

Defending the Gains of Tenurial Reform

PHILIPPINES Country Paper
Land Watch Asia





Acknowledgments

This paper is an abridged version of the original Philippine Land Watch Country Paper "Taking Common Action for Access to Land" on the status of access to land, water and opportunities and strategies for civil society advocacy. This study (and its processes) is unique since it offers a cross-sectoral analysis on access to land, particularly conflicting land policies affecting poor farmers, indigenous peoples, fisherfolk and forest dwellers in the Philippines.

The paper provides insights and directions into the advocacy of groups working on access to land issues and presents common advocacies and strategies that all sectors could pursue with positive effect on their respective issues. However, it does not intend to provide a comprehensive account nor an assessment of the specific provisions or content of such land policies and programs in the Philippines.

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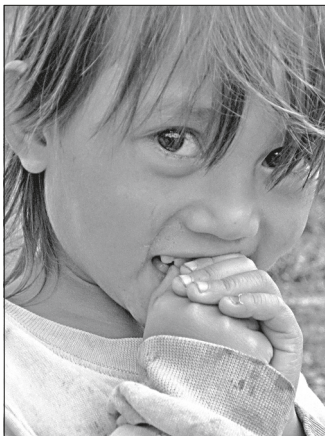
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Abbreviations and Acronyms

ADB	Asian Development Bank	ILC	International Land Coalition
ADSDP	ancestral domain sustainable development plans	IP	indigenous peoples
AFMA	Agriculture and Fisheries Modernization Act	IPRA	Indigenous Peoples Rights Act
A & D	alienable and disposable	IRR	Implementing Rules and Regulation
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development	ISF	Integrated Social Forestry
AR	agrarian reform	JBIC	Japan Bank for International Cooperation
ARB/ARBs	agrarian reform beneficiary/ beneficiaries	KAISAHAN	Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan
ARC/ARCs	agrarian reform community/communities	KII	key informant interview
ARCDP	agrarian reform community development plan	LAD	land acquisition and distribution
AR Now!	The People's Campaign for Agrarian Reform Network	LAMP	Land Administration and Management Project
AusAID	Australian Agency for International Development	LARA	Land Administration Reform Act
BALAOOD–Mindanaw	Balay Alternative Legal Advocates for Development in Mindanaw, Inc.	LGC	Local Government Code
BFAR	Bureau of Fisheries and Aquatic Resources	LGU	local government unit
CADC	Certificate of Ancestral Domain Claim	LTI	Land Tenure Improvement
CADT	Certificate of Ancestral Domain Title	NAPC	National Anti-Poverty Commission
CARL	Comprehensive Agrarian Reform Law	NCIP	National Commission for Indigenous Peoples
CARP	Comprehensive Agrarian Reform Program	NCR	National Capital Region
CBCRM	Community-based Coastal Resource Management	NFR	NGOs for Fisheries Reform
CBFM	Community-based Forest Management	NGO	non-government organization
CFMA	Community Forest Management Agreement	NIPAS	National Integrated Protected Areas System
CHARM	Cordillera Highland Agricultural Resource Management Project	NMCIREMP	Northern Mindanao Community Initiatives and Resource Management Program
CFP	Community Forestry Program	NP/GRBS/ WA	national parks, game refuge and bird sanctuaries, wilderness areas
CI	Conservation International	NSCB	National Statistical Coordination Board
CLOA	Certificate of Land Ownership Award	ODA	Official Development Assistance
CLUP	Comprehensive Land Use Plan	OFWs	Overseas Filipino Workers
CPAR	Congress for a People's Agrarian Reform	PACAP	Philippine Australia Community Assistance Program
CS	Certificate of Stewardship	PAFID	Philippine Association for Intercultural Development
CSOs	civil society organizations	PAL	Private Agricultural Land
CTF	Communal Tree Farming	PAMB	Protected Area Management Board
DA	Department of Agriculture	PARC	Presidential Agrarian Reform Committee
DAO	Department of Agriculture Order	PARCCOM	Provincial Agrarian Reform Coordinating Committee
DAR	Department of Agrarian Reform	PCSD	Philippine Council for Sustainable Development
DENR	Department of Environment and Natural Resources	PESANTech	Paralegal Education Skills Advancement and Networking Technology
DILG	Department of Interior and Local Government	PBD	Program Beneficiary Development
EP	Emancipation Patent	PD	Presidential Decree
FAR	Family Approach to Reforestation	PhilDHRRA	Philippine Partnership for the Development of Human Resources in Rural Areas
FGDs	focused group discussions	PO	people's organization
FLA	Foreshore Lease Agreement	PRRM	Philippine Rural Reconstruction Movement
FMB	Forest Management Bureau	PTFCF	Philippine Tropical Forest Conservation Foundation
FOM	Forest Occupancy Management	RTDs	Round Table Discussions
FPE	Foundation for the Philippine Environment	SAC	Social Action Center
FPIC	Free and Prior Informed Consent	SAFDZs	Strategic Agriculture and Fisheries Development Zones
GAA	General Appropriations Act	SALIGAN	Sentro ng Alternatibong Lingap Panligal
GDP	Gross Domestic Product	SONA	State of the Nation Address
GO	Government Organization	TLA	Timber License Agreement
GPS	Global Positioning System	UDHA	Urban Development Housing Act
Ha	hectare	USAID	United States Agency for International Development
HUDCC	Housing and Urban Development Coordinating Council	VOS	Voluntary Offer to Sell
IEC	Information, Education and Communication	VLT	Voluntary Land Transfer
IFAD	International Fund for Agricultural Development	WMCIP	Western Mindanao Community Initiatives Program
IFMA	Indigenous Forest Management Agreement		



PHILIPPINES



QUICK FACTS

- An archipelago of more than 7,100 islands
- Composed of 79 provinces and 4 districts in the National Capital Region (NCR) grouped into 16 regions and subdivided into 1,623 municipalities, 41,926 barangays and almost 15.3 million households.
- Around 50% of 88.7 million Filipinos (2007 Census) lives in rural *barangays*.

Land

- Total land area=30 million hectares; 45% upland/forests, 47% alienable and disposable lands (A&D) which are open for titling;
- Around 10 million hectares of agricultural land with 4.8 million hectares of agricultural farms;
- Forest cover decreased by 70% or 5.4 million hectares from 21 million hectares in 1900 (Philippine Environment Monitor, 2004)

Waters

- 2.2 million km² or 220 million hectares of marine waters with a coastline of 17,640 kilometers;
- Philippines ranked 11th among top fish producing countries in the world with production of 2.63 million tons of fish, crustaceans, mollusks and aquatic plants. (FAO, 2003)
- Municipal waters consist of the 15-kilometer coastal waters from the shoreline; commercial fishing is not allowed unless approved by local governments

Economy and Employment

- Agriculture contributes an average 20% to the country's Gross Domestic Product (GDP)
- 37% of jobs coming from agriculture and fisheries

Context of Access to Land and Tenurial Security in the Philippines¹

Rural Poverty and Landlessness

The country's rich resources are the source of subsistence and livelihood for majority of the Filipinos. The forest ecosystem directly supports approximately 30% of the population, including indigenous peoples (MTPDP, 2004–2010). Sixty percent of some 80 million Filipinos make their livelihood in some form of forestry or agriculture (Gould, 2002). According to the 2002 Labor Force Survey of the National Statistics Office, the agriculture sector employs one third of the country's total employed per-

sons. On the other hand, fisheries provide employment to 1.37 million Filipinos (BFAR, 2002).

Over 31 million poor Filipinos are found in rural areas (World Bank, 2004). Within agriculture, farm workers in sugarcane, small farmers in coconut, rice and corn, fishermen, and forester households were found to be among the poorest of the poor, accounting for about 70% of all subsistence households in 2000 (NSCB, 2000).

The Philippine agrarian structure is made up of small peasant farms and large plantations. In 1986, before the Comprehensive Agrarian Reform Program (CARP), government estimates indicated that around 20% of Filipino families controlled 80% of the lands.

In 1988, less than 2% of landholders had farms exceeding 24 hectares, but they controlled 36% of all farmland (Quizon, 2007).

According to data from the National Commission on Indigenous Peoples (NCIP), there are more than 110 ethnolinguistic groups in the Philippines with an estimated ethnic population of 12 million, comprising almost 16% of the country's total population as of 2002. They are among the poorest and most disadvantaged social groups in the country. Illiteracy, unemployment and incidence of poverty are much higher among them than the rest of the population. Indigenous Peoples' (IP) settlements are remote, without access to basic services, and are characterized by a high incidence of morbidity, mortality and malnutrition.²

About 80% of the municipal fishing families in the country are estimated to live below the poverty line. These families are entirely dependent on the coastal ecosystem for their livelihoods (PARRC, 2008).

Land Access for Peace and Development

Poverty, inequitable access to land and insurgency have their roots intertwined with the *encomienda* system (Adriano, 1991). Peasant revolts to unjust tenurial relations persisted from the colonial period until today. The Philippine government unsuccessfully tried to address this insurgency through agrarian reform laws, which were insufficient.

