

# **Indigenous peoples, their livelihoods and fishery rights in Canada and the Philippines: paradoxes, perspectives and lessons learned**

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# Outline of Presentation

1. International declarations and conventions
2. Canadian policies related to indigenous peoples
3. Philippine policies related to indigenous peoples
4. Indigenous peoples' experience
  - a. The Mi'kmaq of Atlantic Canada
  - b. The Tagbanuas' of Coron Island, Philippines
5. Challenges and Lessons Learned
6. Conclusion

# Indigenous Peoples

**Canadian  
Constitution of 1982**  
*“Aboriginal peoples”*



Photo by: PAFID



<http://www.bearriverculturalcenter.com/Resources/Images/judy.jpg>

**Philippine Indigenous  
Peoples' Rights Act  
(1997)**

*“Indigenous peoples” or  
“Indigenous cultural  
communities”*

# The Realities Faced by Indigenous Peoples

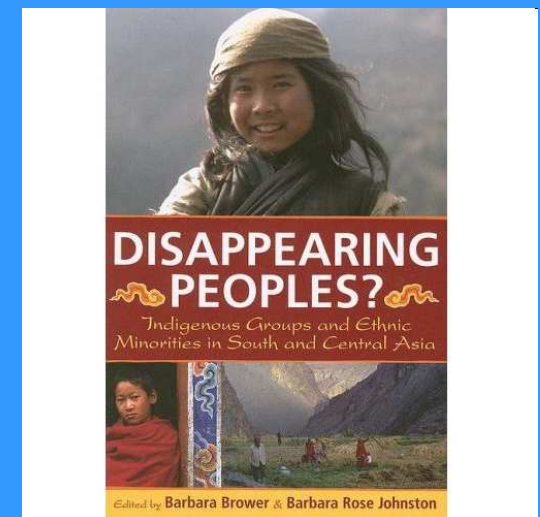
- Suffered from historic injustices due to colonization and dispossession of their lands, territories and resources
- Disproportionately represented among the poorest of the poor



Photo by: Friends of the Earth International



<http://www.venezuelanalysis.com/news/1038>



[http://indigenoussuestoday.blogspot.com/2008\\_07\\_27\\_archive.html](http://indigenoussuestoday.blogspot.com/2008_07_27_archive.html)





# International Declarations and Conventions

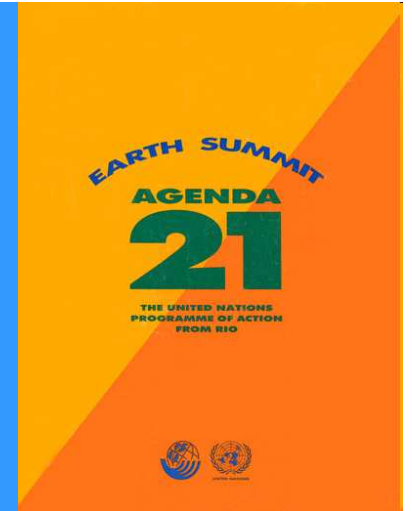
- 1989 – I.L.O. Convention No. 169
- 1992 - Agenda 21 (Chapter 26)
- 1992 – UN Convention on Biological Diversity
- 2007 - UN Declaration on the Rights of Indigenous Peoples



# ILO Convention No. 169

- Adopted in 1989
- Ratified by only 18 countries (as of January 2007)
  - Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominica, Ecuador, Honduras, Guatemala, Mexico, Paraguay, Peru, and Venezuela
  - Denmark, Fiji, Norway, the Netherlands, and Spain
- The only legally binding instrument that distinctly concerns itself with indigenous peoples rights
- The rights of ownership and possession of the peoples over the lands they traditionally occupy

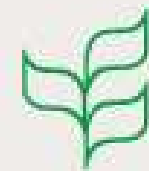
# Agenda 21



- Chapter 26, Section 3  
*“Recognizing and strengthening the role of indigenous people and their communities”*
- Drawn up with little indigenous participation and overemphasizing State sovereignty

# Convention on Biological Diversity

- Conserve the earth's biological diversity; promote equitable sharing of benefits
- Down-side:  
Uses the term "*indigenous and local communities*" rather than "*indigenous peoples*"



Convention on  
Biological Diversity

# UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

- Adopted by the General Assembly in 2007
- Four countries voted against the Declaration
  - Canada, US, Australia, and New Zealand
- 11 abstentions
  - Azerbaijan, Bangladesh, Bhutan, Burundi, Georgia, Kenya, Nigeria, Russia, Ukraine, Colombia, Samoa
- Putting the letter “s” in “peoples”



