



Governance of agricultural lands, ancestral domains, and aquatic resources in the Philippines:

CSO Land Reform Monitoring Report in the Philippines 2018¹

An initiative of the Land Watch Asia Campaign

This study is part of the Land Watch Asia (LWA) campaign coordinated by ANGOC. Over the years, the LWA campaign has contributed to efforts of policy reform or safeguard by supporting the advocacy work of partners and other campaigns, through: (a) the development of evidence-based information, (b) the identification of strategic areas for policy advocacy with governments, and (c) the support for country dialogues and mobilizations. The preparation of LWA Country Land Monitoring Report is part of LWA's efforts to affect these strategies.

For 2017 to 2018, the LWA Philippines Land Watch Monitoring Report aims to:

- provide an overview of the current policy and legal environment on access to land and tenurial security of the rural poor specifically the farmers, indigenous communities and fisherfolks;
- describe their land access status and the emerging issues; and,
- identify opportunities for advancing land rights in the country.

¹ This is an abridged version of the CSO Land Reform Monitoring Report in the Philippines: 2018 prepared by the Xavier Science Foundation (XSF) with inputs from Dave de Vera, Marita Rodriguez, Anthonoy Marzan, Maricel Tolentino, and Timothy Salomon, as part of the Land Watch Asia (LWA) campaign. This 2018 LWA country monitoring report focuses on land governance, and is supported through the project "Sustainable, Reliable and Transparent Data and Information towards Responsible Land Governance: Putting Commitment 8 into Action."

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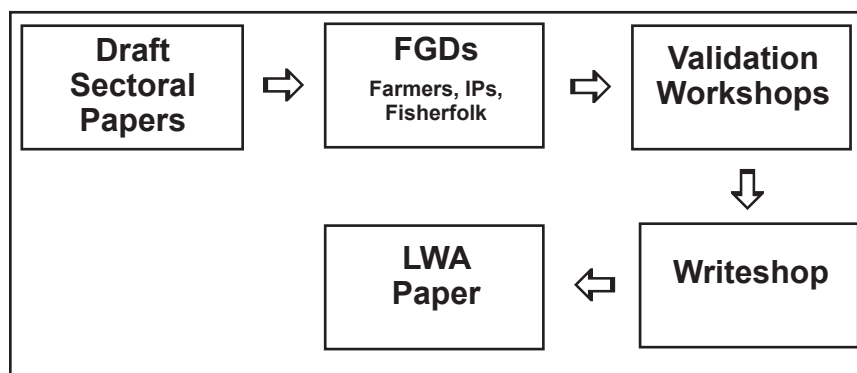
Ravanera, R. (2018). Governance of Agricultural Lands, Ancestral Domains, and Aquatic Resources in the Philippines: CSO Land Monitoring Report in the Philippines 2018. In ANGOC (Ed.). *State of Land Rights and Land Governance in Eight Asian Countries: Forty Years after the World Conference on Agrarian Reform and Rural Development* (pp. 222 to 253). Quezon City: ANGOC.



The paper is also directed towards contributing to the articulation of 2019 National Engagement Strategy (NES) of the International Land Coalition (ILC) - Philippines specifically on networking, mobilization, and influencing policies.

The LWA – Philippine paper is anchored on three sectoral papers on resource reforms in agricultural lands, ancestral domain, and aquatic resources. Such papers were presented in focus group discussions (FGDs) among selected leader-representatives from farmers, indigenous communities, and fisherfolks organizations together with their partner CSOs. Outputs of the FGDs were then presented in round table discussions with representatives from government agencies, specifically the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Bureau of Fisheries and Aquatic Resources (BFAR) of the Department of Agriculture (DA), National Commission on Indigenous Peoples (NCIP), and Commission of Human Rights (CHR).

Figure 1. Process undertaken in drafting and finalizing the Philippines Land Watch Monitoring Report



Using the outline of LWA, the author consolidated the inputs and incorporated additional information from secondary literature, including the salient points of the 2017 to 2018 Land Conflict Monitoring Report in the Philippines prepared by Timothy Salomon of ANGOC. The draft LWA Land Monitoring Report was then presented during a multi-stakeholder consultation in September 2018, discussed, and subsequently finalized.

The paper covers current laws, policies and programs on agricultural lands, ancestral domains, and aquatic resources, particularly on the access to these resources by the farmers, indigenous communities and fisherfolks, respectively. It does not cover, however, public lands and those settling on these resources.

OVERVIEW OF ISSUES ON LAND RIGHTS AND LAND ACCESS IN THE PHILIPPINES

Governance of agricultural lands, forests and aquatic resources in the Philippines, as in many other Asian countries, has significant impact on the country’s development. Land tenure, in particular, is identified as a major constraint in overcoming rural poverty as it is closely linked to



the challenges faced by agricultural households such as hunger, limited access to basic services, low productivity, and underemployment.

While resource governance has gone a long way in the Philippines, much still needs to be covered and accomplished as indicated by the level of poverty. More than one-fifth (22 million) of the country's total population still live below the national poverty line (PSA, 2015). The World Bank in its 2018 Poverty Assessment Report stated that three quarters of the poor reside in rural areas. About two-thirds of these poor households still highly depend on agricultural activities, even while agricultural employment decreased from 36 to 28 percent between 2006 to 2015.

Among the subsectors of agriculture, those living in the uplands and engaged in forestry activities have the highest incidence of poverty at 68 percent. Majority of these upland dwellers are indigenous peoples (IPs) estimated to be between 10 to 20 percent of the national population (PIDS, 2012). The Family Income and Expenditure Survey done by the PSA in 2015 also found that farmers and fishermen consistently registered as the two sectors with the highest poverty incidence since 2006.

This high level of poverty incidence persisted despite the high gross domestic product (GDP) growth. According to the World Bank 2018 report, the Philippines' annual GDP grew on the average by 5.4 percent from 2006 to 2015, up from 4.1 percent in 1996 to 2005 and 3.4 percent in 1986 to 1995. Unfortunately, agriculture experienced minimal growth, contributing to GDP growth by an average of 0.2 percentage points (compared to 1.9 percentage points for industry and 3.4 percentage points for services) over the period of 2006 to 2015 (World Bank, 2018).

Access to land and resources

Addressing this unbalanced development comes with urgency given increasing pressures on resources. With over 105 million Filipinos in a land area of around 30 million hectares, land is not mainly intended for food production but also to provide for the growing demand for settlements, infrastructures and other commercial needs such as tourism, mining, and industrialization. These competing demands for land are also incongruous as the country strives to contribute to the attainment of the global Sustainable Development Goals (SDGs) of eradicating poverty and reducing food insecurity.

Agricultural lands²

Of the country's 30 million hectares total land area, around nine million hectares are used for agriculture with around 3.9 million planted to rice (PhilRICE, 2010). Some 14.19 million hectares are classified as alienable and disposable lands (A&D lands) with 9.63 million hectares already titled (DENR, n.d.).

² Data and information for this section were taken from the paper of Anthony Marzan of Kaisahan and AR Now! on the State of Agrarian Reform in Agricultural Lands.



But given the growing demand of market forces for land, the debate rages on whether it is necessary to protect agricultural lands to ensure the country's food self-sufficiency or allocate lands based on optimal economic use.

DAR data on approved land conversions show that 168,041 hectares of agricultural lands were converted and/or exempted from CARP coverage. However, this does not show the real picture, as there are thousands of undocumented and illegally converted irrigated and irrigable agricultural lands, and the DAR has not been prosecuting violators of conversion regulations.

As an agricultural country, two-thirds of the Philippine population are directly and indirectly exposed to the impacts of climate change events. Agrarian reform beneficiaries (ARBs) are most likely to be affected by climate change mainly because higher productivity depends on weather, water supply, and remaining biological resources, but more critically, because they rely on their produce for food and livelihood. The damages to the ARBs' crops are in billions of pesos annually and most of them have no access to crop insurance and other programs to mitigate the effects of climate change to their farms.

Ancestral Domains³

Indigenous peoples (IPs) lay claim to their ancestral lands and integrated ecosystems that are considered part of their domain. The current IP population in the country is estimated at 12 to 15 million, but the figure is being contested as different sources are citing different figures.⁴ Notably, poverty incidence in the uplands where majority of the IPs reside is still very high.⁵

Ancestral lands and ancestral domain cover more than 20 percent of the total land area of the country and have significant contributions to biodiversity, resource conservation and environmental protection.


The definition of ancestral domains covers forests, pastures, residential and agricultural lands, hunting grounds, worship and burial areas, and includes lands no longer occupied exclusively by indigenous cultural communities, but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators. (IPRA, Chapter 3, Section 3-a)

For IPs, land rights are associated with territory and de facto rights to traditional self-governance, that go beyond private property and legal titles. The ultimate measure of land rights is self-governance.

³ Data and information for this section were taken from the paper of Dave de Vera, PAFID, on the Indigenous Peoples' Rights under IPRA.

⁴ Preliminary data presented by the Philippine Statistics Authority (PSA) show an indigenous population of 8 million, which constitutes a drastic and unrealistic reduction of 6 million from the population estimate of 14 million by the National Commission on Indigenous Peoples (NCIP) (Source: TEBTEBBA). The Episcopal Commission on Tribal Filipinos (ECTF) in 1995 identified at least 40 ethno-linguistic groups with a population of about 6.5 to 7.5 million (10 to 11 percent of the country's population in 1995).

