

# 2016 Philippines Land Monitoring Report on Land and Resource Conflicts

*Prepared by Asian NGO Coalition (ANGOC) with inputs from AR Now! (The People's Campaign for Agrarian Reform Network, Inc.), KAISAHAN (Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan), NFR (NGOs for Fisheries Reform) and PAFID (Philippine Association for Intercultural Development)*

In the Philippines, human rights violations can be both a cause and an effect of resource conflicts. The 2014 Philippine Land Monitoring Report has shown us that land conflicts can escalate into violent stages due to overlapping land claims and weak land governance. In fact, the country has ranked third with the highest number of deaths among land and environmental defenders from 2012 to 2013 globally (Global Witness, 2014).

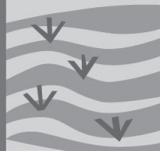
Oftentimes, killings and harassments involving land and resources are seen as an effect of a conflict. However, other human rights violations such as uneven access to resources and non-inclusive participation in public affairs are the actual causes of conflict.

The people's right to land is enshrined in the 1987 Philippine Constitution and lays down the general

principles of access to land. Article II defines the current legal framework for access to land:

- Protection of Property (Section 5);
- Promotion of Social Justice and Human Rights (Sections 10 and 11);
- Promotion of rural development and agrarian reform (Section 21);
- Promotion of the rights of indigenous communities (Section 22); and,
- Protection of the right of the people to a balanced and healthful ecology. (ANGOC, 2013)

Articles 12 and 13 further stress that the use of property must be regulated in the interest of social justice. Therefore, the State must undertake an agrarian reform program founded on the right of farmers and regular farm workers who are



landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of its fruits. The State is also required to protect the rights of indigenous cultural communities to their ancestral lands.

Finally, the Constitution also restricts the foreign ownership of lands and requires the protection of Filipino enterprises against unfair foreign competition and trade practices. (1987 Philippine Constitution)

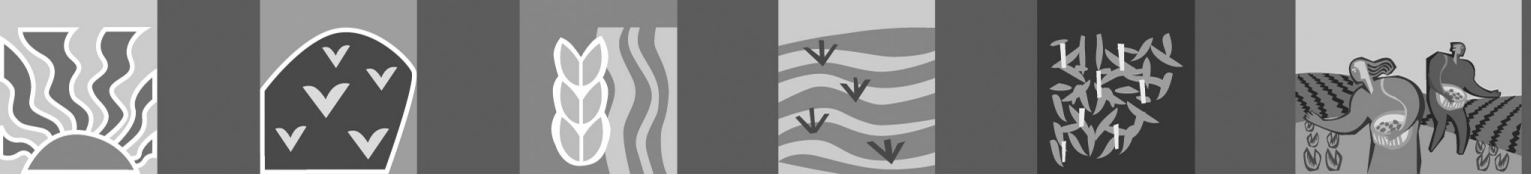
Thus, the Comprehensive Agrarian Reform Law (passed in 1988) and the Indigenous People’s Rights Act (passed in 1997) sought to redistribute some 9 million hectares of agricultural land to landless farmers and to issue titles to around 5 million hectares of ancestral domains to

indigenous peoples, respectively. On a similar vein, Republic Act 8550 or the Philippine Fisheries Code of 1998, amended by RA 10654, was passed to safeguard the rights of small-scale fishers.

However, these programs have not been completed decades later due to implementation issues and heavy resistance from private owners given growing business opportunities with land and resources. The basic right to property, secure livelihoods and improved quality of life for millions of Filipino farmers and indigenous peoples have still not been realized.

### **Agrarian Reform**

As of June 2016, the Department of Agrarian Reform (DAR) reports an accomplishment of



4.72 million hectares distributed to 2.79 million agrarian reform beneficiaries. There is still a balance of 621,085 hectares undistributed for 568,575 agrarian reform beneficiaries (ARBs).

According to the DAR, as of September 30, 2016, the Western Visayas region has the highest number of uninstalled farmer-beneficiaries at 13,776, with 9,588 in Negros Occidental. Leyte province is second with 8,495 uninstalled beneficiaries.

Various issues have hindered the fast accomplishment of these targets, including the following:

#### **Strong landowner resistance**

In Ormoc, KAISAHAN took note of some 9 landowners who threatened or hindered the installation of 127 ARBs in 213 hectares of land. Among those areas that continually face threats are owned by Ormoc's elite families such as the Larrazabals, Tans and the Torreses. The son-in-law of Torres is the current mayor of Ormoc while the Larrazabals own the major commercial establishments in the city. A number of landowners have also resorted to filing cases against DAR personnel or the beneficiaries themselves to stall the complete transfer of ownership.

