Legal Roundtable Discussion

Ancestral Domains or CARPable Lands?

A roundtable discussion was organized on 23 June 2006 by AR Now!, one of ANGOC's partners in the Project, to examine the legal bases for the Department of Agrarian Reform (DAR)'s coverage of ancestral domains (ADs) under the Comprehensive Agrarian Reform Program (CARP), and to prepare to deal with the implications, in case the DAR proves able to legally enforce its actions on this matter.

The DAR's foremost argument for giving out, or refusing to cancel, Certificates of Land Ownership Award (CLOAs) for properties that are being claimed by indigenous groups is to be found in the Indigenous Peoples Rights Act (IPRA) itself.

Section 56 of the IPRA provides that land rights granted before the IPRA became law in 1997 are exempt from AD claims. Therefore, as the DAR officials have argued, where CLOAs had been awarded for lands that may or may not be known at the time of issuance of the land titles to be part of some indigenous community's ancestral domains but were then not yet covered by a Certificate of Ancestral Domain Title (CADT), the CLOAs would constitute an "existing or vested" right which could not be overturned, except by a legal proceeding. The DAR used this interpretation of Section 56 when it stood its ground on the validity of CLOAs it had issued for the Don Carlos estate land.

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

PROCLAMATION NO. 2282

RECLASSIFYING CERTAIN PORTIONS OF THE PUBLIC DOMAIN AS AGRICULTURAL LAND AND DECLARING THE SAME ALIENABLE AND DISPOSABLE FOR AGRICULTURAL AND RESETTLEMENT PURPOSES OF THE KILUSANG KABUHAYAN AT KAUNLARAN LAND RESOURCE MANAGEMENT PROGRAM OF THE KILUSANG KABUHAYAN AT KAUNLARAN OF THE MINISTRY OF HUMAN SETTLEMENTS

This controversial provision of the IPRA has also been invoked in other cases, as follows:

- Public domain lands covering some 1.5 million hectares that had been reclassified as agricultural land by virtue of Presidential Proclamation (PP) 2282. This law was passed by former President Ferdinand Marcos in 1983, or 14 years before the IPRA became law.
- "Lands suitable for agriculture", even though found within reservations, that are put under the DAR's jurisdiction by virtue of Executive Order 407 (then amended by Executive Order 448).
- Portions of the Bongabong-Mansalay Forest Reserve that were declared open to disposition by virtue of Presidential Proclamation (PP) 2073 of 1982.

Unfortunately, many if not all of such so-called public domain lands are part of some indigenous group's ADs, although they are not formally recognized as such.

In any case, a number of legal groups disagree with this reading of Section 56. The Legal Rights and Natural Resources Center (LRC), for instance, argues that no vested rights could be said to have preceded the IPs' rights to their ADs, which have existed from time immemorial.

Other fundamental counter-arguments may be found in Article XIII, Section 6 of the Philippine Constitution, which states that:

> *"The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture,* ***subject to*** *prior rights, homestead rights of small settlers, and* ***the rights of indigenous communities to their ancestral lands."***

The Comprehensive Agrarian Reform Law (CARL) also contains a similar exemption in Section 2 (Declaration of Principles and Policies):

> *"The State shall apply the principles of agrarian reform or stewardship, whenever applicable, in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain, under lease or concession, suitable to agriculture,* ***subject to*** *prior rights, homestead rights of small settlers and* ***the rights of indigenous communities to their ancestral lands****."*

Nonetheless, the DAR insisted that unless a Court declares previously titled lands as part of CADCs/CADTs, they can still cover the land as part of CARP.

"The State shall apply the principles of agrarian reform or stewardship,...subject to prior rights,...and the rights of indigenous communities to their ancestral lands."

--Comprehensive Agrarian Reform Law

As a result of the discussion, the following options were proposed at the roundtable discussion:

- File a case before the Supreme Court in order to clarify the interpretation of the laws; however the case may put implementation of both CARP and IPRA on hold (status quo) for at least three years.
- Temporary Restraining Orders (TROs) can be filed in specific cases.
- Administrative cases can be filed against erring DAR officials.
- The DAR may be asked to clarify its position on Presidential Proclamation 2282.

The outputs of this roundtable discussion were presented and discussed at the National Consultation held on 7-8 August 2006.