The highly inequitable distribution of land has caused social tension and political unrest and inhibited the country's economic growth (Balisacan, et al., 2002). Meanwhile, the experiences of Japan, Korea and Taiwan confirm that land reform is the foundation for mobilizing agrarian societies towards rural, and ultimately urban industrialization (Delos Reyes & Jopillo, 1994 citing Korten, 1990). Land reform promotes higher agricultural productivity and creates purchasing power in rural areas, thus creating capital and markets for industry. Recent studies in the Philippines show that when agrarian reform is implemented properly and integrated support services are provided, farmers have higher incomes, invest in their farms more intensively, and have a more positive outlook (DAR, 2007).

Legal Framework of Access to Land and Tenurial Security in the Philippines³

Roots of Land Ownership Regulation in the Philippines⁴

Private land ownership was first introduced under the Regalian doctrine during the Spanish colonial period. This became the ba-

sis for all land laws in the country under the 1935, 1973 and the 1987 Constitutions. The Regalian doctrine provides that all lands of the public domain and other natural resources belong to the King of Spain. When the republican system was introduced, the State became the rightful heir to the King.

Traditional systems of communal ownership were broken up and not accorded legal recognition, disenfranchising native Filipinos. American occupation later upheld the Spanish system of cadastral laws and introduced the Torrens Title system under the 1902 Land Registration Act.

Earlier policy efforts to broaden access to *public* land consisted mainly of opening up new areas for application of land patents, reforms in land titling and administration systems, and the introduction of systems for recognizing occupancy rights. In terms of *private* agriculture lands, land reform policy was introduced as early as 1963 through the Agricultural Tenancy Act, which sought to improve tenancy systems in agriculture.

Presidential Decree (P.D.) 27 promulgated in 1972 provided for the compulsory acquisition and redistribution of all rice and corn lands. The measure allowed for: (i) the compulsory acquisition of private lands; (ii) lowering of land ownership ceiling from 75 to 7 hectares; and (iii) provision of support services to beneficiaries. Many saw this as a move to quell agrarian unrest in heavily tenanted areas, rather than to institute broader access to land. Large plantations remained untouched and corporate farming for up to 500 hectares was even encouraged in rice.

Poor communities were displaced as lands were taken over by government corporations, large-scale development projects and logging and mining concessions. The introduction of Timber License Agreements (TLAs) allowed privileged individuals to extract forest resources.

When negative impacts of forest destruction emerged, the government tried new policies and programs that involved communities in forest management (e.g., Forest Occupancy Management [FOM] in 1975 and the Family Approach to Reforestation [FAR] in 1976). However, these programs caused upland communities, including the IPs, to be treated as squatters (informal settlers) in their own ancestral lands and became a source of cheap labor for the aforementioned programs (Pulhin and Dizon, 2003). Meanwhile, squatting was made a criminal act by P.D. 772.



The Integrated Social Forestry (ISF) Program of 1982 recognized the people's role in forest management. A Certificate of Stewardship (CS) or a Certificate of Community Forest Stewardship (CCFS) provided tenurial security for the first time for individuals and communities over 25 years. In 1989, the Community Forestry Program (CFP) (Department of Environment and Natural Resources [DENR] Administrative Order No. 123) through Community Forestry Management Agreements (CFMAs) awarded organized upland communities a period of 25 years, renewable for another 25 years, to utilize and sell products from within the residual forest, as well as establish plantations.

There were also presidential issuances and proclamations declaring certain pieces of land as tourism zones or agricultural lands. Presidential Proclamation (PP) 2282 identified and declared certain areas from all the regions of the Philippines for agriculture and settlement. Most of the areas covered by PP 2282 were forest or ancestral lands. Some NGOs allege that PP 2282 is still being used today to justify inclusion of upland areas and ancestral lands in other tenure reform programs or public land concessions.

Constitutional Framework

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, Section 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.

Laws on Access to Land

At least five codes and 11 laws—most of these based on the 1987 Philippine Constitution—affect the use and regulation of

Philippine land. These laws are still effective and enforced by various government agencies.

1. Republic Act (R.A.) 6657 or the Comprehensive Agrarian Reform Law (CARL)

- Enacted in 1988 during the Aquino administration (1986–1992);
- Expanded the coverage of the agrarian reform program to all agricultural lands regardless of crop planted;
- Targeted to redistribute around 8.1 million hectares of agricultural land and ISF areas to 3.9 million landless tenant farmers and farmworkers over a 10-year period (1988–1998);⁵
- Provides for different tenurial instruments based on land classification: tenurial security for forestry areas, and tenancy reforms and land redistribution for private and alienable lands. Land redistribution is complemented by the delivery of support services such as extension, credit, infrastructure facilities and assistance in livelihood projects;
- Imposes a five-hectare retention limit for the landowner and provides three hectares for each heir who is actually tilling the land;
- Exempts from distribution: ancestral lands inhabited by indigenous cultural communities; lands with a slope above 18 degrees; reserved lands like national parks, forest reserves, fish sanctuaries, and watersheds; lands for national defense and education and experimental farms, churches and mosques, cemeteries, etc.
- Managed by the Department of Agrarian Reform (DAR), while the DENR takes the lead role in providing tenurial security in forestlands, under the ISF program of the CARP;
- Operationalized by the DAR through two main program components: Land Tenure Improvement (LTI) and Program Beneficiaries Development (PBD). The main strategy for PBD is the establishment of agrarian reform communities (ARCs), through which assistance and integrated development will be undertaken.
- Beneficiaries of the CARP are categorized into three groups based on their tenurial status: (i) owner/cultivators; (ii) leaseholders who were granted permanent use rights over the land; and (iii) farm workers who render service for value as an employee or laborer in an agricultural enterprise or farm;
- Guarantees equal rights to land ownership and equal shares of the farm's produce between women and men beneficiaries.

Some Restrictions on Land Ownership and Land Use

Section 2, Article XII declares that natural resources, other than agricultural lands, shall not be alienated; that the State shall have full control and supervision of any exploration, development, and utilization of natural resources; that there are citizenship limits for the exploration, development, utilization and ownership of natural resources; that any joint venture or partnership which the State enters into should be with groups that are at least 60% Filipino-owned for not more than 25 years and renewable for another 25 years only.

This restrictive policy applies with equal force to alienable lands⁵, as stated in Section 3, which delineates the manner of alienation, the period of the lease, and the size of the land. Alienable lands of the public domain are limited to agricultural lands. Private corporations or associations may not hold such public lands except by lease, for a period not exceeding 25 years, renewable for not more than 25 years, and not to exceed 1,000 hectares in area. Citizens of the Philippines may lease not more than 500 hectares, or acquire not more than 12 hectares by purchase, homestead, or grant.

The provision also cites conservation, ecology and development, and the requirements of agrarian reform as bases for Congress to regulate the size of lands that may be alienated.

The restrictions applicable to alienable lands likewise apply to private lands since Section 7 of the article provides that no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain and through inheritance.

2. R.A. 8371, or the Indigenous Peoples Rights Act of 1997 (IPRA)

- Seeks to recognize, promote, and protect the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs). These include the right to ancestral domain and lands, self-governance, and the right to cultural integrity.
- Recognizes the *prior rights*, including the *pre-conquest* rights of indigenous peoples, thus superseding other land and resource rights;
- Under the principle of self-determination, ICCs/IPs shall formulate their own ancestral domain sustainable development and protection plans (ADSDPs) based on their indigenous knowledge systems and practices. Contracts, licenses, concessions, leases and permits within the ancestral domains shall not be renewed or allowed without the



What is a CADC/CADT?

A Certificate of Ancestral Domain Claim (CADC) is the land tenure instrument issued by the DENR which recognizes the claim of indigenous cultural communities to land, resources and rights thereon within a defined territory. A Certificate of Ancestral Domain Title (CADT), on the other hand, is a title formally recognizing the rights of possession and ownership of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) over their ancestral domains that have been identified and delineated in accordance with the Indigenous Peoples Rights Act (IPRA).

The law provides two modes of securing a CADT: direct application and conversion from CADC to CADT. IPs whose ancestral lands/domains were officially delineated prior to the enactment of IPRA have the right to apply for a CADT over the area without going through the mandated process. This, in effect, converts their CADC to CADT. On the other hand, direct application is the process for IP groups whose ancestral lands were not delineated under any legislation prior to Indigenous Peoples Rights Act (IPRA).

The identification, delineation, and recognition of ancestral domains should be in accordance with the procedures outlined in the IPRA (Section 52) and its accompanying Implementing Rules and Regulations (IRRs). However, there is no clear guideline on how long the process should take.

In the case of direct applicants, a study by PhilDHRRA found that the average time from the start of the application process to the approval of the CADT is 3.4 years. In addition, it will take an average of 6.35 months before the issued CADTs are actually awarded to the tribes.