⁵ PIDS



There has been a high 18 percent accomplishment rate for issuance of Certificates of Ancestral Domain Titles (CADTs) to IPs. Yet, IPs remain in absolute poverty. The long-term benefits of the issued tenure instruments or titles on indigenous communities is uncertain. Farmers, through CARP, can access support services and facilities but not IP groups. Actual access and control of IP communities over their ancestral domains are also heavily threatened by foreign or local land investments; extractive industries, such as mining, quarrying, logging; other land ownership programs; private land claims; and local government expropriation, among others.

Aquatic Resources⁶

As an archipelago, the Philippines is endowed with abundant fishing and aquatic resources. It has 2,200,000 square kilometers of territorial waters and a coastline length of 36,289 kilometers. Inland waters where small-scale fishers are also located, include swamplands, lakes, rivers, and reservoirs that cover a combined area of 546,000 hectares (BFAR, 2016).⁷

The fishing industry contributes some 1.3 percent of the country's GDP. In 2015, the country ranked 9th among the top fish producing countries in the world, and 11th in aquaculture production (*Ibid*).

The fishery sector may be subdivided into three sub-sectors: a) municipal fisheries, b) aquaculture, and c) commercial fisheries. Municipal fisheries⁸ account for 26 percent of total fish production while aquaculture accounts for 51 percent and commercial fisheries contribute 23 percent. In terms of population, municipal fisheries sector comprises 85 percent of all fishing operators nationwide. The latest figures from the Fisheries Registration System of BFAR shows that there are some 1.93 million registered municipal fishers (*Ibid*).

The municipal fisherfolk rank among the poorest of the poor where 34.3 percent live below the poverty line (PSA, 2017).


OVERVIEW OF THE LEGAL AND POLICY ENVIRONMENT ON ACCESS TO LAND

Poverty in the Philippines remains a major challenge. It is important to emphasize that the Philippines has signed on the international convention to achieve the Sustainable Development Goals (SDGs) with Goal Number 1 aiming to eradicate poverty. One of the indicators included now for Goal 1 is on land tenure or access to resources to help address poverty. There are many laws responding to this issue and yet, so many remain poor in the Philippines.

⁶ Data and information for this section were taken from the sectoral paper of Marita Rodriguez of the NGOs for Fisheries Reform (NFR) on the State of Fishery Reform.

⁷ BFAR Fisheries Profile 2016.

⁸ Municipal fisheries refer to fishing activities in municipal waters (inland waters or within 15 km from the coasts) that use fishing vessels of three gross tons or less, or fishing not requiring the use of fishing vessels (Sections 57 and 58 of the Fisheries Code).




Philippine lands are either *inalienable* (owned by the State) or *alienable and disposable* (may be privately owned). Various laws govern the nature and utilization of these lands.

The current legal framework for access to land is rooted in the 1987 Constitution. Article II, Declaration of Principles and State Policies, lays down the general principles of access to land: (i) Protection of property [Section 5]; (ii) Promotion of social justice and human rights [Sections 10 and 11]; (iii) Promotion of rural development and agrarian reform [Section 21]; (iv) Promotion of the rights of indigenous communities [Section 22]; (v) Promotion of a self-reliant and independent national economy [Section 19]; and, (vi) Protection of the right of the people to a balanced and healthful ecology [Section 12].

Other provisions in the Constitution further underscore these principles:

- **Protection of property.** Property can be taken away, but only with due process, and in certain cases, with just compensation (Article III, Sections 1 and 9).
- **Promotion of social justice and human rights.** The use of property must be regulated in the interest of social justice (Article XIII, Section 1 and Article XII).
- **Promotion of rural development and agrarian reform.** The State must undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of its fruits (Article XIII).
- **Promotion of the rights of indigenous communities** establishes the rights of indigenous communities to their ancestral lands. Section 5 of the Article on National Economy and Patrimony requires the State to protect the rights of indigenous cultural communities to their ancestral lands (Article XIII, Section 6).
- **Promotion of a self-reliant and independent national economy.** The national economy must create a more equitable distribution of opportunities, income, and wealth and refers to agricultural development and agrarian reform as the basis for industrialization and full employment. The State must also protect Filipino enterprises against unfair foreign competition and trade practices (Article XII, Section 1).
- **Protection of the right to a balanced and healthful ecology.** Ecological considerations were made as bases for the State's prioritization and setting of retention limits in undertaking agrarian reform. Congress must determine the boundaries of forest lands and national parks. Such forest lands and national parks are to be conserved. Congress shall provide measures to prohibit logging in endangered forests and watershed areas (Article XIII, Section 4). Requirements for conservation, ecology, and development, shall be considered by Congress in the determination of the size of lands of the public domain which may be acquired, developed, held, or leased (Article XIII, Section 3).

In sum, the 1987 Constitution shows a consistent policy that links land ownership and use to equitable distribution of wealth and to a balanced ecology. Corollary to this main policy are the restrictive policies on the alienation of lands and on the use of alienated and private lands, the



policies on the conservation and protection of resources, and the recognition of the rights of farmers, indigenous communities and other marginalized groups. These policies should serve as the yardstick for legislation pertaining to access to land.

Resource governance in the Philippines took on a sectoral approach in enacting laws, establishing administrative agencies and resolving disputes. A national comprehensive land use plan, though long been filed in Congress, is still to be enacted. Thus, the discussion below on resource rights and access to resources is segmented and focused on the three major resources in the country: agricultural lands, ancestral domain and aquatic resources.

Agricultural Lands⁹

Governance in agricultural lands has a long history in the Philippines. The current governing law came after the ouster of President Ferdinand Marcos and the installation of Corazon Aquino as president in 1987. One of her campaign promises during the 1986 presidential elections was to make agrarian reform a centerpiece program of her administration.

Legal Basis. The Comprehensive Agrarian Reform Law (RA 6657) was enacted by the Philippine Congress in 1988 to acquire and distribute public and private agricultural lands to all qualified agrarian reform beneficiaries. It also provides support services to beneficiaries and just compensation to landowners. It prohibits transfer, conveyance of awarded lands except through hereditary succession.

The Comprehensive Agrarian Reform Program (CARP) was originally set for 10 years. Unfortunately, the Department of Agrarian Reform (DAR), the administering government agency, failed to complete the CARP's target of land acquisition and distribution (LAD). Farmers and their support groups lobbied the Philippine Congress for extension. In response, Congress enacted RA 8532 extending CARP for another 10 years and allocating funds to complete CARP's LAD phase.

But then again, in 2008, DAR still failed to complete the LAD. Agrarian reform stakeholders launched a massive campaign for the passage of the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER) and, in August 2009, the CARPER law or RA 9700 was passed. CARPER continued the provisions contained in CARP with noteworthy reforms, among which are:

- *Budget.* It mandates the continuing appropriation of at least Php 150 billion to the agrarian reform program.
- *Mode of acquisition.* It removes the Voluntary Land Transfer (VLT) and explicitly prohibits Stock Distribution Option (SDO).

⁹ Data and information for this section were taken from the paper of Anthony Marzan of Kaisahan and AR Now! on the State of Agrarian Reform in Agricultural Lands.

- *Repayment.* The law institutionalized the affordability clause to prevent farmers from paying an excessive amount for their land.
- *Penalty for delaying program implementation.* It increases the penalty for derailing and delaying the implementation of the agrarian reform program.
- *Support services.* Forty percent (40%) of the DAR budget is allocated to support services and provides initial capital to new ARBs and socialized credit to existing ARBs.
- *Gender equity.* It mandates equal support services for men and women ARBs.
- *Dispute resolution.* It gives DAR exclusive jurisdiction in all agrarian related disputes and prohibits lower courts to issue temporary restraining orders or injunction to CARP implementation.


Updated Policies

Major changes to R.A. 6657 as amended by R.A. 9700 were later made, some of which have implications on the swiftness or delay of the land distribution and acquisition process.

Administrative Order No. 7, series of 2011

Former DAR Secretary Virgilio delos Reyes issued a revised rules and procedures governing the acquisition and distribution of private agricultural lands acquired through Compulsory Acquisition (CA) and Voluntary Offer to Sell (VOS). AO 7 of 2011 restrained DAR to proceed with CARP coverage beyond the issuance of the Memorandum of Valuation (MOV) if a protest questioning CARP coverage is pending. Further amendments to this order are:

- Administrative Order No. 10 series of 2014 provides guidelines governing the identification, screening and selection of Farmworker beneficiaries for Haciendas, Commercial Farms or Plantations.
- Amended by AO No. 5, series of 2017 addressed this major loophole by allowing the land acquisition and distribution process for landholdings with pending cases to proceed up to installation of agrarian reform beneficiaries upon getting a favorable decision from the DAR Regional Director despite a protest filed against coverage, petition for exemption or exclusion or other agrarian law implementation (ALI) cases. This was ordered by then DAR Secretary Rafael Mariano, a staunch farmer leader appointed to the post in 2016.
- AO No. 6, series of 2017 in turn suspended the implementation of AO No.5 as ordered by Officer-in-Charge Secretary Rosalina Bistoyong due to pressure by landowners.
- AO No. 3, series of 2018 was issued by current Secretary John Castriciones which amended AO No. 5 of 2016. AO No. 3 allows the LAD process to continue up to the cancellation of the land title of the landowner in favor of the Philippine government even if the case is still on appeal at the Office of the President. It also reiterates the usufructuary right of farmer beneficiaries once the land title of the former landowner is cancelled in favor of the government. Although AO No. 3 is more acceptable than AO No.7, series of 2011, it is still



contrary to the intent of RA 9700 (CARPER) to fast-track land distribution by prohibiting other agencies except the Supreme Court, to stop or delay CARP implementation.