#### **Physical threat to lives and property of the farmers**

In Negros Occidental, four of KAISAHAN's farmer paralegals shared that they received death threats from people or armed goons allegedly connected to the landowners. Other farmers are threatened by farmers supported by armed groups.

#### **Circumvention of LAD (Land Acquisition and Distribution) processes**

Qualified farmer beneficiaries are excluded in the master list of agrarian reform beneficiaries. Agrarian reform beneficiaries are not yet in possession of the land they already owned since the 1990s due to different delays in the LAD process. As of February 2014, the Department of Agrarian Reform (DAR) reported to the Philippine House of Representatives (Congress) Committee on Agrarian Reform that 790,671 hectares of agricultural lands remain to be covered under CARP. Additionally, there are still approximately 287,473 hectares of agricultural lands without Notices of Coverage as of January 2014 (from House Bill 114 Explanatory Note). The issuance of NOCs is an important step towards the acquisition and eventually installation of ARBs.

#### ***Some NOCs issued before the deadline were declared "erroneous"***

DAR classified some Notices of Coverage (NOC) issued to the targeted landholdings as "erroneous" for different reasons. For instance, some of the "erroneous" NOCs (as submitted by KAISAHAN) according to DAR were due to differences between the technical descriptions indicated in the NOCs and in the land title. Other cases were caused by illegal transactions that allowed subdivision of big landholdings covered by CARP.

#### ***Lack of post-land distribution support***

- ***Farmers are leasing the land awarded to them to individuals or corporations.*** Willingly or not, farmers are leasing their lands to "aryendadors" (lessors) who offer farmers P15,000 to P20,000 on the average (depending on the crop) per hectare per year.



Sometimes these farmers are also employed as farmworkers; hence, they only receive a monthly allowance. Negros sugarcane farmers who were awarded their lands were coerced into a lease agreement facilitated by a DAR official.

- **Farmers are exposed to unfair joint venture agreements.** ARBs and indigenous peoples in banana plantations, especially in Mindanao, are victims of scrupulous Joint Venture Agreements (JVAs). In Davao Oriental for instance, the Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) transferred its rights over to Lapanday Foods, Inc. In 2008, Lapanday took over the operations of HARBCO due to the debts incurred by the cooperative. At that time, HARBCO had debts of Php 115 million with Lapanday which eventually ballooned to Php 290.8 million in 2012. The case of HARBCO reveals the plight of many ARBs who may still own the land awarded to them on paper, but in actual practice, have lost control and access to it by the takeover of their land's management by supposed partner agribusiness corporation.
- **Lack of support services for agrarian reform beneficiaries.** Many ARB organizations have failed in keeping ownership of their lands due largely to the lack of adequate credit and support services to sustain their farming activities. Agricultural capital was mostly provided for by the former landowners, support which was ceased when the farmers were identified as ARBs.

Land rights are human rights since depriving poor farmers of access to land can deny them and their families food, shelter, livelihoods and dignity. It is thus necessary to promote land rights as human rights at different levels and strategies:

### Calls to CSOs

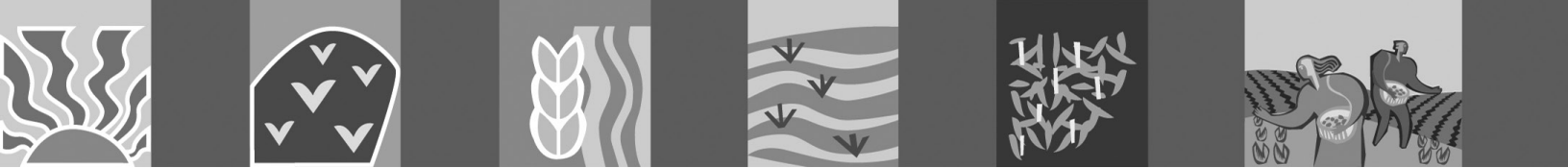
- Formation of local, national and regional support mechanism/s for land rights defenders especially in the fields of community organizing and legal empowerment; and,
- Enhance the capacities of communities in documenting human rights and land rights related cases for case build up.

### Calls to Philippine Government

- Work for the immediate distribution of remaining agricultural lands to qualified farmer beneficiaries;
- Streamline the existing rules and procedure in securing the assistance of the security sector (e.g., police) in the implementation of agrarian reform;
- Implement CARPER provision on initial capitalization and opening of more accessible socialized credit windows for ARBs; and,
- Mandate the Department of Agriculture to prioritize support to ARBs.