Free and Prior Informed Consent (FPIC) of the IP community—i.e., “consensus of all members of the IPs/ICCs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference or coercion” (Chapter 2, Section 3g, IPRA);

- IP land rights are recognized through the issuance of a Certificate of Ancestral Domain Claim (CADC) or a Certificate of Ancestral Domain Title (CADT).

3. R.A. 8550, or the Fisheries Code of 1998

- Signaled a change in government fisheries policy from a production and exploitation orientation to stewardship and protection;
- Provides for the establishment of fisherfolk settlement areas. However, it does not grant fisherfolk residents security of land tenure;

- Gives jurisdiction to the municipal or city government over municipal waters. The agencies involved in carrying out the activities for delineation or delimitation are the Department of Agriculture (DA) through the Bureau of Fisheries and Aquatic Resources (BFAR), the National Mapping and Resource Information Agency (NAMRIA) under DENR, and the Local Government Units (LGUs). Delineating the boundaries of a municipality's 15-kilometer municipal waters is essential for sustainable management of fishery resources, fishery law enforcement and granting the preferential rights of municipal fishers within the 15-kilometer zone (Section 18).

4. R.A. 7279, or the Urban Development and Housing Act (UDHA) of 1992

- Aims to address the housing shortage of the country,⁶ laying down the groundwork for a comprehensive and continuing urban development and housing program by prioritizing the provision of decent shelter to the poorest of the poor; providing the framework for the development and use of urban lands; encouraging people and community involvements and initiatives in urban development and shelter construction; improving and maximizing local government participation, especially in socialized housing; and tapping private sector resources for socialized housing.

5. R.A. 7160, or the Local Government Code (LGC) of 1988

- Empowers local government units and promotes people's participation in all stages of local development work—from planning, implementation, monitoring and evaluation;
- Gives Local Government Units (LGUs) the power to approve land conversion. Section 20 of the LGC states that through an ordinance passed by the *Sanggunian* (local council), a city or municipality may reclassify agricultural lands when: (i) the land ceases to be economically feasible; and (ii) where the conversion shall result in appreciation of land values.

6. R.A. 8435, or the Agriculture and Fisheries Modernization Act (AFMA)

- Aims to accelerate the pace of development of agriculture and fisheries for the purposes of poverty alleviation and social security, food security, rational use of resources, global competitiveness, sustainable development, people empowerment, and protection from unfair competition.

7. National Integrated Protected Areas System Act of 1992 (NIPAS)

- Provides for the use and enjoyment of protected areas consistent with the principles of biological diversity and sustainable development. It also supports the establishment and management of protected areas as a key strategy for conservation of the country's biodiversity;
- Introduced the concept of local participation in protected area management at a time when the common practice of most governments in the Asian region was a strict protection zone (conservationist) policy. The NIPAS Act enabled local communities to take part in deciding on how best to manage the forests that are the source of their livelihood.⁷

8. Presidential Decree No. 705, or the Forestry Code of 1975

- Affirms the Regalian Doctrine of state ownership of public domain, including waters, minerals, coal, petroleum and other minerals, all potential sources of energy, fisheries, wildlife and other natural resources. These can be explored, developed or utilized only through license, concession or lease;
- Article 14 further states that no land of the public domain with a slope of 18 degrees or over shall be classified as alienable and disposable (A & D). Only agricultural lands, industrial or commercial, residential and resettlement land of the public domain may be alienated.

Issues Affecting Access to Land and Tenurial Security

Mixed Roles and Policy Reversals among Implementing Agencies

Many laws on access to land require joint implementation or coordination among government agencies either because of complexities in implementation or because different agencies' expertise is required.

Mixed responsibilities among agencies have resulted in backlogs and contradicting implementation, especially where the accountability of the implementing agency is unclear or where the implementing agency does not have enough funds to perform its task. For instance, DAR cannot distribute agricultural lands without the DENR completing its survey. LGUs

face the same problem in the delineation of foreshore lands for fisherfolk settlement, which is the responsibility of DA and DENR. In other instances, the implementing agency does not have the capacity to perform the task assigned to it and has to rely on another agency.

Land Reclassification: Which Agency has the final say?

Some agencies have been granted blanket authority by law to reclassify lands. Under P.D. 705, only DENR has the power to classify public lands as agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, etc. Where public land is not classified, it is automatically considered as forest land. However, the President also has the power to declare land as forest or mineral reservation. Similarly, under NIPAS, the President may designate an area as protected until Congress passes a law declaring it as such⁸.

Where private lands are concerned, the Comprehensive Land Use Plan (CLUP) of the LGU and zoning ordinances hold sway. The LGU also has the duty to designate zones for fishpens, fishcages and other structures within their jurisdiction. However, the President can at any time reclassify land when public interest requires it.

The National Commission on Indigenous Peoples (NCIP) is supposed to govern all affairs concerning IP groups. However, the determination of the coverage of IP groups' ancestral domains is contingent on a survey conducted by DENR.

Competing Authority on Land Conversion

The Agriculture and Fisheries Modernization Act (AFMA) allows the conversion of agricultural lands on a case-to-case basis, but does not specify the reasons for land conversion.

The Comprehensive Agrarian Reform Law (CARL) also allows the conversion of agricultural land to other uses, i.e., when the land ceases to be economically valuable for agricultural purposes, or when the area has become urbanized, thus making the land more economically valuable when put to other uses. This provision only covers awarded land under CARL.

In many cases, the LGU invokes its power to reclassify land on the mistaken notion that it has full authority to do so under the LGC of 1988. Actually, the LGU's power to reclassify land has limitations under this law. Only portions of agricultural lands may be reclassified upon approval of the DA. Lands awarded to



farmer beneficiaries may not be reclassified. In practice, however, this protection is often flouted by LGUs.

The Fisheries Code and Forestry Code provide for the automatic reversion of land to its former classification, conditioned upon the use or non-use of the subject land.

NIPAS requires a law from Congress to convert a certain protected area to a non-protected area or to adjust the boundaries of a protected area. This process makes changes to protected areas harder. On the other hand, the Forestry Code gives blanket authority to the DENR to classify the lands of the public domain.

IPRA requires the IP community's free prior and informed consent before the conversion of ancestral land by an external entity. However, it does not clearly define "free, prior and informed consent."

Overlapping Policies, Conflicting Definitions, Cross-Cutting Purposes

CARL covers private and public lands devoted to or suitable for agriculture. However, the definition of agriculture is broad enough to include forest lands, resettlement sites, and all other government-owned lands suitable for agriculture.

CARL identifies priority categories of agricultural land that would be covered; among them are idle and abandoned agricultural lands; lands foreclosed by government financing institutions; all arable public agricultural lands under agro-forestry, pasture and agricultural leases; lands already cultivated and planted to crops; and all public agricultural lands which are to be opened for new development and resettlement. CARL is not limited to the acquisition and distribution of agricultural lands; it also has provisions for establishing agrarian settlements and for undertaking lease agreements for the use of agricultural lands. CARL, which preceded the enactment of the IPRA, recognizes and protects the right of IPs and forest settlers to exploit the resources within their territory.

A protected area, as delineated by the NIPAS, can cut across all types of land as long as it fits the criteria, i.e. has a high degree of biodiversity or is ecologically fragile.

"Forest" under P.D. 705 has no clear definition, except for a provision that classifies land as forest when it has a slope of 18 degrees and above. P.D. 705 also mandates that land could re-

vert to forest land in two instances: first, when mangrove areas and other swamps that had been turned over to BFAR for fishpond purposes remain unutilized, or have been abandoned for five years from the date of such release; and second, when land with a slope of 18 degrees and above is declared A & D unless covered by titles or approved application.

The reversion of land to its former classification by operation of law creates confusion over the nature of the land and in regard to the jurisdiction of the regulating agency. CARL exempts from coverage lands with 18 degree slopes and higher. However, CARL also provides that where such land is already developed, then it could be put under agrarian reform.

The Fisheries Code mandates the DA to establish and create a fisherfolk settlement within lands in the public domain that are near the seashore. The same law imposes a prohibition on the alienation or disposability of some public lands, like marshes, mangroves and ponds suitable for fishery operations. However, the law grants fishpond leases to fisherfolk organizations, which the DA may revoke where environmental considerations demand it.

Under IPRA, the extent of ancestral domains⁹ is self-delineated by the IP community. Ancestral domains cover not just land but also water and other resources. They are considered as private land owned by the IP community and all the generations thereof, and hence, cannot be sold, disposed of, or destroyed. At the same time, the government can lay claim to lands covered by the ancestral domains of an IP group, especially those with a slope of 18 degrees and above, and classify them as A & D.



The LGU has the power to impose taxes over lands within its jurisdiction. Under the LGC, the classification of real property for valuation and assessment purposes is made on the basis of the land's actual use, regardless of its classification¹⁰. LGUs have been known to reclassify agricultural land covered by CARP in order to convert them to non-agricultural uses, which bring in more revenue.

