RUPES, Bakun: n.d.)

Shown here is BITO's complicated relationship with some members of Bakun's community. Because BITO has regularly received international funding, it has occasionally drawn suspicion from the community. Conflicting dynamics are also attested to by the Cordillera People's Alliance (CPA), in its 2004 study, which shed light on boundary disputes involving the larger local government units (LGUs) and barangay jurisdictions. It argues that barangays are unable to negotiate tax claims due to hydroelectric power dams. Part of their assessment states:

despite such payments (privilege taxes directly paid by the Bakun A/C Hydro to governmental agencies) the LGU of Bakun has not received its full share from the national wealth tax due to boundary disputes between the LGU of Alilem, Ilocos Sur. Meanwhile, the 1% barangay tax share from the mini-hydros has not been released because of a boundary conflict between Barangay Poblacion, Sinacbat and part of Ampusongan.

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These external interventions in the life of Bakun's local community all too apparently shows the entanglement of issues its people are compelled to face at a daily basis. Even after the awarding of its 2022 CADT, within five years "three sawmills owned by mining companies were granted logging concessions" (Boquiren, 2007) in Bakun. Another controversial mining issue involves Australian-owned Royalco whose operations gained approval from the government's Mines and Geosciences Bureau from 2008-2010. A report⁷ in September 2009 documents the success of a rally led by Bakun's community⁸ in halting Phase 3 of Royalco's operations. There are also Programs such as the International Labor Organization (ILO) Interregional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and other Self-Help Organizations (INDISCO) intended to support their farming livelihood. According to the ADB study of Rovillos & Morales (2001 as cited in Molintas, 2004),

Bakun has been cited as a case of good practice...ILO-INDISCO support to the community-based BITO, which initiated plans for sustainable development in many ways, was instrumental in facilitating the processing of CADT approval.

In fact, Bakun was ILO-INDISCO's pilot site which started in 1998 until 2001. Another foreign entity, in the form of the International Fund for Agricultural Development (IFAD) deemed Bakun deserving of its Rewards for Use of and shared investment in Pro-poor Environmental Services (RUPES) to facilitate the distribution of financial benefits to the community from tax claims issued by the hydroelectric companies. However, a study of the Cordillera People's Alliance (CPA) showed little faith in this type of intervention:

ODA-funded agricultural projects...have not benefited the Cordillera people. Rather, problems and negative impacts have resulted because of the orientation of these projects towards the promotion of commercial agricultural production, deceptive rural financing schemes, inappropriate and corrupt-ridden infrastructure projects, unwanted reforestation projects that conflict with prevailing indigenous practices of forest management and land conflicts arising from contradicting schemes of land tenure and delineation. The approach of these programs has been to impose inappropriate

projects, without going through the necessary consultation and participation of the people. (Cordillera People's Alliance-CPA, 2008)

Bakun was selected as a recipient of the IFAD of the United Nations and the World Agroforestry Centre due to the Kankanaey-Bago's pioneering CADT award and what these foreign institutions perceive as having created a strong IP group in the form of BITO, that could responsibly watch over the interests of the community. The CPA's assessment above reveals a notable misalignment between what sponsors see as applicable projects for the community and what other parties view as destructive endeavors.

Nonetheless, the Kankanaey-Bago of Bakun have set the tone for a relatively positive start in NCIP's awarding of CADTs. Since this first one until early 2024, the NCIP has awarded 243 Certificate of Ancestral Domain Titles (CADT) covering a total land area of 5,735,893.1072 hectares and recognized a total of 1,314,419 IPs as rights holders or about 9.39% of the total estimated IP population in 2019.⁹ The NCIP's framework in territorial rights recognition is, however, riddled with bureaucratic inadequacies. This is because the CADT is only one of the myriad steps IPs need to secure full ownership of their homeland. After this, the Certification of Ancestral Land Title (CALT) still has to be secured 'to strengthen the security of their tenure' (Arquiza, 2001, p. 86). In an article by Rovillios (2003) for the Working Group of Indigenous People's Affairs, he posits that although,

the Philippines is the only country in Asia that has a law on indigenous peoples...[The special rapporteur from the U.N.] found that its adequate implementation is still an unfulfilled promise [and]...may enter into conflict with other laws (such as the Mining Act of 1995) and because IPRA itself contains laws that do not favor the indigenous peoples entirely. (p. 434)