### Ancestral Domains

Over 14 million of the Philippine population are indigenous peoples (IPs). The country is home to 110 indigenous tribes, most of whom live in the upland areas, forests and coastlines. Most of the IPs depend on traditional swidden agriculture utilizing available upland areas. However, most of these traditional cultivation sites and fallow areas have now been degraded and are further threatened by the influx of migrant farmers who have introduced unsustainable lowland-commercial farming practices. Furthermore, most indigenous communities do not have legal recognition over their traditional lands, thus limiting their ability to freely conduct their



livelihood activities and are denied access to other natural resources in their communities.

Under Republic Act 8371 or The Indigenous Peoples Rights Act (IPRA), indigenous communities can secure titles or Certificates of Ancestral Domain Titles (CADT) for their traditional lands or ancestral domains.

### **Policy Conflicts**

Incoherent national policies undermine the rights of indigenous communities to have “control” and “access” to their ancestral domains and resources.

The Department of Agrarian Reform, for instance, issues Certificates of Land Ownership Awards (CLOA) to farmer-beneficiaries. A substantial

number of these CLOAs issued to farmers come from public lands, which are also part of ancestral domain claims of indigenous peoples.

Presidential Proclamation 2282, Series of 1983, a Marcos-era Proclamation which reclassified as ‘agricultural land’ certain parcels of the public domain located in the twelve regions of the country (containing approximately a total area of 1,502.246 hectares) and declared the same as ‘alienable and disposable’ for agricultural and resettlement purposes, also conflicts with IP land rights.

Five ancestral domain claims are affected by Presidential Proclamation (PP) 2282 in Mindoro province which include the Certificate of Ancestral Domain Title (CADT) in Sta. Cruz, Occidental



***“Intrusion of unregulated development projects and other interests continue to marginalize the access to and control of indigenous cultural communities’ of the resources of the uplands.”***

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Mindoro of the Iraya Mangyan, and the Certificate of Ancestral Domain Claims (CADCs) of Naujan Alangan Mangyan and Buhid Mangyan Baco Sablayan.

On the other hand, the Joint Administrative Order #1 (JAO 1) on *“Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of DAR, DENR, LRA and NCIP in order to address Jurisdictional and Operational Issues between and among the Agencies”* was signed on 25 January 2012 by the Department of Environment and Natural Resources (DENR), DAR, Land Registration Authority (LRA) and the National Commission for Indigenous Peoples (NCIP). JAO 1 aims to address issues of overlapping jurisdiction, operational issues and conflicting claims by and among the aforementioned agencies. Furthermore, the JAO shall apply to the coverage of lands and/or processing by DAR, DENR and NCIP and registration with LRA of land titles embracing lands or areas which are contentious or potentially contentious. A Joint National Committee on DAR, DENR, LRA and NCIP has been created to address or resolve such issues. On a similar vein, regional committees of the same nature have been established.

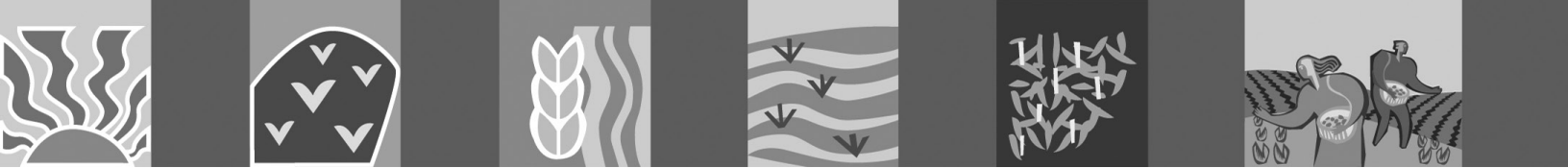
Unfortunately, five years have passed but the incidence of land conflicts due to overlapping claims persist. This situation has led to violence (at times death) among the rural poor. In fact, JAO 1 of 2012 totally undermines the rights of IP to their lands, territories and resources as it allows for conflicting claims over IP lands. There is a need to assess the implementation of JAO 1, whether it has been an effective mechanism to manage or resolve conflicts, particularly at the local level.

### **Development Aggression**

Intrusion of unregulated development projects and other interests continue to marginalize the access to and control of indigenous cultural communities’ of the resources of the uplands. Most of these initiatives bring alien value-systems with regards to the use of natural resources. Mining tenements overlap with almost all IP ancestral domains, another detriment to their tenurial security.

### **Calls to Philippine Government**

- Full implementation of IPRA Law;
- Review the implementation of JAO 1 of 2012
- Practice responsible land governance through proper enforcement of Free Prior and Informed Consent (FPIC);
- Implementation of mandatory representatives for genuine community consultations with IPs; and,
- Visible presence of NCIP representatives for the strict implementation of IPRA to stop mining operations within the IP areas/ ancestral domains.