Conflicts in policies and interpretations, and overlaps in scope create confusion, to the detriment of the basic sectors. Government has tried to harmonize the laws through dialogues and joint agency mechanisms. Though helpful in coordinating the direction of agencies in conflict, these mechanisms have not resolved the differences among the basic sectors involved. For instance, IP claims over their ancestral lands are being contested by agrarian reform beneficiaries, i.e., lowland farmers, (with the support of DAR), resulting in conflicts between these two groups. LGUs represent another group of competitors to IP land claims.

The Philippine Constitution is silent on how to prioritize among such competing interests.

Factors Hindering Agrarian Reform Implementation

Expiration of Law for CARP Funding

R.A. 8532, which provides for funding for the agrarian reform program, expired in June 2008, with no clear indication from the Philippine Congress on how to proceed hence. There are two likely scenarios: (i) there will be no additional funding for CARP (program implementation will be limited to PhP3 billion per year under the General Appropriations Act); and (ii) CARP would be extended, including its funding, but it would proceed much as it had in the last 20 years. A third, less likely, scenario is the enactment of an amended CARP law (with additional funding), which incorporates a number of important reforms that will

hasten land distribution and improve overall implementation. *(Editor's Note: Last 15 December 2008, both Houses of Congress passed Joint Resolution #19 extending CARP for six months but without the compulsory acquisition (CA) scheme. Only pending landholdings under the Voluntary Offer to Sell (VOS) and Voluntary Land Transfer (VLT) are to be processed. Farmers groups and advocates calling for the reform and extension of CARP are taking to the streets to pressure Congress to uphold the CA scheme as mandated by the Constitution and pass House Bill 4077 and Senate Bill 2666 before June 2009. The Catholic Church has also thrown its weight behind the campaign by joining the Congress lobby, the farmers' marches and protest actions.)*

Incomplete Land Acquisition and Distribution, Questionable Data

Agrarian reform advocates agree that CARP implementation over the last 20 years has fallen short of expectations. Land acquisition and distribution (LAD) is still a long way from being completed, with much of the LAD shortfall occurring in private agricultural lands (PAL) where landowner resistance is strong. As of 2007, most of the remaining 1.2 million hectares for distribution under the CARP are privately owned agricultural lands.

Moreover, the reported "accomplishments" under CARP include lands that are covered by certificate of land ownership awards (CLOAs) but which have not yet been turned over to their intended beneficiaries. Collective CLOAs (i.e., issued to cooperatives and farmers' organizations) are treated differently from the proof of ownership which the individual members of such organizations receive in the process, thus resulting in double counting and inflating DAR's accomplishments.

Insufficient Support Services and Access to Credit

There is a backlog in the delivery of support services for the majority of agrarian reform beneficiaries (ARBs) who have already been awarded lands. A recent NGO survey of 1,851 ARBs in 32

Table 1. Summary of CARP Accomplishment, 2007

Agency	Total Scope* (mil.ha.)	Land distributed (mil. ha.)	Balance (mil.ha.)	Beneficiaries	Balance
DAR	5.163	3.960	1.203	2,296,741 ARBs	700,000+
DENR	3.96	3.183	.65		
Total	9.12	7.143			

Source: DAR Accomplishment Report June and December 2007.



provinces reported that more than half of respondents do not have access to post-harvest facilities (e.g., thresher, drier, hauler, warehouse, etc.) and 44 % of the respondents had access to credit (just seven percent which was provided by the government).

Exemptions from CARP Coverage

The government's original target of 10.3 million hectares in 1988 was severely reduced in 1996 to 8.1 million hectares due to exemptions and massive land conversion. More than 5.3 million hectares of land were exempted outright from CARP in 1996. The reduction in public land covered by CARP was due to the lease of vast tracts of government to cattle ranchers, operators of export crop plantations, and logging concessionaires (SALIGAN, 2007)

Insufficient Political Will

The poor performance of CARP is due to lack of political will, as evidenced by government's deliberate understatement of its targets; its inability to hold DAR accountable for its implementation of CARP; and inadequate funding for the CARP.

DAR's Poor Performance

DAR's poor performance is manifested in: (i) the predominance of VOS and VLT as the primary mode of land acquisition, as opposed to the much more difficult CA; (ii) the department's orientation on quantity, which measures success in terms of number of hectares awarded; (iii) the absence of an effective monitoring system to determine if the intended ARBs have actually been installed in the lands awarded them; and (iv) high incidence of abandonment, sale, or mortgaging of CARP-awarded lands by ARBs to raise money for medical expenses or because of the lack of credit for production.

Market-oriented Tenurial Schemes

DAR's poor performance in the distribution of private agricultural lands is compounded by the promotion of various arrangements to circumvent actual land transfer to farmers. One such scheme is the "leaseback" arrangement whereby ARBs turn over control of the awarded land (via a lease contract) to agribusiness corporations or to the former landowners as a precondition for the release of the ARB's CLOAs (Certificate of Land Ownership Award). Another dubious arrangement is the "corporate" scheme, wherein ARBs are given shares of stock in the agricultural corporation of the landowner in lieu of having the land transferred to them. Conversion of agricultural land to commercial, residential and industrial uses is also prevalent, further reducing the scope of land reform.

Lack of Donor Support for Land Acquisition

The policy of donor agencies to fund support services delivery (rather than the more controversial land acquisition) has also contributed to poor CARP implementation. Also donor funding for NGO activities related to agrarian reform has been reduced and shifted toward government projects.

Landlord Resistance

Landlord resistance is one of the major bottlenecks in CARP implementation. This takes various forms, including not presenting the necessary documents; circumventing the CARP by exploiting legal loopholes; using connections to high-ranking government officials; and harassment of ARBs.

Factors Hindering Indigenous Peoples' Access to their Ancestral Domains

Snail-paced Ancestral Domain Titling

Ten years after the passage of IPRA, only 20% of the targeted area (slightly more than half a million hectares of land) have been awarded to indigenous communities and very limited development activities in support of the Ancestral Domain Management Plans have been undertaken in IP areas. There are 181 ancestral domains, with a combined area of 2.54 million hectares, covered by CADCs.

Mining Operations on IP lands

Since 1992 the Philippine government has been aggressively promoting the revitalization of the mining industry, for which it has opened up 30% of the country's land area to exploitation (Doyle, et al., 2007). In 2006, the DENR received 1,953 mining applications. According to the DENR, there are 1,953 mining applications currently pending.

Weak Implementing Agency

NCIP, the agency mandated to implement IPRA, is ill-equipped, underfunded, staffed with people who are poorly trained and lack field experience and cultural sensitivity to handle land conflicts and issues of resource access. A number of NCIP personnel have been accused of helping mining companies gain entry into IP lands by getting around the FPIC requirement.

Lack of Effective Integration between NCIP and DAR

In 2008, NCIP, which used to be under DAR, became an agency under DENR. This transfer gives cause for concern. DAR may not, as a result, be expected to prioritize or at least give due at-



tention to IP concerns, given that IP communities are fewer than farmers. There has been speculation that by putting NCIP under DENR's supervision, the government can facilitate the approval of applications for mining operations, especially those within ancestral domains.

Limited CSO Support after CADC Award

Civil society support for CADC claims has often been limited to the pre-claim period. Few NGOs are committed to and capable of providing the needed support during the post-claim period, which requires governance, as well as livelihood, technical, and financial assistance to the IP claimant. As a result, many forest dwellers have found life to be more difficult during the post-

CASE STUDY

Sumilao Farmers: Victims of Government's Lack of Political Will and Landlord Defiance of CARP

In 1995, the Sumilao farmers were awarded ownership of the Quisumbing Estate, a 144-hectare prime agricultural land in San Vicente, Sumilao, Bukidnon under the government's Comprehensive Agrarian Reform Program (CARP). Before the farmers could get hold of the land, however, the landowner sought to convert the land to an agro-industrial estate, claiming that the conversion would benefit the community. The Agrarian Reform Secretary at the time disapproved the application for conversion, but then Executive Secretary Ruben Torres approved it.

In protest, the Sumilao farmers went on a hunger strike in 1997 which lasted for 28 days. Then President Fidel Ramos acceded to the farmers' demands, ordering that 100 hectares be awarded to the farmers while allowing the landowner to keep the remaining 44 hectares. The farmers celebrated this "win-win" solution, but their jubilation was short-lived. Shortly after, the Philippine Supreme Court overturned the President's order based on a technicality, namely, that the Sumilao farmers were merely "recommendee farmer beneficiaries".

The estate reverted to its landowner, who was ordered to go ahead with developing the projects the landowner promised was implemented. Furthermore, in 2002, the estate was sold to San Miguel Foods, Inc. (SMFI), a food manufacturer, which plans to use the land as a piggery farm. This violates the terms of the conversion order.

The Sumilao farmers thus lodged a protest with the Department of Agrarian Reform (DAR) but were told that the matter was under the jurisdiction of the Office of the President. Hence, on 9 October 2007, the Sumilao farmers marched from Bukidnon, in Mindanao, to Manila to seek a resolution of the case from President Gloria Arroyo.