# Australia formally apologized to the indigenous peoples



<http://www.smh.com.au/news/national/rudd-says-sorry/2008/02/13/1202760342960.html>

**An important step towards closing the gap between indigenous and non-indigenous Australians**

## Watering down the “rights to marine resources” (UNDRIP, Article 26)

*Indigenous peoples have the right to own, develop, control, and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea ice, flora, fauna and other resources, which they have owned traditionally owned, otherwise occupied or used.” (Draft)*

**Indigenous peoples have the right to own, use, develop, and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (Final)**

# Where does Canada stand?

- Waned after the rise of a new government in 2006 (Conservative Party of Canada)
- No domestic legislation protecting traditional knowledge
- 1994 Canadian Biodiversity Strategy:
  - Described what indigenous people can do to implement CBD
  - Led only to consultations and studies
  - No commitment for Federal financial support, legal recognition, etc.

# A Perspective from a UN Special Rapporteur

*“Accordingly, the Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples. [...] From this perspective, the standards of the Declaration connect to existing State obligations under other human rights instruments.”*

**- S. James Anaya (UN Special Rapporteur on the situation of human rights and fundamental freedoms on indigenous peoples)**

# Formal Frameworks in Canada

- Canadian Constitution of 1982 (Section 35)
- 18<sup>th</sup> Century Treaties of Peace and Friendship
- Amendments to the Indian Act since 1876

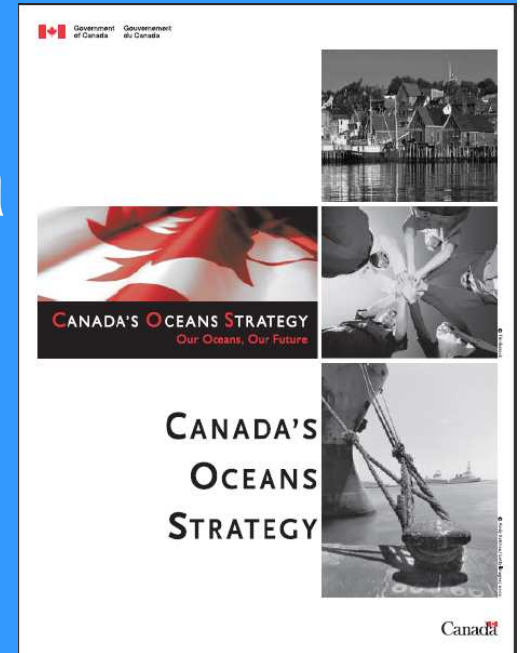


Photo: Fred Chartrand



# Formal Frameworks in Canada

- Fisheries Act 1846
- Ocean's Act 1996
  - cross-sectoral integrated management bring stakeholders including indigenous peoples
- Sparrow Decision (1992)



# Marshall Decision

- **Marshall Decision I:**  
Recognized the indigenous peoples' historic right and involvement in commercial fishing
- **Marshall Decision II:**  
A revised decision that combined the affirmation of treaty rights with a statement of the authority of the DFO to regulate Mi'kmaq fishing

## Is the Crown at war with us?



# Indigenous People in Canada

- Around 1 million (2006 Census)
- Inhabited Atlantic Canada more than 12,000 years ago
- 25,000 inhabitants in Atlantic region
- *Netukulimk* – defining their relationship with the environment



# Status of Indigenous Peoples in Canada

- Social services provided are below Canada's national standards (Kerans and Kearney, 2006)
- Passive participants from economic activity (Wiber and Milley, 2007)
- Limited access to resources

# Mi'kmaq in Prince Edward Island (PEI)

- Two Mi'kmaq First Nations: Lennox Island and Abegweit (Mi'kmaq Confederacy of PEI)
- Communal licenses for food fishery or commercial fishery provided to community and not to individuals
- Sustainable employment
- Community-based management



Photo by: Randy Angus



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## Maritime waters calm a decade after Marshall decision

Comments 14 Recommend 12

Last Updated: Thursday, September 17, 2009 (8:14 AM AT) [CBC News](#)



The waters are calm again off the northeast coast of New Brunswick, a decade after a controversial Supreme Court of Canada decision ignited a series of violent clashes between First Nations and non-First Nations lobster fishermen.

The Supreme Court of Canada handed down the Donald Marshall decision on Sept. 17, 1999, ruling that First Nations people had a treaty right to fish and sell their catch to earn what the court called "a moderate livelihood."

A report says employment and income between 2001 and 2008 among First Nations covered by the Marshall decision have grown faster than among the non-aboriginal population, narrowing the gap between them. (CBC)

First Nations fishermen started exercising that right almost immediately after the top court's decision, and that led to turbulent times in many fishing communities in the Maritimes.

