

CHAPTER 1: DEVELOPMENT CONTEXT



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A. Prevailing issues on land rights in Asia

In the 2014 report of the State of Food Insecurity prepared by Food and Agriculture Organization (FAO), International Fund for Agricultural Development (IFAD), and World Food Programme (WFP), more than 65 percent of the world's undernourished and hungry are found in Asia. Majority of this figure is represented by the marginalized sector, including the small farmers and indigenous peoples.

Despite their significant contribution in achieving global food security and biodiversity conservation, small farmers and indigenous peoples are often disadvantaged due to limited awareness of their rights and the prevalence of discrimination in many parts of the region. Thus, they are unable to counter the claims of political and economic powers, and wisely evaluate contracts of the private sector in utilizing their territorial resource.

Similarly, while international, regional, and national legal bases are in place on upholding redistributive lands and resource justice to these sectors, they are still often weakly safeguarded and rarely provided with full enjoyment of such rights.

In Bangladesh, indigenous peoples of the Chittagong Hill Tracts (CHT) and the 18 ethnic communities in the plains are privileged to own their indigenous territories as identified by the State Acquisition and Tenancy Act of 1950. However, majority of communities in the plains are not accorded with similar rights.

Despite laws upholding indigenous peoples' territorial rights, their customary lands are still being leased out to the private sector by the government, resulting to conversion of these lands for economic use and alienating the people in the process.

Such dismal state of IP affairs is attributed to the severely limited laws on land ownership, which are often focused solely on holding, transfer, purchase, and acquisition of land. While the CHT Accord shall safeguard the indigenous people's land rights through recognition of their traditional ownership rights and management of land, and through provision of land dispute resolution; the trend of land alienation in both the plains and the hills still continues (Ripa and Tripura, 2014).

While good laws on indigenous people's protection of rights are in place, weak implementation will always be an issue in most of Asia's third world countries.

Another pressing concern on land in the Asian context is the overlapping interests among various stakeholders, including the environment sector, in the proper use of lands. Conflicts in resource use not only arise between and among social and economic interest groups, but also with the government in the pursuit of preservation and conservation of the environment. In India, large areas of land were declared as protected areas from 1970 to 2000, causing massive evictions of communities leading to protest actions against the government (AVARD, 2014). This is also evident in the Philippines with the overlapping provisions of the Indigenous Peoples Rights Act (IPRA) and the National Integrated Protected Areas System (NIPAS) Act.

To date, there are still Asian countries lacking laws on the protection of rights of indigenous peoples. Instead, these countries are implementing national policies biased towards commercial agribusiness or extractive ventures. The Corporate Agriculture Farming policy of Pakistan remains a mechanism

to favor foreign investors at the expense of local communities (SCOPE, 2014).

These multi-faceted concerns lead to land disputes, evictions, and even killings, resulting to human rights violations against farmers and indigenous communities. In Indonesia, there have been 1,520 agrarian conflicts that occurred between 2004 to 2014, covering more than 6.5 billion hectares and affecting 977,103 households. This translates to an average of two agrarian conflicts, 1,792 hectares of lands grabbed, which involved 267 households per day. Within a ten-year period, this has resulted to 85 people killed, 743 injured from physical violence, and 1,395 arrested (Nuridin, 2014). In Nepal, due to land disputes, thousands of families were harassed with 760 families being forcibly evicted from their lands (Basnet, 2014).

B. The Indigenous Peoples in the Philippines¹

Indigenous peoples are defined as “a group of people or homogenous societies identified by self-ascription and ascription by others, who have continually lives as organized communities on community-bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of the Filipinos” (IPRA Chapter II Section 3h). They comprise 10-20 percent of the country’s population (IWGIA, 2016) distributed into approximately 110 different ethno-linguistic groups (Pedragosa, 2012). Majority of them reside in the uplands with the remaining biodiverse

¹ Condensed from *The Indigenous Peoples in the Philippines: A Background* by David Benjamin de Vera and Shirley Libre of the Philippine Association for Intercultural Development (PAFID).

ecosystems they claim as part of their ancestral domain (AD)² which cover nearly 25 percent of the total country's land area.

Fifty-five percent of the Key Biodiversity Areas (KBAs) – which represent the most important sites for biodiversity conservation in the country (IUCN, 2011) – overlap with ancestral domain titles. Further, 90 percent of all the remaining forest cover in the Philippines are in ancestral domain areas. Clearly, indigenous communities, through their traditional resource management systems, play a vital role in protecting and governing the use of these resources in sustaining people's needs for survival; and hence should be respected and recognized.

However, indigenous peoples continue to face complex struggles which impede their full enjoyment of legal rights. While their ancestral domains contain valuable resources, indigenous peoples are often disadvantaged because of their lack of tenurial security.