Other key changes introduced are:

- *Administrative Order No. 3, series of 2012 and Administrative Order No. 4, series of 2014* (Amendments to the Revised Rules and Procedure Governing the Acquisition and Distribution of Private Agricultural Lands under RA 9700)
- *Administrative Order No. 5, series of 2014* (Rules and Procedure for Preliminary Processing of Land Acquisition and Distribution of Private Agricultural Lands Upon Revocation by the DAR of Exemption/Exclusion Conversion Order)
- *Administrative Order No. 3 of 2017* (Rules for Agrarian Law Implementation Cases, amending AO3 of 2003)

Ancestral Domain¹⁰

Legal Basis. For a long time, claims of indigenous peoples were not legally recognized. There were isolated department administrative orders, letters of instruction, and memoranda of agreement with particular groups. The emphasis of these policies and instruments was more on resource management and not on ownership rights.


In 1997, a landmark legislation was enacted titled *Indigenous Peoples Rights Act* (RA 8371 or IPRA). IPRA recognizes the rights of indigenous peoples over their ancestral domains and provided for a process of titling of lands through the issuance of Certificates of Ancestral Domain Titles (CADT).

Coverage. As defined in the law, the claims for ancestral domains cover:

- *“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”* (IPRA, Chapter II, Sec. 3.b.).
- *“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 from which they traditionally had access for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators”* (*Ibid*).

Process of Acquiring Claims. The application of new claims starts with the submission of a valid perimeter map, evidences and proofs, and the accomplishment of an Ancestral Domain

¹⁰ Data and information for this section were taken from the paper of Dave de Vera, PAFID, on the Indigenous Peoples' Rights under IPRA.



Sustainable Protection Plan (ADSPP). All existing ancestral domain claims previously recognized through the issuance of CADCs are required to pass through a process of affirmation for titling.

Tenurial Instruments and Access Rights. Certificate of Ancestral Domain Titles (CADTs) and Certificate of Ancestral Land Titles (CALTs) are ownership tenurial instruments issued and awarded to an applicant community or clan. These tenurial instruments have no term limits. Representatives chosen by the community act as holders of the CADT in trust in behalf of the concerned indigenous community. Aside from securing an ownership title, the IPRA respects the community's right to traditionally manage, control, use, protect, and develop their ancestral domain.

Only certified members of the indigenous community listed in the official survey are given access, which is part of the documentation of the claim. Migrants or non-IPs may be included if they are recognized and given limited rights as community members through the land tenure and allocation policies as defined in their ADSDPP.

Limitations. Governance of the CADT is subject to its “consistency” and the “legal framework” of national laws. On the other hand, utilization of natural resources by non-members within the coverage of the CADT will require Free, Prior, and Informed Consent (FPIC) from the concerned indigenous community.

Other proposed tenure schemes. Perhaps a better basis for the recognition and respect of ancestral domain tenurial security is by declaring the indigenous territory as part of conservation areas based on their traditional practices. A new conservation scheme tagged as the “*Indigenous Community Conserved Areas*” or “*ICCAs*” refer to natural and/or modified ecosystems containing significant biodiversity values, ecological services, and cultural values, voluntarily conserved by indigenous cultural communities/indigenous peoples through customary laws or other effective means.

Identified under the ICCAs are the protected areas and sustainable indigenous forest resources management systems and practices. Recognized also are the rights of the IPs for the sustainable use, management, protection and conservation of the land, water, air, minerals, plants, animals and organisms; and areas of economic, ceremonial and aesthetic value based on their traditional knowledge, beliefs and practices. ICCA practice has been gaining ground in the Philippines and worldwide as well as efforts at institutionalizing them at national level.

In 2016, the ICCA bill was filed in the 17th Philippine Congress. Once passed, the legal system will likewise fully recognize the ICCAs and ICC/IP rights to their ancestral domains as well as their right to maintain, protect, and regulate access, and prohibit unauthorized intrusion.



Aquatic Resources¹¹

Legal Basis. The Philippine Fisheries Code (RA 8550) enacted in 1998 provides the legal framework in the utilization, management, conservation, and protection of the fishery resources where food security is the overriding consideration. Among the Code's multiple objectives are: (1) conservation, protection and sustained management of fishery and aquatic resources; (2) poverty alleviation and the provision of supplementary livelihood among municipal fisherfolk; and, (3) improved productivity in the industry through aquaculture, optimal utilization of offshore and deep-sea resources, and upgrading of post-harvest technology.

Some of the notable features of the Fisheries Code that provide a more equitable access and participatory governance of resources include:

- *Preferential access.* The Code limits access to fishery and aquatic resources to Filipino citizens and provides small fisherfolk and their organizations with preferential use of municipal waters. Commercial-scale fishing is not allowed in municipal waters, except in special cases where they are given municipal permits, and only in waters over 10 kilometers from the shore with a depth of at least seven fathoms (12.8 meters).
- *Fisherfolk organizations/cooperatives* whose members are listed in the registry of municipal fisherfolk, may be granted use of demarcated fishery areas to engage in fish capture, mariculture and/or fish farming. Such registry will be updated annually and shall be available for public inspection.
- *Fisherfolk settlements.* Section 108 of the Code mandates the creation of fisherfolk settlement areas, to be located in certain areas of the public domain, near fishery areas.
- *Support services to municipal fisherfolk.* BFAR and the LGUs shall provide support to municipal fisherfolk through appropriate technology and research, credit, production, and marketing assistance and other services such as training supplementary livelihood.
- *Complementary Policies.* There are existing executive and administrative orders that supports RA 8550 such as *Executive Order 263 of 1995 on Community-Based Forest Management* and *BFAR Fisheries Administrative Order 197-1 of 2000*. *EO 263* establishes community-based forest management as the national strategy in recognition of indispensable role of local communities in forest protection, rehabilitation, development and management including those of mangroves. *BFAR FAO 197-1* gives preference to fisherfolk organizations as well as micro, small, and medium enterprises (MSMEs) in the lease of public lands for fishponds and mangrove-friendly aquaculture through the issuance of Fishpond Lease Agreements (FLAs) and Mangrove Aqua-silviculture Contracts (MASCs).

¹¹ Data and information for this section were taken from the sectoral paper of Marita Rodriguez of the NGOs for Fisheries Reform (NFR) on the State of Fishery Reform.



Administrative Constraints

While the principles of decentralized local governance, community-based resource management, and preference for small fisherfolks in granting access rights are enshrined and articulated in the Fisheries Code, the absence of clear Implementing Rules and Regulations have restricted the execution of the law. Major constraints highlighted in the consultations and FGDs include the slow delineation of municipal waters, no guidelines in implementing the provision on fisherfolk settlements and biased issuance of public lease agreements.

- *Delineation of municipal waters.* The delineation of municipal waters is a major requirement to implement the Fisheries Code. To provide preferential rights, and to establish violations of commercial fishing vessels, municipal waters have to be surveyed and designated. Unfortunately, the process of delineation has been slow and remained incomplete primarily because LGUs cannot agree on the reckoning points.


As of August 2018, BFAR reported that of the country's 928 coastal municipalities, only 305 have delineated their municipal waters with certified maps. And of these, LGUs with delineated certified waters, only 67 have issued the required local ordinances that is needed to complete the delineation process. This is only 7.2 percent of all municipal waters after a period of 20 years. What is more alarming is that some 263 LGUs have not even applied for municipal water delineation as reported by the National Mapping and Resource Information Authority (NAMRIA).¹²

- *Fisherfolk settlements.* Many fisherfolk settlements are located in foreshores and public lands with no security of tenure, facing the constant risk of eviction. Thus, Section 108 of the Fisheries Code specifically mandates the setting up of fisherfolk settlement areas. Unfortunately, there are still no clear implementing rules and regulations on how this is to be achieved, in spite of lobbying efforts from fisherfolk organizations.
- *Issuance of public lease agreements.* While the fisherfolks are given preference in fishpond lease agreements (FLAs), only two FLAs were issued to fisherfolk organizations out of the 403 listed aquaculture farms in the country as of June 2018.

STATUS OF ACCESS TO LAND BY THE RURAL POOR SECTORS

In the last 30 years, a number of milestone legislations have been passed in Congress on distributive agrarian reforms, recognition of tenure of indigenous communities over ancestral lands and co-management of aquatic resources.

¹² NAMRIA is the mandated agency under the Fisheries Code to lead in the delimitation and delineation of municipal waters.