First Nations people began fishing immediately with no regard for federal licensing, quotas or conservation.

**Timeline**

- August 1993 — Donald Marshall Jr. is charged with fishing well out of season, fishing without a licence, and

**Related**

- Top court upholds native treaty
- Donald Marshall leads fishery protest
- Aboriginals can't wait for Ottawa — Marshall
- Donald Marshall appeals for calm in fishing dispute
- Lawyers criticize Marshall decision
- Fish meetings try to understand Marshall decision
- Canada's supreme court refuses to re-visit the Marshall case
- Wrongfully convicted Donald Marshall Jr. dies
- IN DEPTH: FISHING: The Marshall decision on Native fishing rights
- CBC ARCHIVES: Donald Marshall Jr. wins Supreme Court victory

**Audio**

- CBC reporter Jacques Poltras talks to Keane Augustine about how the Marshall decision has changed the lives of First Nations fishermen (Runs: 3:14) [Play: Real Media](#)
- CBC's Jacques Poltras talks to Remi Cormier about how the Marshall decision has affected the lives of non-First Nations people in the fishing industry (Runs: 4:14) [Play: Real Media](#)

# Challenges and Lessons Learned

- The reconciliation between indigenous and non-natives may be a means to lasting solutions
- Valuing indigenous and community norms
- Greater respect for indigenous management, customary traditions and institutions
- The need for the State to support community-based management
- Dialogue between the State and indigenous peoples

# Indigenous Peoples of the Philippines

- More than 100 ethno-linguistic groups
- About 20% of the national population
- Colonization left widespread socio-economic problems claiming and exploiting lands often belonging to indigenous peoples



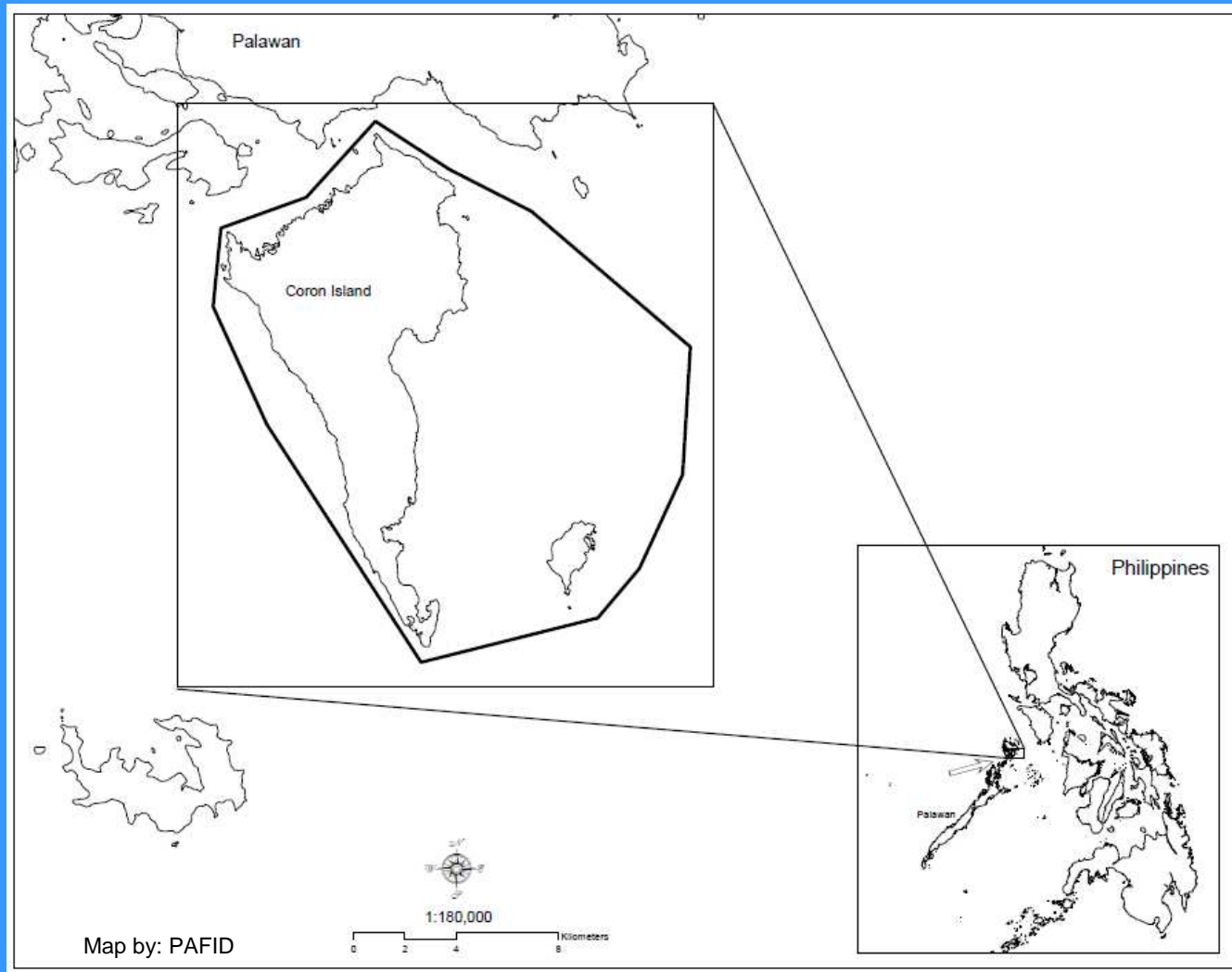
Photos by: <http://www.filipinasoul.com/2008/09/indigenous-peoples-of-the-philippines-and-their-costumes/>