## Aquatic Resources

The Philippines is an archipelagic country composed of over 7,100 islands and islets. Three large bodies of water bound it: the West Philippine Sea, Pacific Ocean and Celebes Sea. Having a long coastline, it is only but natural for majority of the population to be involved in fishing. However, the fisheries sector has long been neglected. This phenomenon holds in particular for the municipal fisherfolk or small fishers.

Most, if not all, of the fisherfolk families residing in the foreshore and the salvage/easement zones just settled into the land they are now occupying, given the open access nature of public domain, with minimal or no document securing their residence. However, they are not the only ones facing the threat of displacement and relocation. Even those who are settling in coastal lands beyond the salvage/easement zones are also facing these threats. Many of them had been residing in their communities for years, others for decades, some for generations, without any threat to the security of tenure.

The Fisheries Code of 1998 (RA 8550) provides for fisherfolk settlement but these have remained ambiguous provisions. Issues on the foreshore land regarding classification, access, resource use, public safety, shoreline management, and regulatory processes compound this. With the national and local governments promoting tourism and countryside industrialization as development strategies, establishment of industrial estates, power plants, ports, as well as beach resorts and other tourist destinations affect many coastal areas.

According to Sec. 4 of RA 8550, as amended by RA 10654 (Fisheries Code of 1998), **municipal fisherfolk** are persons who are directly or

indirectly engaged in municipal fishing and other related fishing activities.

**Municipal fishing** refers to fishing within municipal waters using fishing vessels of three gross tons or less, or fishing not requiring the use of fishing vessels.

**Municipal waters** include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The National Integrated Protected Areas Systems/NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore inlands and 15 kilometers from such coastline. Where two municipalities are so situated on opposite shores that there is less than 30 kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

Municipal fisherfolk directly depend on marine resources for food and income, and are more inclined to protect the marine resources, as their capacity to ensure sustenance of the family depend on it.

Among the factors that threaten the tenurial security of municipal fishers in their coastal settlements are the following: (1) private land claims over public areas where fishers have settled and lived in; (2) private land claims over foreshore land and salvage/easement zones; (3) selling of municipal fishers of their lands or rights for their land to private investors and resort/real estate developers; (4) establishment



of resorts and other tourism facilities; (5) coastal real estate development [vacation houses, retirement villages, beach-front residential areas]; 6) port development and other public coastal infrastructure; and, (7) entry of factories, industrial estates, export processing zones and other industrial facilities<sup>1</sup>.

The absence or lack of tenurial security among the fishers in the use of foreshore and the savage/easement zone including the settlement of their families affect their family income as well as their food security. The constant threat of being ejected to be relocated far from the fishing grounds and the gradual denial of access to the sea by reason of growing “private ownership” affects their normal routine of productive enterprise. There are no sustained government efforts to provide safe and decent settlement and re-settlement for fisherfolk despite mandate under R.A. 8550 or the Philippine Fisheries Code of 1998, which is amended by R.A. 10654. Likewise, local government units and communities receiving displaced families of fishers are burdened as to the quantity and quality of basic services to be delivered to these new constituents.

Women fishers bear the brunt of displacement. Womenfolk are usually occupied with livelihood activities like the harvesting of aquatic resources and their subsequent processing and marketing. The gleaning of shells and mollusks and gathering of sea urchins, starfishes, seaweeds and corals are productive occupations that women fishers perform, as are fish drying and fish paste making. They likewise engage in near shore fishing activities such as fry gathering, subsistence aquaculture and the operation of fishing gears that are managed on or from the shore (e.g. beach seine).

The threat of displacement and relocation also affects relationships within organizations and communities. If the claimants are all from the community, competing claims and interests within the community threatens inter-personal/household relationships and community dynamics. Even if the threat is external, differences in strategies and responses can affect organizations and community relationships.<sup>2</sup>

The threat also becomes a distraction, sometimes even a disincentive, from household and community asset build-up in all aspects: financial, human, social, financial and physical. Financial and physical assets get destroyed or lost in cases of demolitions, especially if it is involuntary and at times, violent. Resettlement often affects the education of children, and also participation in trainings and other non-formal education venues. Participation in resource management, especially area-based and site-focused initiatives, are definitely affected by relocation.