The same report posits that:

IPRA broke away from a legal tradition that historically favored the Philippine state's control of lands and resources over the rights and interests of indigenous peoples (Lynch, 1987, 1984 as cited in Gatmaytan, 2007). This gives Philippine policies on indigenous

peoples a positively progressive image, especially when compared with the other countries in Southeast Asia. (Eder and McKenna, 2004 as cited in Gatmaytan, 2007)¹⁰

It's commendable that, compared to other countries, the Philippines is judged to be in a better position in its enactment of IPs policies. From its own people's judgement however, some wiggle room for improvement is still being sought, as it is also argued that "despite this [IPRA] key act of legislation, the situation of indigenous peoples and groups in the Philippines has remained stubbornly, frustratingly unchanged."¹¹

The work expected from IPs when lobbying for their land claims highlights redundancies in the Philippines' bureaucratic systems. Since the recognition of the CAR, ensuing policies have merely been a repetition of its previous laws. Before the CADT's inception, a number of laws that aim to protect the welfare of IPs have already been passed. Some examples are the establishment of the CAR in 1987, the IPRA in 1997, the CADT of Bakun in 1998 and then the 2002 CADT and the corresponding need for a CALT. The plethora of such laws continually fails to bestow finality in the recognition of IP's land rights. In fact, the continued creation of such decrees has become the norm. Furthermore, the fact that the Bakun title was granted in time for President Gloria Macapagal-Arroyo's State of the Nation Address raises questions about its legitimacy. Molintas (2004) asserts that Bakun's case,

received much needed support and resources in order to fast track the awarding of domain title for the state-of-the-nation address of President Macapagal-Arroyo in 2002. This kind of support and political atmosphere is, of course, not available to other indigenous communities working for their ancestral domain titles.

What has been presented so far are the Kankanaey-Bago's myths whose narratives show spiritual attachment to their land, local administrative history, BITO's role in the community, differing interests in local government, encounters with foreign entities in Bakun, extractive industries, and international grants that intend to support the endeavors of the community. The next part will give a parallel inquiry for the Meriam in Mer of Australia

AUSTRALIA: THE MABO CASE OF THE MERIAM AND EDDIE KOIKI MABO

Meriam's island, sea, and harvest culture

The Meriam, as an ethno-linguistic group, live on the island of Mer, which forms part of the Eastern Torres Strait Islands. Their tropical habitat distinguishes them ethnically and geographically from Aboriginal Australians on the larger continent.¹² A.C Haddon's 1898 visit to the island of Mer noted the integrity of the Meriam's culture. He described a flourishing economic life with deeply seated, compatible, and collective beliefs quite distinct from other indigenous communities, which suffered significant population losses due to the lack of a robust social structure to sustain and adapt to outside changes and influences. (McNiven, n.d.) A number of oral narratives known among Torres Strait Islanders revolve around the *Tagai* constellation. Nonie Sharp (1993) describes how the *Tagai* astral pattern forms the image of a man in a canoe, with his left hand, represented by the Southern Cross, holding a fish spear. (p. xi) They predict their seasonal changes from this assemblage of stars, following Austronesian seafaring cultures in the Asia Pacific. They also have an origin myth that traces the genesis of their land to a dugong named Gelam, from which their island's shape comes from. The Gelam myth, narrates of coconut palms, yams, and other indigenous produce brought by the creature to the East. According to the tale, Gelam spat out two red bean seeds, which became the hinter islands of Dauar and Weir, the other two of the three Eastern Torres Strait Islands. It is from such origin stories that a community of horticulturalists emerged in the island of Mer (Becket, 1987 as cited in Sharp, 1993). Jeremy Beckett, the first scholar to have immersed with the Torres Strait Islanders for almost twenty years, observed how the Meriam developed 'an understanding of a collective identity among Islanders centered around Island custom' (Beckett, 1987, p. 12). Among the livelihoods the Meriam have been able to sustain were a systematized slash-and-burn agriculture, a custom-based land-owning system, the use of boundary land markers called *elikup*, and the construction of large stone fish pens, which they called *sai*. (Sharp, 1993, p. 50). These accounts portray traces of the Meriam's traditional ties and rich sense of rootedness to their land and surrounding seas.