Unabated encroachments in the uplands pose a threat to the environment and the IP's welfare

With increasing population and demand for the use of land and forest resources, lowland families migrate to the uplands, and economic activities encroach in the ancestral domains. Among the mix of stakeholders who are in strong competition with the use of the uplands, indigenous people are in a most

² Ancestral domains are defined as “all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals or corporations, and which are necessary to ensure their economic, social, and cultural welfare. It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/ IPs who are still nomadic and/or shifting cultivators” (RA 8371 Chapter 2, Sec. 3a).

vulnerable state as most of the remaining natural resources and ecosystem services crucial in sustaining human needs, such as watersheds, are found within their territories.

Indigenous livelihoods are also adversely affected and most of the traditional cultivation sites and fallow areas, in particular, have now been degraded and are further threatened by the influx of migrant farmers, who have introduced unsustainable lowland commercial farming practices.

Limited access to basic services and opportunities

As settlements of indigenous peoples are often located in remote areas, they suffer from limited to lack of access to basic social services and economic opportunities, resulting to higher incidence of morbidity, mortality, and malnutrition. Illiteracy, unemployment, and poverty rates are also much higher in IP communities than in the rest of the population.

Under-representation in the Philippine governance

The IPs remain among the most under-represented sectors in the governance of the Philippines. Without the necessary wherewithal, the sector has not been able to actively participate in political exercises and merely settle for token representation in the legislature and other elective posts in the government. Available opportunities for participation in policy-making are limited by the sector's capacity to engage the bureaucracy and the ruling political elite.

Overlapping laws infringing the rights of IPs

The Philippines holds the distinction of being the first country in Southeast Asia to enact a law recognizing the traditional rights of indigenous people over ancestral domains, with the passage of Republic Act 8371 or the IPRA.

Through the IPRA, the Philippines has been complying with the treaty it has signed on the Convention on Biodiversity (CBD), laying internationally-accepted standards on the protection of the rights and welfare of IPs in the conservation of natural resources within their territories. Although, the country has yet to ratify the international treaty on International Labour Organization Convention 169 (ILO) – providing for the basic standards to protect indigenous workers within the framework of respect for indigenous and tribal peoples’ cultures, their distinct ways of life, and their traditions and customs.

As of 2015, the NCIP has issued 158 CADTs and 258 CALTs covering more than 4 million hectares or 14 percent of the nation’s total land area.

But due to the sectoral approach in crafting policies in the Philippines, provisions of different land laws are not harmonized. Hence, attempts to address differing sectors’ needs may have negative implications to one another.

Republic Act 8371 or the National Integrated Protected Areas (NIPAS) Act, passed in 1992, establishes all designated protected areas to maintain essential ecological processes and life-support systems to preserve genetic diversity, ensure sustainable use of resources found therein, and maintain their natural conditions to the extent possible (RA 8371, Section 4). Under the 1987 Constitution, the NIPAS Act is the first law expressly defined for indigenous cultural communities. It also provides accorded recognition to ancestral lands and customary rights arising, and mandates that government shall *“have no power neither to evict indigenous communities from their present occupancy nor resettle them to another area without their consent”* (RA 8371, Section 13).

Despite this recognition, there has been resistance and criticism from the IP sector regarding the scope and coverage of the law, as most of the national parks and protected areas are situated

within traditional lands and territories. Many communities decry the establishment of new governance structures, such as the Protected Area Management Board (PAMB) and the formulation of Protected Area Management Plans, as an expression of disrespect and infringement on their rights as the ‘owners’ of the land.

While the Philippines has undergone a transition from agriculture to manufacturing-based economy, laws were enacted to support, enhance, encourage, and provide incentives to industries that shall generate the necessary revenues needed by the government to jumpstart its economy. As mining was deemed to be the most effective way to generate the needed revenues for the Philippines, the Government, along with the mining industry, worked for the passage of Republic Act 7942 or the Philippine Mining Act of 1995 as response to the growing demand of foreign investors for reduced uncertainties in the industry (Ali, 2003; Gomez, 2012; Vivoda; 2008 as cited in Camba, 2016). It governs foreign investors for a 100 percent ownership of mining activities under an agreed contract, which includes full exploration, development, and extraction in the area. It was a major priority throughout the terms of three Presidents – Fidel Ramos, Joseph Estrada, and Gloria Macapagal-Arroyo. The government even adopted the official line that *“mining shall be the main driver of development for the new millennium.”*

During Macapagal-Arroyo’s administration, there were 180 Mineral Production Sharing Agreements, 70 Industrial Sand and Gravel Permits, 126 Exploration Permits, and five Special Mineral Extractions permits approved by 2005. And by 2010, the Philippines had the second largest world explorations sites in the Asia-Pacific region (World Investment Report, 2007 as cited in Camba, 2016). This law had the biggest impact on the land rights of indigenous peoples.