For agricultural lands under CARP/CARPER, 4,790,234 hectares or 90 percent of the targeted 5,351,365 hectares had been distributed to 2,835,743 agrarian reform beneficiaries (ARBs).

Similarly, the enactment of IPRA provided ancestral domain titles to indigenous peoples covering over five million hectares or around 18 percent of the total land area. For aquatic resources, specifically municipal waters, the Philippine Fisheries Code instituted decentralized local governance, community-based resource management and gave preference to small fisherfolks in granting access rights to resources.

But why is it that after 30 years of distributive reforms, the country still has more than one-fifth of the country's total population living below the national poverty line where majority are engaged in agriculture and fisheries? And this persisted despite the country's high Gross Domestic Product (GDP) growth in the last three decades.

Ancestral Domains

After 20 years, 18 percent of the total land area of the Philippines are now covered by CADTs and are considered legally owned and governed by IPs. This comprises 221 CADTs covering a total area of 5,413,772.7066 hectares and benefiting 1,206,026 individuals. This is highly commendable and, as reported, there is no other country in the world that can lay claim to a similar accomplishment. A closer look, however, reveals current and emerging issues that need to be addressed and resolved.

- *Administration of IPRA.* The National Commission on Indigenous Peoples (NCIP), the government agency entrusted to implement IPRA, had been found wanting not only of appropriate budget but also of trained personnel. Given its scope of work and responsibility, NCIP requires trained personnel to administer technical aspects of land title issuance and experienced personnel to handle land conflicts and issues of resource access affecting indigenous communities.

In the last seven years (2011 to 2018), issuance of CADTs has slowed down, with only 65 titles approved. This is partly due to the revision of the Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands that was intended to: i) increase the efficiency of the survey and delineation process, ii) increase safeguards against fraudulent claims, and iii) ensure the legality and acceptability of NCIP surveys. This is understandable, but a bigger concern is on the non-compliance of NCIP personnel to the regular processes and to the approved Work and Financial Plans (WFP) of the CADT applications. In the Commission on Audit (COA) Review of NCIP performance for 2011, it stated, "the process of CADT application was not in consonance with the approved WFP, this resulted in the delayed processing of CADT application which deprived the IPs of their rights provided for in Sec. 7, of the IPRA" (COA, 2011).

- *Policy and Jurisdictional Overlaps.* With the sectoral approach in resource governance, policy and jurisdictional overlaps among agencies mandated to implement the laws have now become a major concern. Boundaries delineation overlaps of titles and resolution of disputes, among others, have become a major concern with NCIP, DAR, and DENR. To address these concerns, these agencies together with Land Registration Authority (LRA) issued a Joint Administrative Order (JAO) #01 of 2012.

JAO 01-2012 was intended to coordinate the process of registration of the ancestral domain titles issued by prescribing a process for the preparation of the map projection to identify titled lands, which might overlap with CADT/CALTs. However, the implementation has not gone smoothly as planned. This has been marred by the lack of synergy among agencies, ambiguity of who takes the lead and the limited capacity of frontline implementors of the JAO to perform their expected duties. Rather than facilitate the preparation of map projections, the JAO has resulted into a bureaucratic deadlock that has impeded ancestral domain registration and blocking the registration process with the Land Registration Authority (LRA). Of the 221 Approved CADTs, only 50 have been registered with LRA.

- *Commercial Pressures.* Given the country's continuing economic growth and the limited availability of land in the downstream, ancestral domains have become attractive in the establishment of special economic zones, agricultural investments, mining and even tourism. The Philippine Export Zone Authority (PEZA), for example, has declared that it will pursue the establishment of at least 300 new Eco-Zones in the Philippines with an area that will range from a low of 1,000 hectares to a high of 4,000 hectares.

While CADTs are legally recognized, they will have to contend with these initiatives that have their own legal mandates such as the Economic Zones and the Mining Act.

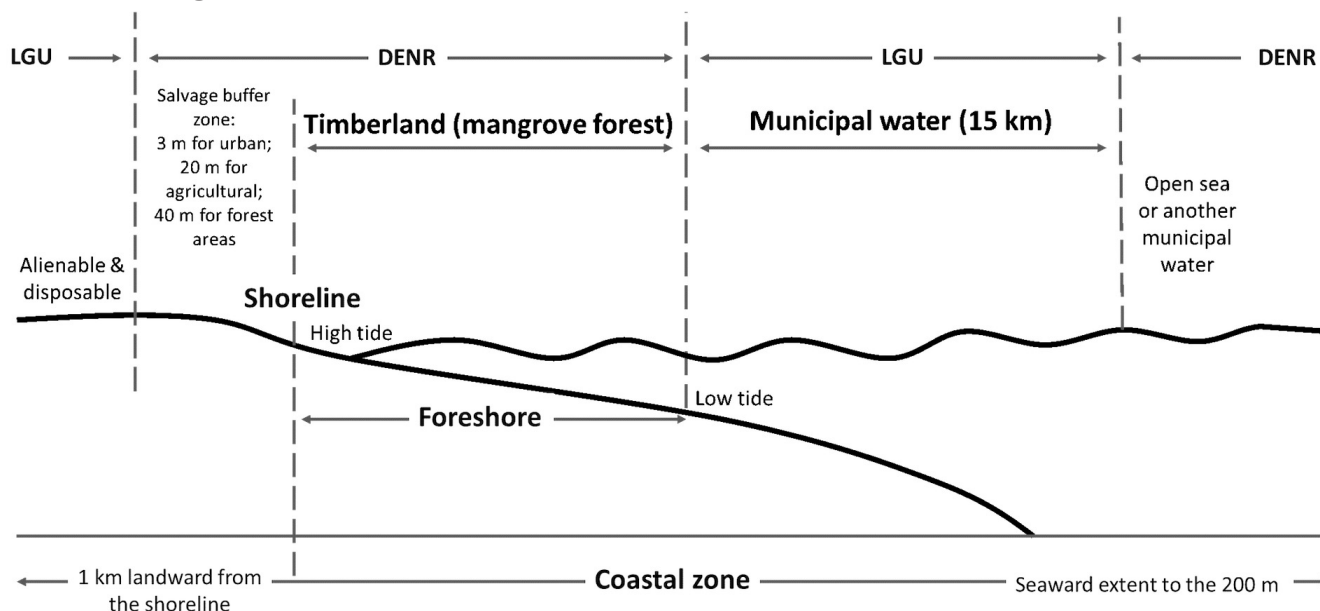
Aquatic Resources

Similarly, the Fisheries Code has been encountering a number of challenges in its implementation.

- *Multiple and overlapping agency jurisdictions.* There are several government agencies with jurisdiction over the coastal areas, particularly on foreshore and easement areas (LMB-DENR, 2018). LGUs take on primary responsibility in the management of fishing and aquatic resources while DENR is responsible for the survey and management of alienable and disposable public land, issuance of leases and permits and environmental concerns. Figure 2 illustrates their general mandates over coastal zones and municipal waters.

Other than the difficulty of determining the boundaries between and among LGUs, they also have to determine the boundaries of shoreline, foreshore and municipal water that may differ depending on the tide (low and high).

Figure 2. Jurisdiction over Coastal Zones and Municipal Waters



Source: Adapted from Land Management Bureau, DENR.

Moreover, in areas where there are ancestral domain claims, IPRA comes in conflict with the Fisheries Code and also that of the Local Government Code on the coverage of municipal waters. Those waters may be included as “ancestral waters” as provided for in IPRA. This has been contested in Coron, Palawan where the NCIP decided with finality in favor of the IP community and used as a precedent for the recognition of two other CADT claims in Northern Palawan.

Table 1. Roles and Legal Mandates of Various Government Agencies in the Development of Coastal Zones

Agency	Role	Legal Provision
Department of Public Works and Highways (DPWH)	Responsible over cases involving construction and developments along foreshore areas	CA 141, Section 66
Philippine Ports Authority (PPA)	Issues permit regarding construction of pier/port.	Presidential Decree (PD) 857
Bureau of Fisheries and Aquatic Resources - Department of Agriculture (BFAR-DA)	Issues or cancels Fishpond Lease Agreements.	Philippine Fisheries Code of 1998
Philippine Reclamation Authority (PRA)	Responsible over activities pertaining to reclamation.	EOs 525 and 654
Housing and Land Use Regulatory Board (HLURB)	Promulgates zoning and land use standards & guidelines governing land use plans and zoning ordinances of LGUs.	EOs 648 and 72; and RA 7279



On top of these overlapping claims, more challenges are encountered in the development and utilization of these resources. Different agencies are involved in the managing and utilization of these resources for livelihood, infrastructure, tourism and housing.

- *Commercial Pressures.* Coastal areas have become vulnerable to the establishment of industries and tourism. Partly this is encouraged by local government units (LGUs) as they bring in investments and livelihood to the community. Moreover, they pay taxes and fees that are much needed in augmenting the LGU budget. On the other hand, these establishments can lead to the displacement of small fisherfolk, demolition of their temporary houses and obstruct their right-of-way to coastlines. These investments, if not monitored properly, can also be a threat to the environment. Moreover, industrial wastes can be hazardous not only to the environment but also to the communities. Waste disposal, as experienced in a number of tourist spots, has become a major predicament.
- *Climate change.* Fisherfolk are heavily affected by the changing climate as they reside in coastal areas and their livelihoods dependent on territorial waters. Rising water level, strong winds and typhoons, can easily damage their properties, destroy their fishing gears. With the country being in the top five of the most disaster-risky country, the fisherfolks would have a lot of extreme weather to expect in the coming years.