Meriam management

Mer is the indigenous name of Murray Island, now inhabited by the Meriam people. It is one of three eastern Torres Strait Islands off the coast of the State of Queensland (QLD) annexed in 1879. The early years of QLD's administrative history was fraught with racially discriminating laws and oppressive regimes (Nettenheim, 1944, p. 55). Its 1897 *Aboriginals Protection and Restriction of the Sale of Opium Act* was the first of succeeding ones implemented in the continent that restricted the movement of Aborigines through the,

establishment of reserves – geographically isolated enclaves –to which Aboriginal people could be forcibly removed by designated 'Aboriginal Protectors' – civil servants, police and missionaries. People were restricted to these reserves ostensibly to protect them from the ravages of European immorality and disease. In effect, such reserves operated initially to separate unproductive, ill, and 'problematic' Aboriginal people from those working efficiently in European industries – pastoral, agricultural, marine, and domestic. As time passed, they also became labour reservoirs from which Aboriginal contract workers could be drafted to white rural and urban employers.

More than 300 kms from the wreck off Cape York in QLD,¹³ Mer's remote location from the mainland allowed the Meriam a significant level of political and social autonomy compared to most Australian Aborigines. In fact, only after ninety years since the arrival of the first convicts from Britain, in the mid-1880s, did administrative oversight begin through the London Missionary Society (LMS). The Meriam, however, continued to enjoy a certain level of autonomy through,

...former premier, the Hon. John Douglas, who established an idiosyncratic benevolent despotism, very different from the regimes which Aborigines were subjected...[he] instituted a system of government that was unique in the Pacific at that time, including elected island councils. These councils advised resident European magistrates (who were also teachers) and served as assessors in the island court (Becket, 1994, p. 9).

The Meriam were documented to be active and aggressive forces, unlike the “unarmed” and generally subservient mainland Aborigines noted¹⁴ by Governor Arthur Philip on his first landing at Botany Bay¹⁵. Anthropologist Jeremy Becket described the Meriam as the ‘Irish of the Torres Strait’ having instigated a strike against lower wages imposed by an agency of the QLD protector. This labor rally will be one of their many pioneering legacies. Incidentally, the demonstration occurred in 1936, the same year the man behind the celebrated Mabo case was born. The Meriam’s relative isolation did not keep them from learning of other Aborigines’ land struggles. Before their unprecedented case, the Yirrkala bark petition¹⁶ in 1963 set the precedent in the fight for Aboriginal territorial rights. Learning of the Yirrkala’s plight was influential in heightening the Meriam’s land claim.

Furthermore, Meriam’s genealogical ethnicity has categorically been likened more to ethnic groups in New Guinea and/or Melanesia than to the Aborigines on the larger island. These differences prompted colonial Queenslanders to recognize their capacity for self-governance. The recognition of their autonomy was due as well to their practice of traditional cultivation and farming, which stood in stark contrast to the majority of mainland Aborigines, who were nomadic or semi-nomadic. As a result, QLD officials allowed the Meriam to ‘[enjoy] unimpeded access to their islands [which] enabled the Islanders to believe that they still owned them’ (Sanders, 1994, p.10).