# Formal Frameworks in the Philippines

- 1987 Philippine Constitution
- 1992 National Integrated Protected Areas Act
- 1991 Local Government Code
- 1997 Indigenous Peoples' Rights Act



# The Tagbanuas' of Coron Island









# The Journey of the Tagbanuas'

- 1970s – Municipal government seized their clan caves
- 1980s – Decline of fisheries due to illegal practices of migrants from other regions
- 1985 – Establishment of the Tagbanua Foundation of Coron Island
- 1990 – Awarded the Community-based Forest Stewardship Agreement



# The Tagbanuas's Perspective

*“It was like asking permission to enter in our own home.”*

*“The land is meaningless without the seas.”*



Photo by: Bob



Photo by: PAFID



# Challenging existing policies

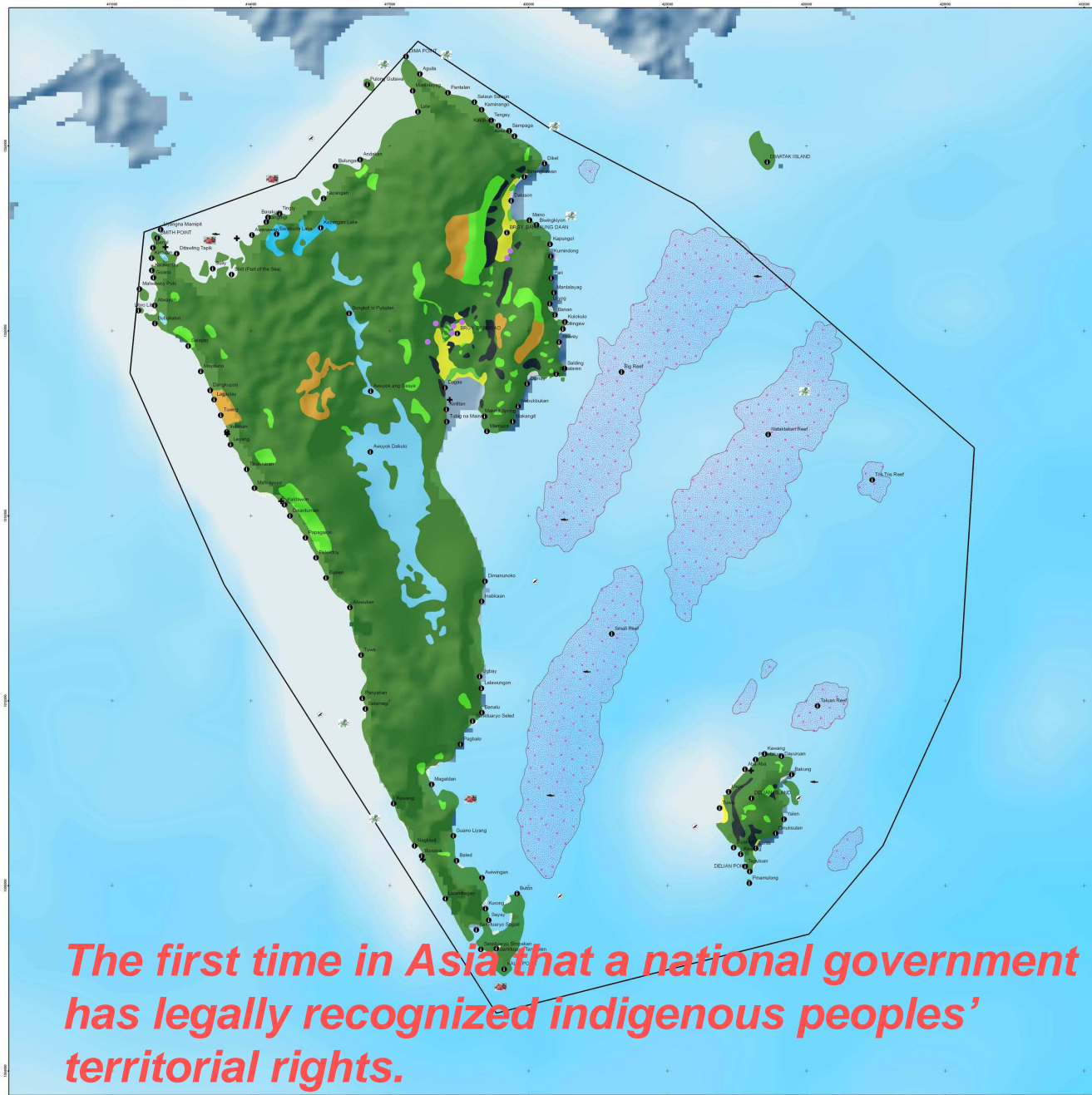
- Strategic Environmental Plan for Palawan (1992)
- Recognizing the Certificate of Ancestral Domain Claims (1993)