Common emerging issues

On top of these administrative concerns, there are emerging issues that the people's organizations and CSOs have to contend with that are inherent in the approach adopted. Others are external interventions that added pressures to current situation.

Overlapping Jurisdictions

The Philippines has taken on a sectoral approach in the governance of its resources, enacting laws and implementing programs per sector – agricultural lands, ancestral domains, and aquatic resources. This has its advantages especially when resources are well delineated. Unfortunately, this is not the case. With the increasing competition for resources, overlapping claims and jurisdictions have become a major challenge among implementing agencies. In their effort to address these concerns especially those concerning ancestral domain, the NCIP, DAR, DENR, and LRA issued a Joint Administrative Order to coordinate the process of registration of CADTs. Unfortunately, this has resulted to a bureaucratic deadlock and blocked the registration process. These overlaps are also experienced by the different agencies operating in the municipal waters. Other than the difficulty of determining the boundaries between and among LGUs, they also have to overcome the overlaps of other agencies having authority over the development of these resources.



Commercial Pressure

With the increasing population and the sustained economic growth, land and other resources have become vulnerable to commercial pressures particularly extractive industries, agricultural investments and tourism. The government promotes these investments as they increase revenue, provide employment and, in general, contribute to the growing economy. The downside to these investments, especially if not properly monitored, is that they can displace communities and degrade the environment. In the past few years, conflicts related to resource utilization and investments have continued to increase.

Changing Climate and Natural Disasters

The impacts of climate change have become more evident in recent years, especially for coastal communities.

Coastal communities are the first to bear the brunt of super typhoons brought about by climate change as experienced with the super typhoon Haiyan in 2014. Coastal areas affected by the typhoon were practically wiped out, their settlements declared no dwelling zones, but there were no clear/secured resettlement areas. Tens of thousands of small boats, fishing equipment and supporting facilities were destroyed. Some 146,748 fisherfolk families and 21 of the country's 72 fishing provinces were directly affected by the storm (BFAR) and total damage to the fishing sector was about PhP 6 billion (NDRRMC, 2013).


INCREASING LAND AND RESOURCE CONFLICTS¹³

Many of these administrative constraints and external pressures have resulted to conflicts and violence. Data gathered indicate that these incidences are increasing and intensifying.

Agrarian Reform Conflicts

Many of the conflicts involved landowners resisting the DAR process of implementing CARP in their subject landholdings. From January 2017 to May 2018, 44 cases of agrarian reform conflicts were documented covering 45,080 hectares. Most of these conflicts are at the latter stage of installation as landowners pursue desperate means to resist the redistribution of their land. A total of 38 human rights defenders were killed, nine injured, five detained, five gravely threatened, and 104 filed with SLAPP (strategic lawsuit against public participation) charges. These conflicts and violence have resulted to displacement of 3,143 households depriving them of their land to till.

¹³ This is a summarized version of a paper on land and resource conflicts prepared by Timothy Salomon of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).



Landowners used threats, intimidation, physical attack, and killings. Many landless farmers and even DAR officials performing their tasks were physically and psychologically harassed by landowners and their goons. Even those who have been awarded with CLOAs were unable to gain access, control and possession of their land because their former landowners are blocking their entry.

Conflicts in Ancestral Domain

A more pressing concern is the protection of IP rights on the approved CADTs. Reports abound on the intrusion of migrants, the use of power by politicians to control these resources and the non-observance and even manipulations of FPIC.

Many of these intrusions have resulted to conflicts and violence. In 2017 to 2018, 126 incidents of forcible entry into ancestral domains without FPIC were documented. These were committed by businesses or migrants against ICCs/IPs who wanted to claim ownership and/or use the land without proper consultation and not in observance of indigenous culture and processes in the area.

A more indirect infringement but having a direct impact on the environment are the cases of mining and illegal logging. These interventions had resulted to soil erosion, landslides, and exposed communities to become more vulnerable to natural disasters. Some even had major impacts to public health due to water contamination.

Disputes over Aquatic Resources

Reports on maritime disputes include intrusion of commercial fishers in municipal waters. With the incomplete delineation of municipal waters in many areas, however, violations become difficult to litigate. Resource-use conflicts also arise among municipal fishers – e.g., hook and line fishers cannot fish in areas where nets and pots had been set up. The LGU has the mandate to intervene in such cases.

Fisherfolk are also invited on a voluntary basis to participate in law enforcement through the *Bantay-Dagat*. Unfortunately, the fisherfolk groups engaged in *bantay-dagat* sometimes are the ones charged with court cases instead of being the ones to help prosecute apprehended violators. Some are even killed in the performance of their duties.

A Summary of Resource Conflicts (2017 to 2018)

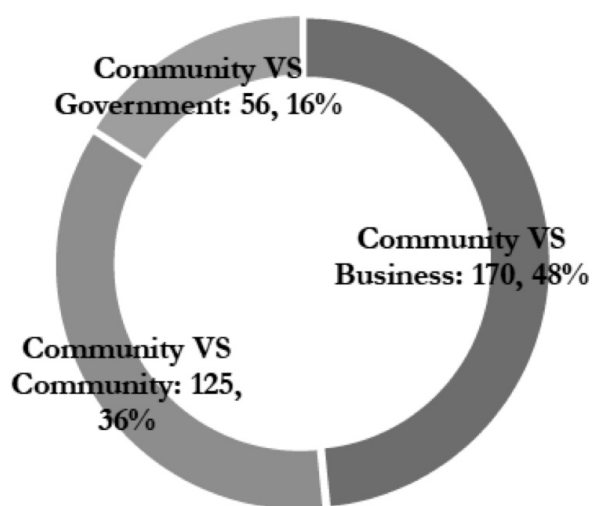
Land and resource conflicts are considerably prevalent in the Philippines. Cases, policy and institutional documents were gathered from six National Government Agencies, 10 Civil Society Organizations (CSOs), and 14 online/media sources using the purposive sampling method. Three



hundred fifty-two (352) land and resource conflict¹⁴ cases were studied and analyzed. 59 percent (208) of the documented cases took place in Mindanao, 23 percent (82) occurred in Luzon, and 18 percent (62) transpired in the Visayas region. The cases documented were concentrated in four percent of the total territory of the Philippines (over 30 million hectares).

Nearly half (48 percent) of this number were conflicts between communities and business establishments. A significant percentage (36 percent) occurred between and among community members, while the remaining percentage (16 percent) is comprised of conflicts between community members and the government. The duration of conflict ranges from less than a year to 68 years, with a mean of 14 years.

Figure 3. Types of Land Conflicts




On Human Rights Violations in Land and Resource Conflicts. Aggression against land and environment rights defenders, as well as rural poor communities has been on the rise in connection with land and resource conflicts.

The Philippines is considered as Asia’s most dangerous country and second only to Brazil as the world’s deadliest country for land and environment defenders (The Guardian, 2018). About 431 instances of human rights violations (HRV) were found in 233 of the conflict cases studied.

Majority of these HRV incidents (272 incidents or 63 percent of total HRVs) occurred in the island region of Mindanao. Violations came in the form of killings, disappearances, injuries, detention, displacement, damage to property, unfair contracts and labor practices, intrusion into territories without FPIC, and criminalization.

There were 61 killings perpetrated during the period January 2017 to June 2018. More than 90 percent of those killed were affiliated with CSOs and social movements. Furthermore, 66 percent of the killings were committed by the military in the guise of anti-insurgency campaigns that subsequently emboldened landowners to resist CARP coverage, or facilitated investments in ancestral domains. These investments were owned by influential families, particularly cronies of the late dictator Ferdinand Marcos, and/or prominent legislators and local chief executives.

¹⁴ Conflict in this study is defined as “a situation wherein two or more stakeholders compete for control over resources, decision-making and truth.” More specifically, this study looks into land and resource conflicts, which is defined as a “situation where two or more stakeholders compete for control over the use, decision-making, and transfer of land and resource rights”. Land and resource conflicts threaten the enjoyment of tenure rights of stakeholders particularly those with less power, such as rural poor communities. Some land conflicts hinder the transfer of land rights, others deny the full range all land rights, while still others reduce rights to lower levels of enjoyment.



Other perpetrators of killings were guns for hire, private armed groups, rebel groups and paramilitary groups employed by businesses, and community members in cases of inter-community land ownership conflicts.

On top of the killings, there were six individuals that disappeared; eight individuals maimed and 17 individuals illegally detained. All these incidences of physical violence, except one case of maiming, were allegedly committed by the military.

On Impacts on Rural Communities. Rural communities bear the brunt of the impacts of land and resource conflicts. HRVs committed at the community level involved displacement, damage to livelihood, unfair/exploitative economic arrangements, criminalization of actions of community leaders and members, forcible entry without FPIC, and denial of participation in decision-making processes affecting land and resource rights.