The farmers' march drew the attention of many sectors, especially the Roman Catholic Church. No less than Manila Archbishop Gaudencio Rosales blessed and expressed support for the poor landless tillers. This further fuelled the campaign to pressure President Arroyo to act on the case and the SMFI to give up its claim to the land. Prominent media exposure; the strong support of the

Catholic Church and of various NGOs and POs; countless briefings at schools, churches and, with influential individuals, and the farmers' commitment to their cause were critical factors that led to the campaign's success.

In March 2008, five months after the farmers set out for Manila, SMFI yielded and struck a compromise deal with the farmers. The food conglomerate returned 50 out of the original 144-hectares to the Sumilao farmers and agreed to purchase the remaining 94 hectares from the surrounding areas in the province.

On March 30, the Sumilao farmers, with their supporters from the Church and civil society advocates, finally tore down the perimeter fence and set foot once again on the land of their forefathers.

However, the farmers still have to secure their victory. The DAR was tasked to locate the 94-hectare balance, which would be subjected to the long process of CARP coverage. There is no word yet where the said property will come from, much less when it would finally be awarded to the Sumilao farmers.



claim period. The remoteness of many CADC areas likewise hampers the delivery of basic social services.

Crisis in IP Leadership and Threats to IP Culture and Traditions

Within IP communities, there is a rift between traditional (male) elders and younger leaders, who have been educated in low-land schools. This friction, coupled with the ongoing process of integration into the mainstream cash economy, makes IP communities more vulnerable to pressure from external forces (e.g., corporate interests, migrants, etc.) and can bring about community disintegration. Affiliation with various religious or political groups is also dividing IP communities and families, and threatens to destroy their culture. Many IP spiritual leaders have become Christian pastors. In other cases, persons who are not true tribal leaders have been appointed as chieftains.

Issues Affecting Access to Forestry Resources by Forest Dependent Communities

Lack of Tenurial Security Among Upland Communities

Of the over 20 million people residing in upland areas, only those who hold a CADT, or who have entered into a forest stewardship agreement with the government under a community-based forest management (CBFM) program, enjoy security of tenure. Moreover, majority of the 2.7 million people who are supposed to be tenured by virtue of these instruments are still seen as squatters. Meanwhile, large upland areas are covered by timber licenses, or else have been given over to mining operations.

Prevalence of the Regalian Doctrine

In 1995, CBFM was adopted by the Government as the national strategy to achieve sustainable forestry and social justice. This marked a shift from centralized management of resources to a participatory and people-oriented approach. However, this policy

shift has not resulted in greater tenurial security among forest dwellers. The Regalian Doctrine still persists and allows the government to revoke any land use permits and tenure instruments it has extended to communities and individuals. Because it does not guarantee tenurial security, CBFM cannot ensure the judicious use of forest resources.

Confused DENR Mandate

DENR is the primary controller of public lands and resources, including forest lands. The dual mandate of DENR—to protect and conserve the environment and to promote the utilization of natural resources—creates confusion and conflict in the policies and operations of the agency. This “schizophrenia” came about when the Department of Environment and the Department of Natural Resources were merged to form the current DENR. At the same time, the DENR bureaucracy has failed to demonstrate its capacity to shift toward a more participatory and people-oriented approach which underpins the CBFM strategy.

Development Strategy Based on Resource Extraction

The current administration has anchored the economic development of the country on resource extraction, particularly of timber and minerals. This is a marked departure from the social reform and asset reform agenda of previous administrations and has led to increased pressure on the remaining natural resources of the country.

Lowland to Upland Migration

Pressure on limited forest resources is further exacerbated by the continuous migration of lowlanders to the uplands. The upland population, estimated at 25 million people, or 29% of the country’s total population, is growing by 10% per year due to migration (De Vera, 2007). New upland settlers find few livelihood opportunities apart from those that depend on forest resources. IPs also frequently come into conflict with farmers due to claims over the same piece of land.

Table 2. Summary of CADTs/CALTs Issued, Area Coverage, and Number of Beneficiaries, 2007

Instrument	Number issued	Tenured area (ha)	Beneficiaries
CADT	57	1,116,439.4	242,356
CALT	172	4,855.7	2,792

Source: National Commission on Indigenous Peoples List of CADT/CALT as of June 2007.

Table 3. Forest Land-use Instruments

Instrument	Number issued	Tenured area (ha)
Community Based Forestry Management (CBFM)	1,781	1,622,129
Timber License Agreement (TLA)	14	684,524
Integrated Forest Management Agreement (IFMA)	169	674,000
Industrial Tree Plantation Agreement (ITPLA)	9	39,749
Tree Farms	142	17,469
Agroforestry Areas	80	89,725
SIFMA (Socialized Industrial Forest Management Agreement)	1,837	40,265
PFDA (Private Forest Development Agreement)	91	4,992
FLGMA (Forest Land Grazing Management Agreement)	395	109,415
Total		3,282,268

Source: Philippine Forestry Statistics, Forest Management Bureau. 2005

Issues Affecting Access to Fisheries Resources by Small Fisherfolk

No Land Allocated by Government for Small Fishers

The experience of municipal fishers in Luzon, Visayas and Mindanao shows that government agencies, both local and national, do not prioritize access to land and tenurial security of small or municipal fishers.

Lack of Funds and Capacity to Implement the Fisheries Code

Ten years after its passage, the Fisheries Code has not been fully implemented because it is unfunded, among other reasons. There are also no implementing rules and regulations (IRRs) in regard for its key social reform provisions, such as the establishment of fisherfolk settlements, delineation of municipal waters, etc. Moreover, DA and LGUs lack the capacity to implement it.

Tenurial Instruments Beyond the Reach of Small Fishers

Fishpond and Foreshore Lease Agreements (FLAs) provide tenurial security to qualified applicants and allow them to develop, utilize, and manage foreshore lands, fishponds, and other water bodies. Unfortunately, FLAs are too expensive for most small fisherfolk.

Resort owners and real estate developers are the usual beneficiaries of FLAs. The application of these groups for FLAs is pri-

oritized by the local government because they can be counted on to finance economic activities, and thereby bring tax revenues to LGUs. Small fisherfolk, on the other hand, are regarded as a burden by LGUs because they require assistance in managing the resources entrusted to them.

Threats to Coastal Settlements

The tenurial security of small fishers is threatened by the following: (i) private land claims over public areas where fishers have settled and lived in; (ii) private land claims over foreshore land and salvage/ easement zones; (iii) sale by small fishers of their lands or their occupancy rights to private investors and resort/ real estate developers; (iv) the promotion of aquaculture for fisheries development; (v) establishment of resorts and other tourism facilities; (vi) port development and other public coastal infrastructure development; and (vii) setting up of factories, industrial estates, export processing zones and other industrial facilities.

Land Titling Complications

Small fishers' tenurial security is also threatened by problems in land titling which usually arise from: (i) complicated laws on land titling; (ii) unclear jurisdiction of various agencies and institutions; and, (iii) differing systems, processes of land measurement, mapping, valuation and titling of various agencies and institutions.

Issues Related to Land Use Planning

Other threats to small fishers' tenurial security are related to land use planning, including: (i) conflicts over differing land uses among stakeholders; (ii) environmental degradation due to lack of enforcement of environmental laws and standards; (iii) lack of appropriate knowledge and skills in coastal area management, especially among local governments; (iv) lack of genuine participation of municipal fishers and other sectors in the process of land use planning; (v) lack of resources (especially funds) to enforce and monitor CLUP implementation of; (vi) unclear jurisdiction over municipal waters, foreshore areas, and coastal zones; and (vii) the need to integrate land use planning with the preparation of the Annual Investment Plan.

Displacement and Relocation Issues

Small fishers who are displaced or relocated to other areas are faced with the following concerns: (i) relocation sites that are far from the sea, their livelihood source; (ii) limited consultation with the affected families in planning the relocation/resettlement process; (iii) problems in the process of selecting beneficiaries; (iv) limited compensation for destroyed properties and limited/ no assistance in rebuilding their houses; (v) inadequate social services, transportation/communication facilities and public utilities in the relocation sites; and (vi) inadequate health, education and social services, as well as livelihood and employment opportunities.

Weak, Fragmented Fisherfolk Groups

Only 10% of Philippine fisherfolk are organized. Fisherfolk organizations are generally weak and fragmented because they are vulnerable to the machinations of local politicians. In some cases, political differences among NGO support groups contribute to the division among fisherfolk groups. Civil society and government support for the fisherfolk sector is generally less than for other sectors.



Actors Facilitating or Impeding Access to Land and Tenurial Security

Government

Government faces formidable challenges in the enforcement of access to land laws and implementation of related programs. Foremost among these challenges is the lack of political will to implement the laws, manifested in inadequate budgets and inefficient or inept bureaucracies.

Market forces have also influenced government implementation of access to land laws and programs. This is illustrated by government's enthusiastic promotion of commercial mining, despite the latter's negative impact on other sectors, particularly IPs.