Photo by: PAFID



Photo by: Bob



**The first time in Asia that a national government has legally recognized indigenous peoples' territorial rights.**

## Present Land Use Map of Tagbanua Tribe of Coron Island Association, Inc. (TTCIA)



1:50,000



CLARKE 1866 SPHEROID  
LUZON 1911 DATUM  
MEAN SEA LEVEL  
PTM ZONE 3

LOCATED IN CORON ISLAND, PALAWAN PROVINCE

Note: Political boundaries are not authoritative.



### REFERENCES:

1. The ancestral domain boundary were obtained from a Differential GPS survey.
2. The land uses, landmarks, places were derived from the Community 3-dimensional Model of Tagbanua Tribe of Coron Island Association, Inc. (TTCIA) constructed in Coron Island, Palawan Province on 2000.
3. NASA Shuttle Radar Topography Mission 90m Elevation Data Courtesy of CGIAR.

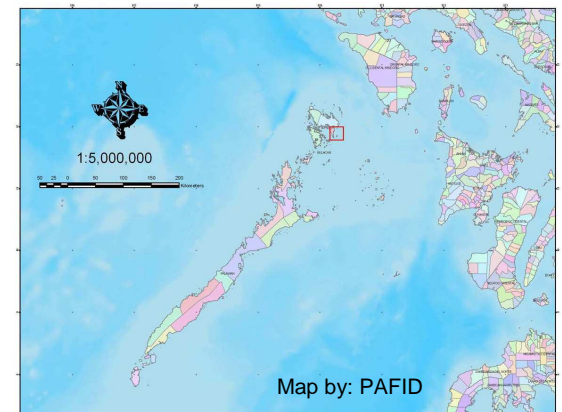
Land Use	Area/Hectare	Percentage (%)
Beach/Sand	47.300	0.193
Communal Forest	307.613	1.255
Coral Reef	3239.692	13.222
Hunting Ground	177.702	0.725
Lake (Closed to the Public)	433.933	1.771
Lake (Open to the Public)	45.122	0.184
Mangrove	12.486	0.051
Protected/Sacred Forest	6054.226	24.709
Residential	92.643	0.378
Sea	13973.261	57.029
Swidden Farm/Kaingin	117.949	0.481
<b>Total (Hectare)</b>	<b>24501.927</b>	<b>100.000</b>

### Legend

- ✦ Burial Ground
- Home of Small Octopus
- Fish Sanctuary
- Home of Giant Octopus
- Spring
- Places
- ✦ Bird's Nest Area
- ✦ CADT
- Beach/Sand
- Communal Forest
- Coral Reef
- Hunting Ground
- Lake (Closed to the Public)
- Lake (Open to the Public)
- Mangrove
- Protected/Sacred Forest
- Residential
- Swidden Farm/Kaingin

For Validation

### LOCATION MAP



Map by: PAFID

# Challenges and Lessons Learned

- Indigenous peoples experience reflect their continuing struggles based on a collective aspiration for survival
- Policies shape fishery rights which plays an essential role in promoting equity
- Indigenous rights to natural resource management are integral to their livelihoods

# Conclusion

- An open and respectful dialogue between the State and the indigenous peoples
- Due recognition should be given for building the capacity of indigenous peoples.
- In the pursuit of self-determination by indigenous peoples, securing control, access and management decision making capabilities over their territories and natural resources is a key element.

**Maraming salamat po!**