The case of Eddie Koiki Mabo

The first British settlers assumed Australia to be *terra nullius*¹⁷ hence, the continent was initially called *terra australis incognita*.¹⁸ Centuries after, all Torres Strait Islanders formed an Island Coordinating Council which settled with a contract that gave them indefinite occupancy of their ancestral lands...[the] Mer Council was the only one to refuse, awaiting the outcome of what was to be famously known as the Mabo case filed in 1982 (Sanders, 1994: 10). The Meriam’s case claimed ownership, and not mere occupancy, of their territory. A decade later, it became the most controversial indigenous-related issue in Australia, not due to the High Court’s decision in favor of the Meriam but because it was the first law to defy what Peter Russel calls the ‘legal fiction’ upheld by Britain that Australia was *terra nullius*. Beilharz (2004) documented the floodgates it opened among political conservatives:

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the Mabo case calls the bluff on the Lockean, British and then white or imperial Australian claim of *terra nullius* but at the same time embracing change, the accelerated change of globalization with a vengeance, casting off lines of connection with the past and opening the way unwittingly to conservative reaction and the emergence of the racist, or more accurately, reactionary One Nation Party. (p. 438)

While the 'Mabo case' was named after Eddie Koiki Mabo, it has now become colloquially referred to as 'Mabo' in its own right. 'Mabo' as an iconic term, symbolically refers not just to the legal case itself and not exclusively Eddie Koiki Mabo himself. It also alludes to the proceedings, the ten-year lawsuit, and the final decision. The name of the case may suggest the inspiration behind it, but it fails to acknowledge the complexities the Meriam faced in relation to the proceedings that ensued. Jeremy Beckett (1994) describes some of its hurdles:

...Eddie Koiki Mabo and his fellow plaintiffs did not make their claims on behalf of the whole community. Rather, each claimed particular parts of the total land area; and while from the perspective of the land rights struggle they might be said to be standing for all Meriam land owners, in the Meriam context they were acting for themselves...[Eddie] Mabo's own claims proved particularly contentious; indeed some could see his case only in terms of self-aggrandizement. (p. 13)

Deep suspicion toward Eddie Koiki Mabo, was not unwarranted. For one, there were doubts about his rightful land inheritance as he was adopted at an early age by his mother's brother and failed to show evidence of ownership from either his adoptive parents or his natural parents. Furthermore, as a free-spirited and adventurous teenager at 15–16 years of age¹⁹, he left Mer to work in Townsville, QLD, and spent several years in diaspora. His absence, however, unbeknownst to the Meriam, did not distance his heart from Mer. His sojourn ignited his ideals as a Meriam because a wider audience to forge his activist spirit was made available to him outside Mer, allowing him to forge his activist spirit. Such an opportunity would not have been possible in Mer alone, as the council of elders influenced most of the community's views.

These elders were shown to be more acquiescent to persuasions imposed by the QLD government. Among Eddie Koiki Mabo's exploits outside Mer was serving as secretary of the Aboriginal Advancement League in Townsville. Later, he was asked to leave his post in the Council for Aboriginal Rights as his fellow Aborigines perceived Torres Strait Islanders' rights to be outside the framework of the Aboriginal movement. It was when he worked as a gardener and grounds man at James Cook University²⁰ that the seeds of self-determination was going to finally blossom for Eddie Mabo. His inspired activism was sparked by renowned scholars, Henry Reynolds and Noel Loos, who advocated for Aboriginal rights. Reynolds published works that criticize 'how colonists contrived to deny [Aboriginal] rights' and served as a witness in the Mabo case and presented hard evidence that convinced the judges to rule in favor of Meriam ownership.