A third challenge comes from existing laws that go against social justice principles yet remain unrepealed and, therefore, continue to be in force. One such law is Presidential Proclamation (PP) 2282, which gives the President blanket authority to convert forest lands and ancestral domain areas into agricultural and resettlement lands.

Donor Agencies and International Institutions

The three major Philippine donors—Japan, Asia Development Bank (ADB) and the World Bank—have provided significant funding to access to land programs. However, donor funding has been uneven across the four sectors (i.e., lands subject to CARP, forestry, fisheries, IPs), with agrarian reform receiving the largest share and fisherfolk, receiving the least. There are also gaps in donor support. For example, few donors provide financing for land acquisition.

Donor support is also provided indirectly through civil society groups sub-contracted for projects funded by Official Development Assistance (ODA).

Agrarian Reform

To date, the total ODA contribution for CARP stands at PhP35.3 billion, or 32% of the PhP110.2-billion (as of 2004) released by the Philippine government for CARP. ODA funds that have gone to CARP have been spent largely on the delivery of support services (mostly infrastructure); only a little part, of this ODA money has been earmarked for land acquisition. This donor reluctance to fund land acquisition has contributed to the slow progress of CARP. Pending the passage of a CARP extension bill,

donor agencies are holding back from making new commitments to fund agrarian reform.

Forestry

One recent major donor initiative in the forestry sector is the Philippine Tropical Forest Conservation Foundation (PTFCF), which was established through a United States Agency for International Development (USAID)-sponsored debt swap. The foundation is managed by a board of trustees whose members include representatives from government, NGOs and USAID. The foundation provides support to NGOs and POs (in partnership with LGUs) that are engaged in reforestation activities.

Many donors have likewise provided support for reforestation activities, among them, the World Bank, the European Union (EU), the ADB, Japan Bank for International Cooperation (JBIC), and the International Fund for Agricultural Development (IFAD).

Indigenous Peoples

Due to capacity gaps within NCIP, donors have stepped back from earlier commitments to support the agency's operational projects, and instead, have chosen to focus on capacity building of the NCIP, that is, website development, education, and resource management planning. Most donor funding for field projects has been coursed through the DAR.

There has been renewed interest in IP issues due to the passage of the UN Declaration of the Rights of Indigenous Peoples in September 2007. This opens up opportunities to lobby the Philippine government for more effective implementation of IPRA.

Fisheries

There has been minimal donor support for fisherfolk settlement. In 2003, DENR, the WB and AusAID started implementing a pilot project to introduce reforms in land administration and public land management in six municipalities of Leyte. As of July 2007, the project registered 2,019 patents and of these, 1,531 have already been distributed. Three of the municipalities covered by the project—Palo, Tanauan and Barugo—are coastal municipalities.

A key contributor to the fisheries sector, particularly the promotion of land access by small fisherfolk, is Oxfam (Great Britain and Hong Kong), which has supported the advocacy work and other activities of the NGOs for Fisheries Reform (NFR). Oxfam was also a major sponsor of the National Conference on Fisherfolk Settlement in November 2006.

Private Sector

In general, private commercial interests have been a major obstacle in the struggle of the basic sectors to gain access to land or tenurial security.

Agrarian Reform

Landlord resistance is one of the major bottlenecks in the implementation of agrarian reform. This takes various forms, including: (i) not presenting the necessary documents; (ii) circumventing CARP by exploiting legal loopholes; (iii) using connections to high-ranking government officials; and (iv) harassment of ARBs, leading in most cases to violence. Since 1998, as many as 18,872 farmers and rural organizers have fallen victim to human rights violations. (PARRDS, 2007)

Forestry

Logging concessionaires take advantage of their Integrated Forest Management Agreements (IFMAs) to clear-cut forests. Only 10% of the area covered by Timber License Agreements (TLAs) are being reforested, and mostly with fast-growing species that will also be cut down. Other replanting efforts involving the private sector consist of tree-planting activities by company employees along national highways rather than in denuded forest areas.

Mining interests have targeted some 80,000 hectares for mining exploration, most of these in forest areas. A recent Philippines–China agreement has earmarked some two million hectares for agribusiness plantations. These plantations are likely to cut across the country's few remaining forest areas.

Indigenous Peoples

As a result of the National Minerals Policy, private investments—in mining, IFMAs, pasture lease agreements, palm oil plantations and orchards, and similar large-scale commercial enterprises—are being implemented in the ancestral lands of indigenous communities.

Fisheries

The establishment of industrial estates, power plants, ports, beach resorts, recreation facilities, etc. on foreshore lands and coastal areas has displaced communities of small fisherfolk. A number of small fisherfolk are enticed to sell their occupancy rights, or are forcibly removed. They usually no resistance because the lands they occupy state-owned lands.



Civil Society and Social Movements

Civil society and social movements continue to be involved in the struggle of the basic sectors to gain access to land and tenurial security. Civil society engagement is uneven, with agrarian reform receiving the largest share of support, in comparison with other rural issues. The recent trend towards downsizing of NGO activity in the Philippines has affected civil society support for land access and tenure security.

Agrarian Reform

Civil society has traditionally been involved in the advocacy for agrarian reform, starting from the peasant rebellions in the pre-independence period, continuing throughout the 1950s and 1960s in protest of tenancy, and persisting to this day, to hold governments to their commitment to land redistribution.

Civil society action reached a high point in the late 1980s, with the formation of the Congress for a People's Agrarian Reform (CPAR), a broad federation of peasant groups whose lobbying efforts were instrumental in the passage of CARL.

Tracing a general downward trend in the activities of NGOs in the Philippines, civil society support of agrarian reform is also declining. Among other reasons, this probably came about when NGOs began to specialize in their chosen fields, and thereby reduced their involvement in broader political and economic issues.

Forestry

A number of civil society groups are working in the forestry sector. However, most of their efforts are uncoordinated and, as a result, fail to achieve their intended impact. An underlying reason for this is their failure to focus on inclusive themes that could serve as a rallying point for collaboration. For example, the more inclusive theme of "sustainable land use" (as opposed to "forest protection") would elicit support from a broader range of stakeholders, including the academe and the private sector (which has a stake in ensuring the continued supply of marketable forest products).

The lack of coordination among NGOs involved in the forestry sector is also due to the absence of a credible personality who can mobilize the various groups. Perhaps this is a role that the bigger conservation groups, such as the Foundation for the Philippine Environment (FPE), Haribon, etc., could consider taking. At the local level, the experience of Social Action Center-

Quezon (and SACs in other areas) demonstrates the potential of the church to catalyze broad support to address forestry issues.

Indigenous Peoples

A promising initiative is the "Forging Partnerships Conference," which has brought NGOs and other resource providers in dialogue with IP leaders and communities. The Conference has enabled IP groups to define development assistance within their own context, formulated protocols for NGO support to IP communities, and established mechanisms to share information (through IP coalitions) and provide assistance (by matching IP needs with NGO capabilities). A permanent steering committee facilitates the sharing of resources.

This development represents a positive shift in NGO attitudes away from paternalism (which had fostered IP dependency in the past), a softening of formerly inflexible ideological positions, and a willingness to engage with other stakeholders.

The government's mining policy has forged a strong link between environmental concerns and IP rights. The "Alyansa Tigil Mina"—a multi-sectoral civil society alliance—has been established for sustained advocacy against mining abuses.

Civil society support for CADC claims has often been limited to the pre-claim period. Few NGOs are committed to and capable of providing the needed support during the post-claim period of resource utilization, which requires governance, livelihood, technical and financial assistance to the IP claimant. As a result, many forest dwellers have found life more difficult during the post-claim period. The remoteness of many CADC areas likewise hampers the delivery of basic social services.

Fisheries

Civil society support for the fisherfolk sector is less than for other sectors. Such support includes awareness raising on fisherfolk rights, legal assistance and case handling, paralegal training, research on fisherfolk issues, and engagement with local governments. The small number of volunteer lawyers can hardly service this sector's huge demand for legal assistance. NGOs in the fisherfolk sector are likewise strapped for funding, and this has forced a number of them to focus on Mindanao, where much donor support is concentrated.

Apart from NGOs, the church has been a key ally in providing information and other types of support toward the resolution of

cases involving fisherfolk. Media, both local and national, have also been supportive of fisherfolk issues.

A noteworthy initiative is Gawad Kalinga (GK), which employs a simple strategy of providing land for the landless, homes for the homeless, food for the hungry and as a result providing dignity and peace for every Filipino. While not focused exclusively on small fisherfolk, a number of Gawad Kalinga projects in Bato, Leyte, Ozamiz, Misamis Occidental and Balangkeyan, and Eastern Samar have successfully addressed the settlement needs of municipal fishers in these areas. It may be appropriate to establish a more formal collaboration between GK and fisherfolk groups.

Fisherfolk have not been as fortunate with LGUs. In general, cooperation between them has not been productive. However, there are notable exceptions, e.g., in Quezon, Davao Oriental and Zambales, where mechanisms for consultation and dialogue have facilitated the identification of fisherfolk settlement sites for inclusion in the municipal CLUP.