A sizeable number of households have experienced displacement as a result of land and resource conflicts. There were 99 cases involving displacement and 29 cases of threat of displacement. Cases of displacement included the eviction of 17,000 households from their residence, and damages to livelihood or displacement from their sources of livelihood for nearly 75,000 households. Business investments, particularly in mining and forestry indirectly caused more than 47,000 livelihoods to be damaged by pollution, or caused land and natural resources used for livelihood to become vulnerable to natural disasters.

Threats of displacement were also documented. More than 47,000 households experienced threat of eviction from their residence and close to 44,000 households experienced threat of displacement from or damage to their sources of livelihood.

Economic violence in land and resource conflicts was observed to have also been committed against rural communities, with 56 incidents documented. A majority (89 percent) of the incidents of economic violence found in the study involved businesses manipulating farmers to enter into unfair Agribusiness Venture Arrangements (AVAs). Such arrangements deprive the farmers of land rights and/or bury them in debt. Other forms of economic violence are labor issues in *haciendas*/plantations and the refusal by mining companies ancestral domains to pay royalties.

Data analysis also showed 126 incidents of forcible entry into ancestral domains without free, prior, and informed consent (FPIC). A majority (78 percent) of these incidents occurred in Mindanao, southern Philippines. These violations were committed by businesses or migrants wanting to claim ownership and/or use of land for purposes not properly discussed with the existing Indigenous Political Structure (IPS) in the area. Other forms of political violence documented were criminalization of activities of community leaders and members, and the denial of access to decision-making processes affecting land and resource rights.



On Impact on the Environment. Damage to the environment is considered a pronounced yet indirect effect of land and resource conflicts arising from investments. Some investments have major impacts on public health such as contamination of bodies of water, while others are felt by communities by way of damage to biodiversity. The clearing of forests makes communities vulnerable to natural disasters and climate change, resulting in hundreds of deaths. Mining operations weaken the integrity of soil, leading to siltation and landslides.

On Causes and Trends. There were three main causes of land and resource conflicts identified: (a) resistance to agrarian reform; (b) overlapping claims; and, (c) land investments. Of all causes of land and resource conflicts, resistance to agrarian reform was the most violent in terms of killings. Resistance occurs in 62 percent of agrarian reform conflicts, mostly during the latter stages of installation (the third and last stage of the land distribution process). It is in this stage that landowners pursue desperate means to thwart the redistribution of land to Agrarian Reform Beneficiaries (ARBs). Apart from depriving ARB's of land to till, landowner resistance results in HRVs such as killings, injuries, detention, grave threats, and criminalization.

Overlapping claims, the second cause of land conflict, are symptoms of the fundamental problem of overlapping land laws and programs of the government. A majority of land conflict caused by overlapping claims relate to ancestral domains. The key issue is the poor security of tenure afforded by the State to ICCs/IPs over their traditional territories. Tremendous delays occur in the issuance of Certificates of Ancestral Domain (CADTs) and Certificates of Land Titles (CALTs), and their registration with the Land Registration Authority (LRA). On the other hand, government programs for land titling, distribution, and investments are unhampered. As a result, the encroachment of property claimants within ancestral domains is legitimized. More than 7,000 households have been evicted from their residence due to overlapping claims, the most number in all causes of land and resource conflicts in this study.

Land investments as a source of conflict account for 55 percent of the 352 cases of conflict analyzed. Most of these cases are conflicts between businesses and communities, and some are between government and communities. In terms of type of investment, conflict arose most frequently in plantations (101 cases of conflict), mining (44), infrastructure (40), and forestry (7). Amidst the slow implementation of land and resource reform programs, the government has been pursuing initiatives to streamline land investments in energy, agribusiness, and infrastructure. Currently, investments in forestry and to a certain extent, mining are strictly monitored by the government and hence, violence in these industries are at a decline.

On Conflict Management Mechanisms. When parties pursue conflict resolution, legal battles are generally time-consuming and resource-draining with litigation lasting from three to 17 years. Legal battles are especially costly for the rural poor. Quasi-judicial bodies and local dispute resolution mechanisms are available and deliver quicker resolution of conflicts, but data is



generally unavailable if decisions arrived at through these mechanisms are favorable to rural poor communities or to landowners/investors.

Conflict-prevention mechanisms are also embedded in land and resource governance. Procedural safeguards such as permits, licenses and other government requirements can sometimes prevent land and resource conflicts. Representation and participation mechanisms, when utilized properly, allow poor sectors and communities to register their concerns to decision-making processes in governance. However, in certain instances, these only serve as rubber stamps for land investments. There are cases wherein representatives to governance bodies are beholden to the government officials who appointed them and are not necessarily held accountable by the sectors/communities they supposedly represent. Freedom of information (FOI) policies are in place, but do not necessarily translate to public access to data on land.

Recourse for the rural poor is often fleeting. The government is often caught in fundamental conflicts of interest, which comes in two forms. First, various agencies imbued with their respective mandates and programs compete for jurisdiction over the same parcels of land and natural resources. In the absence of clear harmonization of overlapping laws, land and resource conflicts often turn violent and persist unresolved. This renders the tenure of land and natural resource stakeholders, particularly rural poor communities, insecure, and perennially contested. Consequently, their lives and livelihoods are beset with danger.

The second form of conflict of interest can be seen in the deliberate policies of government to expedite investments in the name of “ease of doing business” and “readiness for integration.” In many cases of land investments, the government is a facilitator or even a direct partner. Thus, the government often fails to perform its mandate to regulate business, particularly when the rights of people and communities are being trampled upon.

There is a dearth of responsive mechanisms to address land and resource conflicts. Only with aggressive and sustained lobbying and advocacy can these conflicts be addressed and prevented.

One factor is bureaucratic inefficiency or a lack of political will to address legal, administrative, and judicial hindrances towards the completion of land and resource reforms, and the harmonization of agency jurisdictions.

Another important factor is the multitude of loopholes and bottlenecks in law and policy that enable the reversal of gains in land and resource reform, and to facilitate the entry of corporate interests in land and resource governance. Given the broader human rights situation in the Philippines (i.e., the War on Drugs, Martial Law in Mindanao, All-out War against terrorism and insurgency), impunity has characterized the rule of law in Philippine society. It is in these times that the barrel of the gun has been pointed at the very people in need of protection the most.



TRANSPARENCY IN LAND GOVERNANCE AND ADMINISTRATION

While the country can boast of its legislative achievements, an equally important governance question is the execution of these laws and policies. Good laws can be circumvented in many ways such as non-allocation of budget, lack of technical know-how of personnel, absence of implementing rules and regulations and long process of conflict resolution. In the Philippines, all these have contributed to the delay of implementation and evasion of coverage sometimes even leading to conflicts and violence.

- *Budget.* In CARP/CARPER, budget allocation for its implementation is clearly articulated. Unfortunately, this is not so with IPRA and the Fisheries Code. NCIP, the government agency entrusted to implement IPRA, has inadequate budget given its scope and responsibility. For the Fisheries Code, the implementation has been lodged with local government units where budget allocation is dependent on the chief executive and his/her council.
- *Technical capacities.* NCIP requires trained personnel to administer technical aspects of land title issuance. This has been found wanting and delayed the issuance of CADTs. For agricultural lands, the lack of capability and resources to conduct surveys and field investigations have slowed down the process of land acquisition and distribution and contributed to DAR's under performance.
- *Implementing guidelines and transparency.* A good example of this administrative concern is the establishment of fisherfolk settlements. Given its importance and urgency, this has been included in the Fisheries Code. However, implementing rules and regulations on how this is to be achieved is still not yet formulated, thus no fisherfolk settlement has been established to date. On the issue of transparency and non-compliance to existing regulations, COA, in its audit report of 2011, observed that NCIP deviated from its approved work and financial plans that delayed the processing of CADTs, thus depriving IPs of their rights.
- *Conflict resolution.* In the Philippines, resolution of legal cases is costly and can take more than 20 years. Landowners have used this strategy to delay or even stop land distribution. Farmers, IPs and fisherfolk with their income barely enough to sustain their daily needs are at the losing end in legal battles. Some organizations, in coordination with their CSO partners, have instituted training programs for paralegals but this is limited to mediation and administrative cases.

Sectoral Mechanisms

Participation of farmers, indigenous peoples and fisher folks is mandated in the laws and pertinent mechanisms have been established accordingly.



Agrarian Reform

For agricultural lands under CARP, a monitoring mechanism has been established where farmers and civil society organizations (CSOs) participate to put forward their concerns and advocacies.

Among the key mechanisms at the national level include:

Presidential Agrarian Reform Council (PARC)

- Six farmer representatives (two from each island region).
- The PARC and the DAR have the power to Implement and issue rules and regulations, whether substantive or procedural to carry out the objects and purposes of CARL.

Land Bank of the Philippines (LBP)

- Two agrarian reform beneficiaries' representatives to the Board of Trustees
- An implementing agency of CARP involved in land evaluation, compensation to owners of private agricultural lands, and collection of amortizations from CARP farmer-beneficiaries.
- Provide the farmers' perspectives on issues in providing adequate agrarian and agricultural support to small farmers, particularly credit.

National Anti-Poverty Commission (NAPC)

- Farmers and landless rural workers sector have 25 council members and a sectoral representative.
- Recommend policy and other measures to ensure the responsive implementation of the commitments under the Social Reform Agenda.