Reynolds and Loos took Eddie Koiki Mabo on as a research assistant for fieldwork in the Torres Strait Islands. They supported his establishment of a Townsville black community in the University and encouraged him to attend conferences to express his disenchantment toward the academia represented by those he called 'colonial thieves.' A critical moment in Mabo's life was when Reynolds and Loos confronted and explained to him [Eddie Koiki Mabo] the doctrine of *terra nullius*...It was a shocking revelation and one that hardened his determination to fight for justice.' (Partington, 1994). Conservative Queensland officials used Eddie Mabo's political zeal and perceived anti-Christian views to persuade the Mer council, a religious body, to ban him from the island. Eddie Koiki Mabo was barred from returning until 1977. Upon his return, he worked to represent himself as the first plaintiff for his land rights case. This was not an easy task due to the heavy doubts about his legitimacy among his fellow Meriam. In fact, among all the Meriam plaintiffs whose claims to their own lands were either opposing or overlapping, Judge Moynihan found Eddie Mabo's case the weakest due to his lack of official documents. Among his transcribed statements, this one has been a constant highlight from the manifesto:

My family has occupied the land here for hundreds of years before Captain Cook was born. They are now trying to say I cannot own it. The present Queensland Government is a friendly enemy of the black

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people as they like to give you the bible and take away your and. We should stop calling them boss. We must be proud to live in our own palm leaf houses like our fathers before us. (Graham, 2010)

Despite the misgivings surrounding him, his eloquence, informed reasoning and deep understanding of Meriam culture were enough tools for him to become this case's strongest advocate.

The Meriam case was a significant step toward acknowledging Aboriginal rights, not only in Queensland but for the entire continent. Many had high expectations of the Australian government's next steps in prioritizing Aboriginal issues. However, shortly after the Mabo decision, subsequent indigenous land cases became a downhill battle. The Mabo case was unfortunately not allowed by its detractors to enjoy a longer period of victory. One of the most painful moments of this case was the death of Eddie Koiki Mabo five months before the verdict was passed. Ironical that the person for whom the case will be known was not around to witness the fruits of his lifetime's labor. In fact, it might seem that the Mabo's victory began and ended with the decision's passage. Noel Loos gives a vivid account of how its staggering defeat was sooner felt,

On 3 June 1995, three years to the day after the High Court judgment, Mabo's tombstone was unveiled to commemorate his life and achievements. During that night, his grave was desecrated. Eight swastikas had been sprayed in red paint on the black marble tombstone and 'Abo' sprayed twice. Red paint had been sprayed elsewhere around the grave to disfigure it. The bronze image of Mabo's smiling face had been removed...Those responsible have still not been found nor the bronze face of Koiki Mabo recovered. (Loos, 2011)

The reason behind the reigning "post-Mabo anxiety" was the sentiment by some that the Aborigines might just soon vie for ownership in anybody's backyard.²¹ Australia's response to the international pressures and the domestic upheavals that hounded it resulted to the passing of the Native Title Act (NTA) in 1993, followed by the 1998 Native Title Amendment. Aden Ridgeway (2011) describes how

the Native Title Act...established processes that are alienating and disempowering for most Indigenous people because the *Act* remains centered around a reliance on litigation to achieve a final settlement of claims...the amendments in 1998...have rendered it non-beneficial...(p.187)

Garth Nettheim (1994) further shares that the U.N's Committee on Economic, Social and Cultural Rights published its observations on September 1, 2000 noting the amendments to the NTA to be 'regressive' in the fight for Aboriginal land ownership (2003). Ritter (2009) supports this point:

those native title claim groups that are successful in achieving determinations are then required by the NTA to engage in a further process of construction....It is to some extent one of the ironies of the native title system that Indigenous societies which have proved their claims are then directed on the form of the corporate structure...(p. 25)

The same international body that pressured Australia to advance its recognition of Aboriginal rights shall sooner criticize its government again for failing in this endeavor. Although the United Nations has the power to influence, its capacity to coerce remains limited.