In 2006, NFR, together with fisherfolk representatives from Luzon, Visayas and Mindanao, reviewed the Fisheries Code. The review identified seven themes in fisheries, one of them being Fisherfolk Rights and Settlements. This was in response to the increasing number of reports from fishers of court-decreed displacement and eviction. To address this concern, NFR came out with three documents declaring its support for fisherfolk settlements. The first is a Joint Administrative Order (JAO) outlining the process for identification and selection of fishers-beneficiaries and disposability of lands through different modes. The second document is a draft special order for DENR to identify lands of the public domain near the sea that are suitable for settlements (this has been adopted by DENR as a Special Order entitled "*Identification of Public Lands Suitable For Fisherfolk Settlements in Coastal Municipalities and Cities.*") The third NFR document is a proposed municipal ordinance ordering coastal cities and municipalities to identify, acquire, and distribute areas for fisherfolk settlement.

Innovations in Promoting Access to Land and Tenurial Security

Approaches to access/tenurial security that hold the most promise are those that integrate the concerns of tenurial security, live-

lihood, resource management and community empowerment. To some extent, integrated, tenure-based resource management is already embodied in progressive legislation such as IPRA and the Fisheries Code. In part, these community-based, integrated approaches evolved from experiments by NGOs, people's organizations (POs), and reformers in government.

Agrarian Reform

TriPARRD

The Tripartite Partnership in Agrarian Reform and Rural Development (TriPARRD) program of the Philippine Partnership for the Development of Human Resources in Rural Areas (PhiDHARRA), a rural development NGO network, utilized a tripartite approach (cooperation among government, NGO, and farmer's organizations) to promote land tenure improvement, social infrastructure building and agricultural productivity enhancement. The "tripartite approach" as well as many TriPARRD technologies (for instance, on land distribution tracking) have since been institutionalized at the DAR (Delos Reyes & Jopillo, 1994).

Agrarian Reform Communities Development Project (ARCDP)¹¹

The government, through DAR, launched the ARC approach to beneficiary development in 1993. The ARC approach involves the provision of support services, specifically basic social infrastructure, like water, power supply, education and health, for ARB communities living in the same or adjacent barangays, rather than attempting to service all areas covered by CARP.

The second phase of the ARCDP, implemented from 2003–2007, focused on the following interventions: (i) community development and capacity building; (ii) rural infrastructure development; (iii) agriculture and enterprise development; and (iv) financing support.

Farmer Paralegalism

Paralegalism involves educating farmers on the laws that affect their rights. It also includes training on handling legal cases and networking with other advocates. One such paralegal program is Paralegal Education, Skills Advancement and Networking Technology (PESANTech). The project aims to improve the resource tenure of communities through empowered community based legal resource institutions. PESANTech was implemented by SALIGAN, KAISAHAN and BALAOD–Mindanao. From 1993 to 2006, the program covered 21 provinces nationwide.



Forestry

Community Based Forest Management Agreement (CBFMA)

The CBFM Program was instituted by the government in 1995. Its underlying principle is that "equity refers not only to the sharing of benefits but [also] the responsibility of sustainable development." Through the issuance of CBFMAs, the CBFM program provides land tenure to organized upland groups (POs), and entitles them to utilize a designated forest land for a period of 25 years, renewable for another 25 years subject to certain conditions.

Indigenous Peoples

3-Dimensional Mapping of Ancestral Domains

Unlike conventional maps, a 3-dimensional (3-D) map includes 3-D representations of significant natural features (such as mountains, bodies of water, etc.) as well as sites with social, cultural and spiritual significance. A 3-D map thus reflects residents' knowledge and use of a particular area.

Supplemented by Global Positioning Satellite (GPS) technology for accuracy, a 3-D map was used by the Tagbanwa clan in Calamian, Palawan to bolster its application for a CADC over an area which had been earlier appropriated by the local government.

Thus, on 12 June, 1998, six years after the Tagbanwas filed their claim, and despite strong opposition, DENR approved the Tagbanwa's CADC application covering 22,400 hectares of land and waters.

Fisheries

Community-Based Marine Protected Areas

NGOs are promoting the CBMPA approach within the context of the community-based coastal resource management (CBCRM) strategy already adopted by the government. The CBMPA strategy involves the setting up of a fish sanctuary (where absolutely no fishing is allowed) and a fishing area where the small fisherfolk will have preferential access as well as direct management responsibility. These CBMPAs are established in cooperation with local governments. A locally organized committee or council manages the CBMPA (Haribon, 2004).

Lessons from Interventions and Initiatives to Promote Access to Land and Tenurial Security

1. Government is a key factor in the struggle of the basic sectors to gain access to land and tenurial security. LGUs are



particularly important because of their local presence and their regulatory powers over land and natural resources.

2. The issue of land access and tenurial security for the basic sectors cannot be divorced from the country's mainstream economic development strategy. This development paradigm is characterized by subservience to the demands of globalization and a strategy of resource extraction as the major engine of economic growth.
3. The demise of the Congress for People's Agrarian Reform (CPAR) notwithstanding, collaboration (perhaps even unity) among the farming sector at the national level is still possible as long as this is issue-based and the parameters of collaboration are clear and agreed upon by all parties.
4. Studies indicate a trend toward the abandonment, sale, or mortgaging of CARP awarded lands. The sale of such lands has been more pronounced in progressive or urbanized areas where land prices are higher. This phenomenon requires a careful re-thinking of agrarian reform.
5. Information dissemination and education on land access and tenurial security rights remain important tasks. Only a small number of the basic sectors are aware of their rights.
6. Granting IP communities rights over their ancestral domain is highly controversial because the latter are richly endowed with much coveted natural resources. This effort can succeed only by building a supportive broad, multi-sectoral coalition. The inclusive theme of environmental protection—forest

protection in the rural areas—is a good rallying point for collaboration among a broad range of sectors, including LGUs.

7. Building multi-sectoral alliances will require the resolution of internal conflicts among the basic sectors. Conflict resolution will entail more than an acceptable legal framework (Section 59 of IPRA has the beginnings of a legal solution). More important is the creation of a cadre of facilitators who will help sustain the dialogue between competing parties to resolve conflicting claims.

Opportunities and Strategies to Advance Access to Land and Tenurial Security

Opportunities and Challenges

The Philippines has some of the most progressive laws on tenure reform in the region, if not the world. Nevertheless, the Philippines also has one of the most skewed property regimes in the world.

A major challenge is the capacity of government agencies to implement key legislation. Implementing agencies, such as DAR, NCIP, BFAR/DA and DENR, are generally perceived as lacking the resources, expertise and political will to implement decisive tenurial reform. The question of political will reaches the highest levels of government, which continue to be dominated by elite interests.

Globalization and modernization are also threatening national sovereignty, compromising ecological integrity, and imposing varied and new demands on the nation, its people and natural resources. For example, the government policy favoring large-scale, commercial mining has affected all social justice and ecological programs, threatening the integrity of the lands and waters used by farmers, fishers and IPs.

Clearly, the issue of land and water access and tenurial security for the basic sectors cannot be divorced from the dominant development paradigm and the mainstream economic development strategy.

Progress in tenurial security for marginalized sectors is the result of painstaking advocacy and social innovation by NGOs, POs and reformers in government. Despite divisions among the

poor and the groups that support them, collaboration (even unity) of pro-poor forces at the national and local levels is possible as long as this is issue-based and all parties agree on the parameters of collaboration.

Response

In response to the above challenges, a number of Philippine civil society organizations—representing a broad spectrum of NGO networks and support groups, agrarian reform advocates, environmental conservation organizations, federations of peasants, fisherfolk, indigenous communities and forest dwellers—convened in January 2008 to commit to an advocacy program and cross-sectoral actions intended to promote access and control of the basic sectors to land, water and other natural resources.

The convergence of these civil society groups is based on two basic principles that they hold in common:

1. Access and control to land and water resources are crucial to the survival and dignity of the basic sectors. For this reason, their rights to land and water must be prioritized over those of other users.
2. The respective concerns of the basic sectors on access and control over land and water are not in contradiction to each other, nor to the goal of conservation and development of national resources. Rather, security of tenure over land and water resources by the basic sectors is a major prerequisite for national development and the conservation of land and water. The participation of the basic sectors in the determination, planning and execution of land and water use is therefore of paramount importance.

Advocacy Program

The advocacy program, aimed at promoting access to land and water and tenure security, and which will be implemented over the next five years, is expected to achieve the following results:

1. Passage of a National Land Use Act.

The National Land Use Act shall articulate the national policy that will regulate the interests of the different stakeholders (and particularly, the basic sectors). Specifically, the National Land Use Act shall: (1) address conflicting provisions on land use found in different laws like CARP, IPRA, UDHA, NIPAS, Fisheries Code, etc.; (2) provide for a rational land use policy, taking into consideration the lands to be protected, the lands to be used for productive purposes, settlements development, and infrastructure development;

and (3) be participatory in nature. Congress should ensure adequate funding for the National Land Use Act, particularly for the resolution of disputes and delineation of lands.