At the local level:

Provincial Agrarian Reform Coordinating Committee (PARCCOM)

- One representative from a PO or NGO and two representatives from the agrarian reform beneficiaries.
- The PARCCOM shall coordinate and monitor the implementation of the CARP in the province. It shall provide information on the provisions of the CARP, guidelines issued by the PARC and on the progress of the CARP in the province.

Barangay Agrarian Reform Committee (BARC)

- Five representatives from PO, NGO, farmers in the barangay
- Assist in the identification of qualified beneficiaries and landowners within the barangay.

Local Development Council (LDC)

- Representatives of the private sector and non-governmental organizations (NGOs) operating in the barangay, who shall not be more than one-fourth of the members of the fully constituted Council.

- Assist local legislative bodies in setting the direction of economic and social development and coordinating development efforts in their respective territorial jurisdictions.

Other land governance mechanisms

- Task Forces
- Bilateral engagements

Indigenous Peoples

For ancestral domain under IPRA, Section 16 of RA 8371 provides that the indigenous cultural communities/indigenous peoples (ICCs/IPs) have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policymaking bodies and other local legislative councils.

Fisheries


The Fishery Code mandated the establishment of Fisheries and Aquatic Resource Management Councils (FARMCs) composed of fisherfolk organizations and NGOs/CSOs in the locality under the leadership of the LGUs the responsibility in the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters. Fisherfolk also participate in law enforcement through the *Bantay-Dagat* (sea guardian). *Bantay-Dagat* is a community-based law enforcement program that engages fisherfolk in coastal villages on a volunteer basis to support the detection and enforcement of illegal fishing in coastal waters. It is mandated under Sec 158 of the amended Fisheries Code (RA 10654).

On Limited Participation of Sectors

Unfortunately, these mechanisms have been rendered ineffective for a number of reasons:

- The formation and appointments of representatives reside on the government where the criteria for selection is not clear;
- Convening of the mechanism is a decision of the Chair who is a government official;
- The mechanisms have become recommendatory not executory in nature; and,
- Given its size, there is difficulty in mustering a quorum.

Among farmers, the BARC at the village level is the most accessible. This is also more effective as the Chair of the committee is often from the ranks of farmers. In most cases, however, the



Council does not fulfill this function and not operational. In some cases, there is no BARC set up in a barangay. Some of the BARCs are actually one-man operations with only the BARC Chair as member. The lack of BARCs leads to the increase in the number of agrarian justice cases filed because the BARCs are supposed to resolve issues at their level before these are elevated to the PARAD or the MARO.

It has also been raised in the focus group discussions that the sector should hold the representatives in these mechanisms accountable. They should be required to report on what have been accomplished. Thus, it has been recommended that assemblies be set up for these representatives to provide regular reporting to the sector.

On Limited Access to and Quality of Land Data and Information

Data on land governance from the government are produced *per sector* (farmers, fisherfolk, IPs) by specific agencies (Department of Agrarian Reform [DAR], Bureau of Fisheries and Aquatic Resources [BFAR], Department of Environment and Natural Resources [DENR], National Commission on Indigenous Peoples [NCIP]). Although available, data is not consolidated, and national-level aggregates or summaries may not be produced.

Generally, information on land policies and regulations are available and accessible. Accessibility of administrative and management information, however, varies as responsible agencies have their own information management systems. For the agrarian sector, documents on land ownership are readily available for smallholder farmers. These data may be sex-disaggregated. For the IP sector, the number of indigenous peoples living within titled ancestral domains may be determined but may not be disaggregated by sex. For the fishery sector, accessibility of information is more difficult. In some agencies, users have to pay fees to access data.

Quality of the data is another story. Most of the data are outdated, not user-friendly, and are pre-tabulated. There is also no nationally-consolidated data catered to by government agencies. Also, in most cases, shapefiles of land data are not available.

Gender disaggregation of data is done by several government agencies for specific sectors. However, gender disaggregation of data is not applied in all datasets of the government and not available in all agencies (e.g. NCIP does not provide readily-processed gender disaggregated data for indigenous peoples).

Further, there is no available data on landlessness and official data on informal settlers are often based largely on estimates.

LAND ADMINISTRATION IN THE PHILIPPINES¹⁵

The land administration system in the Philippines can be described in three words: *obsolete, complex and dysfunctional*. It is governed by multiple, at times contradictory regulations, and is (mis)managed by a multitude of institutions with inadequate coordination, and overlapping mandates and functions (CPBRD, 2011).

The very core of the system predisposes it to failure as it follows an *obsolete legal and regulatory framework*. The laws and edicts on land administration are contained in 60 separate issuances which were promulgated a century ago. These policies¹⁶ therefore are outmoded, upholding processes and standards that have long outlived the social contexts that they were crafted for.

While countries in the ASEAN have long progressed towards a land titling system relying purely on administrative processes, the Philippines mandates land titling and registration to undergo *both judiciary and administrative processes*. This is based on the American model, the Torrens System, that is particularly contentious due to the requirement of court intervention in the registration process. This has even further bogged down the justice system whereby it was found that 15 percent of all cases handled by courts are in relation to land registration.

Given the multiple laws on land administration, there are at least 19 government agencies¹⁷ involved in land administration. This results in a *complex web of overlapping bureaucratic functions and processes* in each of the areas of land classification; conduct and approval of land surveying; disposition of land; maintenance of maps and records; compilation of maps and land information; and, land valuation. This provides an enabling environment for institutionalized chaos characterized by bureaucratic “turf-wars.”

There are a host of serious consequences for sustaining such an inept system:

- **Economic losses:** the multitude of methods and systems for land valuation have made it altogether unreliable. A study of the Department of Finance reported that for 2000-2005, local government units (LGUs) have lost an estimated P9.5B in annual revenues due to poor collection efficiency.
- **Public confusion:** the absence of a single authority for mapping, and the varied tenure instruments over land have perennially sowed confusion among citizens seeking to avail of land administration services.
- **Proliferation of informal transactions:** This is caused by high tax rates on land owing to the multiple bases for taxation by national agencies and LGUs, and the high cost of land registration. This has discouraged formal transactions and have made non-formal ways more viable.
- **Corruption:** According to the Business Anti-Corruption Portal, overlapping and conflicting laws and policies on land have caused the system to short-circuit and instead, follow the “rule of arbitrariness.” This has set the stage for bribery and political manipulation in the system.

Given the overall state of land administration system in the Philippines, it has contributed to further entrench injustice in the system and weaken the enforcement of land rights. When Thailand and Vietnam already have registered 80 percent and 90 percent of their lands, respectively, the Philippines has only registered 66 percent. This is especially alarming in rural areas where only one out of three lands are registered.

¹⁵ This is a summarized version of a paper prepared by Dave de Vera of the Philippine Association For Intercultural Development (PAFID) for the International Land Coalition National Engagement Strategy in the Philippines entitled The State of Land Administration System in the Philippines: The Proposed Land Administration Reform Act (LARA) (2015).

¹⁶ Among the said framework laws for the Land Administration System of the Philippines are: Land Registration Act of 1902, Cadastral Act of 1913, Public Land Act of 1936, and Revised Administrative Code of 1917. All these laws have been supplemented and/or amended by subsequent issuances.

¹⁷ The main agencies of the executive branch comprise the DENR (LMB, PENRO & CENRO), DOJ (LRA/ROD), DOF (BIR & BLGF), DAR, DILG, LGUs, HUDCC (HLURB & NHA), and NCIP; while the judiciary involves regional trial courts, municipal/circuit trial courts, and the Special Court on Tax Appeals.



RECOMMENDATIONS

More than one-third of the total land area of the country has been covered by distributive reforms. This is a substantial accomplishment but, based on recent developments, this has remained an unfinished business with risk of being reversed.

In moving forward, the following programs and activities are recommended to continue advancing land rights in the country.

Strengthening Ranks of Stakeholders

The substantial accomplishment is an outcome of the long struggle of the peasant movement, indigenous peoples and fisherfolks that gained widespread support from the general public after a long period of political suppression under a dictatorial regime. Despite global appeal for a more sustainable and inclusive development, however, recent developments indicate a non-supportive political environment. Given this atmosphere and uncertainty, social reform advocates should persevere in completing the programs and building on the gains.

The low accomplishments of mandated agencies in recent years reflect a weakening among the ranks of reform stakeholders vis-à-vis the strong resistance of landowners and the intrusion of the business sector. While continuing on with the sectoral engagements, much can be achieved if reform stakeholders come together as one. An overriding goal that can bring groups together is the enactment of the National Land Use Act where landscape governance becomes the unifying approach.

Collaboration with allied groups should also be pursued. There is a need to establish mechanisms in collaborating with partners, both in government and in the private sector. In the FGDs conducted, for example, government representatives shared the concerns raised by reform advocates and they have agreed to collaborate and set up mechanisms to resolve implementation issues.