The High Court provoked by international pressures

Australia's policies toward its IPs have often been laced with criticism, largely due to its colonial past. One source of criticism occurred after the United Nations' General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1965. It would have been hypocrisy for Australia to enact a law that supported this when the Aborigines were still excluded from the national census at that time. Even after the Aborigines gained suffrage in 1967, the Commonwealth moved cautiously to establish the proper mechanisms that complied with the UN's CERD. Australia ratified the CERD in 1975 by passing the Racial Discrimination Act (RDA). A study by Oxfam Australia (2009), testifies that:

if it had not been for international law, there would have been no RDA and no recognition of Native Title. There would have been nothing to prevent racially discriminatory actions by state governments and private persons. This is one illustration of the value of international standards. (p. 17)

Australia's RDA and the Mabo decision were apparently substantial responses to international pressure the country faced from the UN's CERD. This view is supported by Sandra Creamer, who had the privilege of attending UN conferences on indigenous issues, she states,

It takes time to bring about change but change can come: The Mabo case is a good example of how international law changed things in Australia for the good. The Mabo case also used the common law here in Australia and was the beginning of a journey in regards to the recognition of land in Australia. (2009: 84)

Evidently, the Mabo case, at least from the perspective of its defendants, hinged significantly on international pressure from the UN to the Australian government. The Mabo has since become a defiant symbol of Aboriginal rights rather than a celebrated pioneering effort that should've paved the way for the future acquisition of Australia's IPs. Despite the violent aftershocks that mark its reluctant acceptance by certain sectors of the Australian community, Mabo remains a yardstick for other territorial assertions in New Zealand, Canada, and the United States. This affirms that it has had far-reaching impacts, at least for academic scrutiny.²² One significant comparative study is Peter H. Russel's (2004) *Recognizing Aboriginal Title: The Mabo Case and indigenous resistance to English-settler colonialism* which used the Mabo case as a springboard to discuss the differing impacts of colonialism and land rights in these former British colonies. To further cement the legacy of this watershed moment, the University of Melbourne together with the National Native Title Council established the Mabo Centre last March 2025.

with the purpose of maximising the economic, social and cultural benefits of these rights by building leadership skills and knowledge to advance successful agreement-making. First Nations youth will also be supported to become community leaders and drive economic

change in their communities. (Mabo Centre Advances New Era of Native Title and First Nations Leadership, 2025)

What has been presented so far are the Meriam's mythologies that tie their people's belongingness to the island, a brief background of the autonomous history of the island of Mer, the plight of the Meriam and Eddie Koiki Mabo, which challenged the colonial ownership of their land, and lastly, the international influences that helped bring the Mabo case into fruition.

Comparing Cases

The Kankanaey-Bago's folk myths and the Meriam's origin myths shifted from being sources of their people's spiritual identity to foundational evidence that articulated their ancestral connection to the land. Both of the IPs' proto-historic narratives portray a continuity in the ownership of their lands from the past to the present. These stories have served to function as "the substratum of [their] consciousness," grounded on "understanding and meaning...whether theoretical or pragmatic." (Hornedo, 2012, p. 233)

Further, these two cases offer a new perspective that demonstrates people's capacity to work within government bylaws to achieve their goals. It has been shown that, due to bureaucratic barriers, both IPs had to work for extended years to finally gain government recognition. For the Kankanaey-Bago, it took four years from the awarding of the Certificate of Ancestral Domain Claim (CADC), which was given on March 13, 1998, to the CADT grant in 2002, but the overall work for this even before the creation of BITO is most definitely lengthier than five years. For the Meriam, it took almost ten years for their case to be settled. Both outcomes reflect IPs' capacity to negotiate their land claims within the legal framework of their countries. Muehlebach (2001) observed this to be a consistent norm among IPs in the UN-WGIP, such that 'indigenous delegates are aware that an exclusionary politics of difference would backfire on their agenda' (p. 439). Similar observations are made by Maiguashca (1994) in testifying that IPs are 'very willing to negotiate...for an arrangement that protects the state's sovereignty while granting them freedom to determine their way of life.' (p. 51) Indeed, such a strategy seems to be part of the 'best practices' for indigenous movements that have achieved self-determination. It is worth noting that Bakun's ancestral domain case was resolved by BITO within the NCIP's mandate, an agency sanctioned and entrusted by the Philippine government for this purpose. On

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the contrary, the Meriam's land rights case had to be elevated all the way to the High Court of Australia to reach fruition.