Agrarian Reform

2. National Debate on the Role of Agrarian Reform.

The cessation of funding for the CARP in June 2008 has re-focused national attention on agrarian reform. This is an opportunity to launch a national debate on agrarian reform as a prerequisite for industrialization, local market development, and broad-based sustainable national development.

3. Amended CARP Law

The advocacy for an extension of CARP funding is likewise an opportunity to organize the critical mass of peasant groups and agrarian reform advocates (including the Church and reformists in government) to lobby Congress for an amended CARP law with adequate funding and incorporating the important reforms to hasten land distribution and improve the overall implementation of agrarian reform. A proposal to this end is pending before the Lower House of Congress as House Bill 1257.

Forestry

4. Clear Primary Mandate of DENR.

DENR, the controller-agency for public lands and natural resources, has a dual (at times, conflicting) mandate: (1) to protect and conserve the environment; and (2) to promote the utilization of natural resources. This dual mandate creates confusion and conflict in the policies and operations of the department, resulting in conflicting land uses. The primary mandate of DENR should be clarified in order to resolve this confusion and conflicts.

5. Co-Management.

Collaborative management and strong people's participation should be the guiding principle in forest management. This shall enable LGUs and other sectors to actively participate in forest management. This will also facilitate the infusion of additional resources and the decentralization of responsibilities and accountability such that benefits accrue to local communities.

6. Forest Tenurial Instruments that are Community-Based.

Community-based forest tenurial instruments should recognize the link between forest protection and a security of tenure among forest dwelling communities. They should be flexible and be based on existing community practices and

traditions, integrity of ecosystems and appropriate management units.

7. Mapping of Forest Lands.

Estimates of Philippine forest cover are questionable because of the dearth of reliable maps and the decision of DENR to include tree plantations and orchards as part of forest lands. Mapping should be undertaken to determine the extent and location of forest areas and to document the overlapping claims in these areas.

8. Environmental and Natural Resource Accounting.

An environment and natural resources accounting system should be adopted in the preparation of national income accounts in order to internalize environmental costs and benefits.

Indigenous Peoples

9. Strict Enforcement of the IPRA.

The capacities of NCIP should be strengthened and held accountable as IPRA's implementing agency, and funding should be assured for the implementation of Ancestral Domain Management Plans.

10. Revised FPIC Procedures.

The procedures of the current revised FPIC process should be reviewed and changed to conform to the traditional decision-making processes of the tribe(s) concerned. Tribal decisions based on the new FPIC process should be implemented strictly, particularly with regard to decisions involving mining and other extractive activities within the ancestral domain.

11. Established Conflict Resolution Mechanisms.

The competing claims of IPs and other basic sectors on the same land have resulted in an extremely polarized situation that is difficult to resolve. The IPRA should serve as the legal framework for the resolution of these competing claims and the Ancestral Domain Management Plan adopted as the overall development framework to which the plans of other stakeholders can be incorporated. A cadre of facilitators should also be formed to ensure the peaceful resolution of these claims at the local level.

12. Sustained Information Dissemination.

There should be continuing Information, Education and Communication (IEC) on the IPRA, as many are still unaware of the law's specific provisions. The IEC campaign should also aim at building broad support for the implementation of the IPRA.

*Fisherfolk***13. Speedy Implementation of the Fisheries Code.**

This involves: (1) allocation of General Appropriations Act (GAA) funds; (2) delineation of municipal waters using the framework of DENR Department Administrative Order (DAO) 17; and (3) the immediate issuance of the IRRs for Section 108 to guide the establishment of fisherfolk settlements. The IRR should be prepared jointly by BFAR/DA, DILG, DENR, HUDCC and other concerned agencies.

14. Amendment of Section 108 of the Fisheries Code.

Section 108 of the Fisheries Code (RA 8550) should be amended such that in place of the DA, HUDCC should take on the task of providing for the establishment and creation of fisherfolk settlements, and provisions for land ownership by municipal fishers (which are absent in the Fisheries Code) are included.

15. Revise FLA Guidelines.

Guidelines on FLAs should be revised to prioritize the FLA applications of small fisherfolk, and to make the FLA more affordable.

Cross-Sectoral Actions

In addition to the above advocacy program, participating civil society organizations also agreed to undertake the following cross-sectoral actions:

16. Inter-sectoral Dialogues and Collaboration.

In order to build consensus and learn from each other, the groups shall convene regular inter-sectoral dialogues and collaboration. They shall advocate and build internal capacities to help form and strengthen coalitions of people's organizations.

17. Electoral Education and Reform.

The groups shall pursue and participate as a coalition in massive electoral education and in the pursuit of electoral and political reforms to enable the basic sectors to put in place political leaders who will implement laws that promote social development and the protection of the welfare of the masses.

18. Budget Monitoring.

The groups shall participate in the formulation of budgets, and monitor the budget utilization of government agencies implementing the major land and water tenure programs (i.e., DAR, NCIP, DENR, and BFAR-DA).

19. Monitoring of Human Rights Violations.

The groups shall monitor, document and disseminate cases

of human rights violations in relation to land and water tenure issues.

20. Alternative Reports on Tenure Reform.

The groups shall document, consolidate and disseminate alternative reports assessing the implementation and effectiveness of land and water tenure reform legislations and programs.

Endnotes

- ¹ Based on the summary prepared by Mr. Joel Pagsanghan and Jennifer Javier for the Philippine Partnership for the Development of Human Resources in Rural Areas (PhilDHRRA) with input from summaries of the Round-table discussions of the farmers, IPs, forestry and fisherfolk sectors, Quezon City, August to November 2007.
- ² As cited by the International Fund for Agricultural Development (IFAD) in their Rural Poverty Report on the Philippines, www.ruralpovertyportal.org/english/regions/asia/phl/index.htm, 2007.
- ³ Based on the paper prepared by Atty. Aison S. Garcia and Atty. Marlon J. Manuel, Peasant Unit of SALIGAN for the Country Paper of ANGO on Access to Land and Tenurial Security, Quezon City, 2007.
- ⁴ Excerpted from Antonio B. Quizon, Meynardo Mendoza, Gregorio Quitangon, Maricel Tolentino, Land Partnerships in the Philippines, Quezon City, ANGO, 2004.
- ⁵ Department of Agrarian Reform states in its June 2007 Accomplishment Report that the total CARP Scope is 9.12 million hectares, of which 5.16 million hectares are assigned to DAR and 3.96 million hectares to DENR.
- ⁶ The Philippines has one of the highest annual rates of urban growth among developing countries—averaging 5.1% from 1960–1995. The estimated housing shortage from 1993 to 1998 was placed at 3.72 million housing units. (Also see Annex B, Notes on Urbanization and Housing Issues in the Philippines)
- ⁷ Working with People section, www.haribon.org.ph
- ⁸ See section 5 of RA 7586
- ⁹ RA 6657, Section 40, (3) Sparsely Occupied Public Agricultural Lands—Sparsely occupied agricultural lands of the public domain shall be surveyed, proclaimed and developed as farm settlements for qualified landless people based on an organized program to ensure their orderly and early development.
Agricultural land allocations shall be made for ideal family-size farms as determined by the Presidential Agrarian Reform Committee (PARC). Pioneers and other settlers shall be treated equally in every respect.



¹⁰ RA 6657, Section 40 (2) Subject to the requirement of a balanced ecology and conservation of water resources, suitable areas, as determined by the Department of Environment and Natural Resources (DENR), in logging, mining and pasture areas, shall be opened up for agrarian settlements whose beneficiaries shall be required to undertake reforestation and conservation production methods. Subject to existing laws, rules and regulations, settlers and members of tribal communities shall be allowed to enjoy and exploit the products of the forest other than timber within the logging concessions.

¹¹ Contributed by the John Carrol Institute for Church and Social Issues citing from Balisacan, Arsenio M. May 2007. Agrarian Reform and Poverty Reduction in the Philippines. Policy Dialogue on Agrarian Reform Issues in Rural Development and Poverty Alleviation. Traders Hotel, Manila, www.dar.gov.ph/faps_arcdp2.html, www.davaonorte.gov.ph/profile/sep_4_6_5.htm

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The International Land Coalition is a global alliance of civil society and inter-governmental organizations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building.



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SALIGAN

Land Watch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves civil society organizations in six countries—Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines. It aims to take stock of significant changes in land policy; undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences of coalition-building and actions on land rights issues.

This book presents regional and country perspectives on access to land for the rural poor from the six countries mentioned above. It makes assessments of land reforms and their implementation, and the legal frameworks and conditions necessary to advance land rights. The publication also examines the changing roles of government, the private sector, NGOs and civil society in influencing agrarian reform and sustainable development for the rural poor. Finally, it puts forward an agenda for actors and activists in pursuit of more equitable access to land in the Asian region