But what can the poor basic sectors do themselves? In 2018, the farmers, IPs and fisherfolk under the Land Watch Asia campaign arrived at a common action agenda to pursue and protect their respective resource rights claims as follows:

- **Protect** our rights based on these tenure laws
- **Persevere** in strengthening and broadening our mass base; building our knowledge on laws and skills in dealing with threats like climate change, foreign investments, conversion, commercial interests over agricultural and ancestral land and waters; continue to form and strengthen community-based organizations, especially involving the youth and women, in protecting reform gains through economic empowerment; how to preserve unity within these CBOs to pursue what they are struggling for together without falling for monetary payoff.

- **Promote** alliances with support groups, such as legal groups, academe, church, women, youth, even socio-civic groups, social entrepreneurs and allied political individuals and blocs.
- **Participate** in processes that would further unify the sectors in defending their resource rights and enhancing their empowerment through policy dialogues, local government lobbying, etc. Apply a landscape framework of advocacy instead a sectoral one. Our advocacies should not harm that of another sectors, hence we must work in tandem and in consideration of other sectors and landscapes.

Protecting the Gains

Given the growing economy, resources that have been distributed are being eyed by business corporations for their investments, sometimes with the assistance of the government. More often the offer becomes tempting especially when resources are unable to meet their basic needs. Accessing support services, introduction of productive and climate-resilient technologies, value-chain processes especially for women and socialized credit can go a long way for the farmers, IPs and fisherfolk to hold on to their lands.

If dealing with investors become an imperative, getting a fair deal with potential investors should be ensured. This can be achieved by enhancing their capacities on FPIC processes, establishing standards and indicators on fair investments and learning the art of negotiation with investors.

Resolving Land Conflicts

As such, based on the findings and analysis during the joint ANGOC-CHRP (Commission of Human Rights of the Philippines) forum, the following recommendations are put forward:

For Government:

- Address the root causes of land and resource conflicts: complete land and resource reform programs and ensure tenure security for the rural poor.
- Institute an effective and efficient mechanism to resolve overlapping claims on land.
- Ensure the integrity of safeguard mechanisms that regulate land investments by integrating the UN Guiding Principles on Business and Human Rights (UNGP-BHR) in land and resource governance.
- Enhance the awareness of government on land rights as human rights especially the military.

For Businesses:

- Comply with government regulations to ensure the sustainability of their investments.
- Engage in discussions related to the UNGP-BHR



For CSOs and social movements:

- Unite under a common goal and program of responding to the needs of rural poor communities.
- Organize and empower the rural poor to enable them to effectively defend their rights.
- Improve on existing reporting and protection mechanisms, and widely disseminate these so that they and the rural poor can utilize these in cases of violations of their rights.
- Sustain and strengthen non-violent struggle to hold rights violators accountable for their actions.

Improving Land Administration

- There is a need to discard the Torrens System and adopt a fully administrative approach to the recognition of land rights and the resolution of land disputes.
- Streamline the land administration system and possibly, form a single land administration agency with clear roles and responsibilities, and set forth institutional reforms towards efficiency, transparency, and accountability.
- Adopt a citizen-focus rather than process- and regulation-focus in the delivery of land administration services and where possible, make clear commitments on quality, time and cost of key services.
- Adopt a mass program to systematically register rights to land, bearing in mind social justice principles as laid down in the 1987 Constitution.

Influencing Policies

With the increasing globalization and similarities of issues with other countries, reform advocates, especially ILC Philippine members, should link their advocacy work with international agreements and global initiatives. While this is already being done to a certain extent, this has to be emphasized more. For example, land access, poverty and food insecurity issues should be connected with the governments' agenda on SDG 1 and 2. Similarly, the recognition of IPs in managing their ancestral domains can be linked to the Convention of Biodiversity and to ICCA. This will strengthen the policy work at the national level and contribute to international agenda. ■

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ACRONYMS USED

ARBs	Agrarian Reform Beneficiaries
ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
AVAs	Agribusiness Venture Agreements
BARC	Barangay Agrarian Reform Committee
BFAR	Bureau of Fisheries and Aquatic Resources
CADTs	Certificate of Ancestral Domain Titles
CALTs	Certificate of Ancestral Land Titles
CHR	Commission of Human Rights
CLOAs	Certificates of Land Ownership Award
COA	Commission on Audit
CSOs	civil society organizations
DA	Department of Agriculture
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
FGD	focus group discussion
FPIC	free, prior, and informed-consent
ICCA	Indigenous Community Conserved Areas
ILC	International Land Coalition
IPs	Indigenous Peoples
IPRA	Indigenous People's Right Act
GDP	Gross Domestic Product
Kaisahan	Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan
LAD	Land Acquisition and Distribution
LRA	Land Registration Authority
NAMRIA	National Mapping and Resource Information Authority
NCIP	National Commission on Indigenous Peoples
NDRRMC	National Disaster Risk Reduction and Management Council
NES	National Engagement Strategy
NFR	NGOs for Fisheries Reform
PARC	Presidential Agrarian Reform Council
PARCCOM	Provincial Agrarian Reform Coordinating Committee
PAFID	Philippine Association For Intercultural Development
PEZA	Philippine Export Zone Authority

PSA Philippine Statistics Authority
SDG Sustainable Development Goal

REFERENCES

- Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). (2018) *State of Asset Reform in the Philippines Validation Workshop*. 4 September 2018, Fersal Kalayaan Hotel, Quezon City, Philippines. [Documentation report].
- Bureau of Fisheries and Aquatic Resources (BFAR). (2015). *Philippine Fisheries Profile*. Quezon City: Bureau of Fisheries and Aquatic Resources, Department of Agriculture.
- Commission on Audit (COA). (2011). *NCIP-COA-ES2011*. Quezon City: COA.
- Congressional Policy and Budget Research Department (CPBRD). (2011, May). *Policy Brief No. 2011-4, Addressing Policy Gaps in the Land Administration System*. Quezon City: House of Representatives.
- Corral, V. (2015). *Analysis of land tools in the Philippines using Gender Evaluation Criteria (GEC)*.
- De Vera, D. (2018). *The Indigenous Peoples' Rights under IPRA: A Sectoral Paper*. [Manuscript copy].
- De Vera, Dave. (2015). *The State of Land Administration System in the Philippines: The Proposed Land Administration Reform Act (LARA)*. Discussion paper prepared for the International Land Coalition National Engagement Strategy in the Philippines. [Manuscript copy].
- Department of Agrarian Reform (DAR). (2004). *Reaffirming the Vital Role of Farmer Paralegals in facilitating the delivery of Agrarian Justice and providing for the Creation of Agrarian Justice Paralegal Support Fund, DAR Memorandum Circular 15, series of 2004*.
- Government of the Republic of the Philippines. (1988). *An Act instituting a Comprehensive Agrarian Reform Program to promote social justice and industrialization, providing mechanism for its implementation, and for other purposes (RA 6657)*.
- Government of the Republic of the Philippines. (1998). *The Philippine Fisheries Code of 1998 (RA 8550)*.
- Government of the Republic of the Philippines. (2009). *An Act strengthening the Comprehensive Agrarian Reform Program, extending the acquisition and distribution of all agricultural lands, instituting necessary reforms, amending for the purpose certain provisions of RA 6657, and appropriating funds thereof (RA9700)*.
- Land Management Bureau of the Department of Environment and Natural Resources (LMB-DENR). (2018). *Lease*. Retrieved from <http://lmb.gov.ph/index.php/land-disposition/foreshore-and-reclaimed/lease>.
- Marzan, A. (2018). *State of Agrarian Reform in Agricultural Lands: A sectoral paper*. [Manuscript copy].
- National Disaster Risk Reduction and Management Council (NDRRMC). (2013). *NDRRMC update: Final report re effects of Typhoon "Yolanda" (Haiyan)*. Retrieved from [http://ndrrmc.gov.ph/attachments/article/1329/FINAL_REPORT_re_Effects_of_Typhoon_YOLANDA_\(HAIYAN\)_06-09NOV2013.pdf](http://ndrrmc.gov.ph/attachments/article/1329/FINAL_REPORT_re_Effects_of_Typhoon_YOLANDA_(HAIYAN)_06-09NOV2013.pdf)
- National Statistics Office (NSO). (2005). *2002 Census of Fisheries*. Quezon City: NSO.
- Philippine Institute for Development Studies (PIDS). *Poverty and Agriculture in the Philippines: Trends in Income Poverty and Distribution*. Discussion Paper 2012-09. Retrieved from <https://dirp4.pids.gov.ph/ris/dps/pidsdps1209.pdf>
- Philippine Statistics Authority. (2016). *Women and Men in the Philippines: Statistical Handbook*. Quezon City: PSA.
- Rodriguez, M. (2018). *State of Fishery Reform: A Sectoral Paper prepared for ANGOC*. [Manuscript copy].
- TEBTEBBA. (2016, September 26). *Statement presented at the Indigenous Peoples' International Center for Policy Research and Education, Philippines on the "Situation of Indigenous Peoples in the Philippines: Submission to the 59th Session of CESCR"*. Retrieved from <http://tebtebba.org/index.php/content/383-situation-of-indigenous-peoples-in-the-philippines-submission-to-the-59th-session-of-cescr>
- World Bank. (2018). *Making growth work for the poor: a poverty assessment for the Philippines*. Washington, D.C.: World Bank Group. Retrieved from <https://hubs.worldbank.org/docs/imagebank/pages/docprofile.aspx?nodeid=29892868>