Both cases have confirmed the notion that if people were faced with unifying motives to achieve a particular goal (for the Kankanaey-Bago—the CADT and for the Meriam—the Mabo Case), these motives are usually not tantamount to unifying interests in the community. Hence, while the success of land claims may be perceived as a window of opportunity for a community, it in fact also opens a window of threat to the community itself. In Bakun, a plethora of overlapping functions and interests among the local government, BITO, and other interest groups have led to challenges in handling issues that concern external intervention. For the Mabo case, over and above the Meriam's suspicions toward Eddie Koiki Mabo, each of the plaintiffs were shown to have individual claims that overlapped and contradicted one another. (Russel, 2004)

What then, after more than a quarter of a century, hence? For the case of the Philippines, on one hand, the country has earned the accolade of being "the only country in Asia that officially uses the term 'Indigenous Peoples' (Asian Development Bank, 2002) in its legal and political affairs, as defined in the Republic Act 8371 or the Indigenous Peoples Rights Act (IPRA)" (Voice Global) and concurrently institutionalized it through the establishment of the NCIP in 1997. On the other hand, Bakun has yet to move ahead, as after being granted their CADT, they still have to follow through in acquiring their Certificate of Land Title (CALT). The CALT is issued with respect to ancestral lands outside the ancestral domain. (Isagani Cruz and Cesar Europa vs. DENR, DBM, NCIP, 2000) It is unfortunate that among the 224 CALTs in CAR that have been issued by the NCIP from 2002-2010 (Calde, 2011, p. 146), Bakun was not one of its recipients. Nonetheless, Bakun people continue to protect themselves from the abuse of disruptive entities in their land. One such instance was last June 2021, when the community enforced a Cease and Desist Order (CDO) of the NCIP to shut down Hedcor Inc.'s three hydroelectric power plants, which have been in operation for 30 years. (Quitasol, 2021) The presence of BITO in this undertaking proved key as well (Hent, 2020). For Australia's case, while institutions such as the Mabo Centre in Melbourne symbolically serve to remind its people of the Australian

High Court's unprecedented decision in favor the Meriam, Strelein (2005) critically points out that the,

Mabo contained the seeds of current constraints of native title law, through which Indigenous rights have been confined to narrow property interests and subordinated to the interests of others. (p. 224)

Gunn's introductory essay in the *Journal of Law and Policy* which includes Strelien's article, further attests to the regrettable reality that:

developments in Australian courts and legislature since *Mabo* have rendered native title "inherently fragile". According to Strelein, it has become increasingly difficult for Australia's aboriginal peoples to assert claims of exclusive land ownership over their native lands. In addition, the Australian government has consistent rejected aboriginal claims to sovereignty or self-government over their territories. Taken together, these dynamics have severely limited the ability of Australia's indigenous peoples to control their own destinies... [ultimately] *Mabo* contained the seeds of its own undoing. (p. 159)

While the Philippine case highlights the bureaucratic hurdles faced by IPs when seeking for ancestral domain titles, it is worth noting that this endeavor is not without reward. After the Philippine government granted Bakun its first CADT, more certificates have followed and continue to be granted by the NCIP. In Australia, the *Mabo* case's final resolution more than three decades ago have lost the steam it once had in truly fulfilling,

progressive notions of "justice and human rights," and in many ways, [presaging] important developments in international law recognizing the validity of aboriginal Indian title. (Gunn, 2005, p. 159)

An important point that needs to be raised is that if an IP achieves its "success story", such a group essentially moves beyond merely standing for itself but ultimately becomes a representative of some, if not all, IPs,

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whether domestically or globally. In championing their cause, whatever success they achieve afterward should serve as an inspiration to a larger IP's constituency.