Majority of the mining applications and operations are found within ancestral domains and environmentally-critical areas

and consequently, serious conflicts have arisen due to the establishment of a parallel and more powerful governance structure by mining corporations. Unfortunately, public or government maps do not show these overlaps of mining tenements with the indigenous lands.

Following a long history of foreign colonization in the Philippines, Republic Act 7227 or the Bases Conversion Act of 1992 was enacted mandating the conversion of American military bases in the country into other productive uses to promote economic development in Central Luzon, and thus creating the Subic Special Economic Zone, Subic Base Metropolitan Authority (SBMA), and the Clark Special Economic Zone. This law paved the way for the growth of more Special Economic Zones or ECOZONES³, through the enactment of Republic Act 7196 or the Special Economic Zone Act of 1995.

The first ECOZONES in the country were established in ancestral domains; and similar to the case of the Mining Act, new and more powerful governance structures and planning modalities were put in place, which supplanted the existing traditional leadership structures and resource management arrangements of the affected indigenous communities. Moreover, these ECOZONES did not recognize the rights and ownership of the IPs over their ancestral domains.

Weak implementation of IPRA

While IPRA is seen as the most radical policy reform as regards to tenurial security of indigenous peoples, there has been difficulty in enforcing and implementing many of the progressive provisions of the IPRA, mainly due to the unfamiliarity of many state actors along CSO workers who are expected to advocate for the law and provide support to IP communities.

³ ECOZONES are selected areas in the country that are transformed into highly developed agro-industrial, tourist/recreational, commercial, banking, investment, and financial centers, and where highly-trained workers and efficient services will be made available to commercial enterprises.

Many IP communities are also unaware of their bundle of rights. This is where the business sectors take advantage and exploit the loopholes of the free, prior, and informed consent (FPIC) processes and requirements as institutionalized to the IPs by the law.

Indigenous communities also face the negative notion that they do not have the capacity to manage large tracts of lands; hence, claiming their rights over ancestral territories becomes a challenge.

C. The Development of National Spatial Database in the Philippines

Indigenous communities are at the frontline of preserving and defending the remaining forests from degradation as land use conflicts escalate. About 70 percent of the Key Biodiversity Areas (KBAs) of the Philippines are located within traditional lands and territories of ICCs.

Of the estimated four million hectares of ancestral domains, only about half (two million hectares) have been mapped, delineated, and titled. The remaining two million hectares are characterized by numerous existing land use conflicts within the ancestral domains. These include encroachment of mining or other extractive industries, and coverage of other tenurial instruments (i.e., CLOAs for agrarian reforms, TLAs/FLAs for timber and logging, energy projects, and tourism areas).

The lack of systematic collection, archival and access to reliable and accurate maps are preventing indigenous communities in making informed decisions, particularly in the process of FPIC. In turn, the absence of a genuine and meaningful FPIC often leads to social division and cultural displacement for IPs.

While there are case studies featuring best practices of community development initiatives as well as field reports on

the violations of IP rights, there is a need to complement the advocacy efforts with evidence-based spatial data, specifically maps that clearly outline the land-use conflicts.

In this context, the development of a National Digital Spatial Database in the Philippines was developed, aimed at producing an online, interactive portal of spatial data and maps, showing, among others, the overlays of different major tenurial arrangements and land uses. The national database shall be utilized in the production of maps as evidences to advocacies in addressing land tenure issues in the country. ■

BOX 1. The Case Study of the Tampakan Mining Project in South Cotabato, Mindanao

In September 2011, a public consultation was conducted where the technical experts composed of British, Australian, and Filipino mining executives used empirical data, graphs, and pictures to persuade the local government and villagers about the safety and merits of the US\$5.8-billion mining project by Australian-Filipino investors to extract copper and gold in South Cotabato, Philippines.

Using a 3-Dimensional map of the Koronadal Valley and the Tampakan watersheds in South Cotabato province, Ms. Kail Zingapan of PAFID exposed the open pit mining operations to build its tailings dam on top of a hill considered as sacred



by the indigenous tribes. The hill is also the headwater of the Mali River that irrigates fields and a source of freshwater fish. The people were enlightened about the adverse impacts of the mining project on the people's well-being and the environment.

Shortly after the public consultation, South Cotabato Governor Arthur Pingoy was duty-bound to implement the province's 2010 environment code, which bans open-pit mining.

While the mining company experts insisted that open-pit mining is safest to the public, Governor Pingoy has stood his ground, a position which pleased indigenous and local community folk.

As of this writing, the mining project has been held in abeyance for 12 years due to numerous complaints from stakeholders and non-compliance to the rules by the mining operators. Truly, community mapping through 3D Modelling can be used for advocacy to empower IPs and local communities in protecting their land rights and right to self-determination. ■

Source: PAFID

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