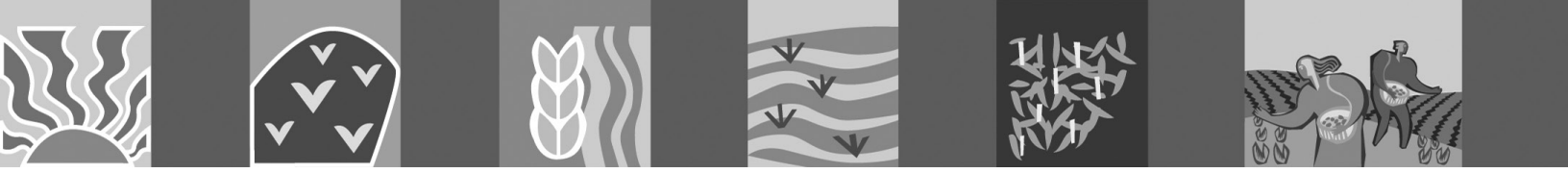
### **Calls to Philippine Government**

- On Municipal Water Delineation
  - For the Department of Agriculture through the Bureau of Fisheries and Aquatic Resources (DA-BFAR) to develop a program for municipal water delineation and see to it that the provisions under the Comprehensive National Fisheries Industry Development Plan (CNFIDP) related to the municipal water delineation are implemented;
  - For the Department of the Interior and Local Government (DILG) to issue a memorandum circular for all local government units (LGUs) without offshore islands to fast track the

<sup>1</sup> Balderrama, BANAAG Bahay at Buhay Primer 1: *Pagtingin sa Paninirahan ng mga Mangangisda*.

<sup>2</sup> Balderrama, Policy Paper on Fisherfolk Settlement, 2006.





process of verification and enactment of ordinance for the 15-kilometer municipal water delineation, with emphasis on bay-wide management and preferential use of municipal waters by small fisherfolk. Also for DILG to provide incentives to LGUs that sustainably manage their municipal waters and uphold the preferential rights of small fisherfolk over the use of municipal waters.

- For DA-BFAR to re-convene the inter-agency task force for fisherfolk settlement, which it formed in 2012. The task force shall supervise the implementation of the Fisherfolk Shelter for Stewards Program (FSSP), which was implemented initially by the National Anti-Poverty Commission in Yolanda-affected communities.
- For DA-BFAR to allocate and spend around Php1,200,000,000, starting 2017 until 2020, for the establishment of fisherfolk settlement as indicated in the updated Comprehensive National Fisheries Industry Development Plan.
- For the DILG to issue a supplemental guideline to Joint Memorandum Circular 01 series of 2014 that emphasizes the need for LGUs to use geo hazard maps in determining safe zones, unsafe zones and no dwelling zones to ensure rights of displaced fisherfolk.

### Overall Recommendations

Although international human rights instruments do not necessarily include a **human right to land** (except for indigenous people's right to land and territory as articulated in the UNDRIP<sup>3</sup> & ILO Convention 169), security of access to and control over land and its resources is a key

to people's survival. Given the overlapping land claims and weak governance in all lands, the consensus is that land conflicts would progress from latent to manifest and become violent. Thus, it is imperative that the Philippine Government officially recognize land rights as human rights. Specifically, government should:

- establish a Human Rights Desk in all government agencies concerned with land and resource access rights;
- assign a Human Rights Commissioner to focus on issues related to land and resource access rights;
- establish mechanisms to monitor and resolve conflict at the local level that are accessible and affordable; and,
- recognize and optimize alternative and traditional dispute management mechanisms.

### Calls to the Philippine Government

Immediately pass the following bills into law:

- **National Land Use Act (NLUA)**, which seeks to institutionalize a national land use policy aimed at ending the destruction of the country's land resources and promoting balanced development. It mandates the standardization and classification of land use for the purposes of planning and implementation into protection, land use, production, settlements development, and infrastructure development. It also seeks to address the long-overdue task of determining and delineating the country's permanent forest line. Moreover, it establishes the National Land Use Policy Council (NLUPC) as the highest policy-making body on all matters pertaining to land use and management.

<sup>3</sup> UNDRIP-United Nations Declaration on the Rights of Indigenous Peoples (2007)



- **Indigenous and Community Conserved Areas (ICCA) Bill**, which provides for a system of recognition, registration, protection, and promotion of indigenous peoples' lands, and providing penalties to any act of desecration of these lands. The Bill also seeks to provide the necessary government mandate, especially the annual budget and people needed to manage the ICCAs.
- **Notice of Coverage (NOC) Bill**, which is a key component for the continuation of the Comprehensive Agrarian Reform Program (CARP) in that it allows the Department of Agrarian Reform (DAR) to continue issuing notices of coverage, accepting voluntary offers to sell and the resolution of CARP-related cases. ■

## References

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