Juxtaposing Muehlerbach's postulated 'politics of morality' with the legacies thus far of the Kanakaey-Bago and Meriam, endeavors to contribute to cross-cultural comparative scholarship among IPs who, despite their unique particularities, are subjected to a universalizing and hegemonic legal framework. This comparative approach has provided a nuanced understanding of each case, enabling identification of factors beyond Muehlerbach's 'politics of morality' that can clarify and anticipate how the unique strengths of IPs can advance their land claims more effectively. Ultimately, there may be some merit in recognizing and working within the reality that "the nature of the indigenous peoples' struggles or movements [...] is that it moves forward at uneven speeds, in small, scattered, sometimes ambivalent increments, rather than in grand, Tolkeinesque battles" (Gatmaytan, 2007, p. 28)

ENDNOTES

¹ See T.S. Eliot's poem, "Little Gidding" in Four Quartets.

² It is not part of the research to discuss the authenticity of these people's indigeneness. Various studies have already dealt with their linguistic (Lawrence Reid) and historical relationships (William Henry Scott).

³ Barangay is the Philippines's smallest political governing unit. For more of its history, see William Henry Scott's *Barangay: sixteenth century Philippine culture and society*.

⁴ Cruz, Clemuel.

⁵ This refers to the largest ceremony celebrated by the Kankanaey in Bakun. These are usually baptism, wedding and funeral feasts that last for an extended period of time. This is usually held at a common area nearby the people's *ili*. They now continue to hold *pakde* usually at the gym of the public high school.

⁶ This refers to a meeting place of the council of elders. There used to be an old *totem* placed in this area to mark its sacredness. These days, the elders meet at the municipal hall and the totem has long been uprooted from its original position.

⁷ See Quitasol, Aldwin.

⁸ The article mentions Bakun Aywanan as having lead the protest. 'Aywanan' in Ilocano language is translated as 'take care'. 'Bakun Aywanan' is a collective voice in Bakun's community whom BITO represents.

⁹ See Antequisa, Carino V.

¹⁰ See Gatmaytan, p. 2-3.

¹¹ See Gatmaytan, p. 2-3.

¹² This explains why the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) in 1964 separately named these two groups to distinguish them from each other.

¹³ See Coral, C.

¹⁴ See Stockdale, J.

¹⁵ Located in Sydney.

¹⁶ This was a historic landmark as the narrative petition which was submitted to the Parliament was glued in a bark with surrounding Aboriginal dreamtime symbols seeking to halt the planned mining explorations in the Arnhem Land of the Yolngu. This paper chose not to focus on this issue as the Mabo Case proved to be greater in significance and had greater political and social effects compared to the bark petition.

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¹⁷ This means a land owned and belonging to no one. Simplistically, the main basis for this assumption is the nomadic and semi-nomadic lifestyle of the Aborigines. European rationality prescribed that the cultivation of one's land was the main basis of ownership hence, observing the land of Australia to be uncultivated, it was believed that it was therefore owned by no one.

¹⁸ This means an unknown land in the South.

¹⁹ The sources vary in his exact age.

²⁰ Formerly called Townsville University.

²¹ See National Museum of Australia, Defining Moments: Mabo Decision, <https://www.nma.gov.au/defining-moments/resources/mabo-decision>; Johnston, Trevor. (1993) Mabo Land Rights decision : is your farm under threat? by Trevor Johnston. Retrieved 2026, April 29, from <https://hdl.handle.net/10070/87257>

²² See a.) Erueti, Andrew. 2006 "The Demarcation of Indigenous Peoples' Traditional Lands: Comparing State Modes," Arizona Journal of International and Comparative Law 23; b.) Gilbert, Jérémie. 2007 "Historical Indigenous Peoples' Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title," International and Comparative Law Quarterly 56(3); c.) McHugh, P.G. 2011, Aboriginal title: The Modern Jurisprudence of Tribal Land Rights. Oxford University Press; d.) Gover, Kirsty. 2015 "Settler–State Political Theory, 'CANZUS' and the UNDRIP," European Journal of International Law 26(2):345–373.

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