



## LAND TENURE AND POVERTY IN ANCESTRAL DOMAINS

### RURAL POVERTY AND LAND TENURE

Poverty in the Philippines remains highly agricultural in nature (PIDS, 2012). In 2009, poverty incidence is predominant among agricultural households at 57 percent compared to that of non-agricultural (17 percent). Farmers and fishermen are consistently recorded as the two sectors with the highest poverty incidence since 2006.

Poverty incidence is highest in the uplands. According to the Philippine Institute for Development Studies (PIDS) in 2015, 68 percent of households below the poverty

line live in the said areas and are engaged in forestry activities. Majority of these upland dwellers are indigenous peoples (IPs) that constitute 14 to 15 percent of the Philippine population. Most of the uplands, for the IPs, are part of their traditional territories or ancestral domains where they perform their indigenous rituals and lifeways and depend on traditional livelihoods (i.e. swidden agriculture).

Rural poverty is a result of the highly-skewed distribution of wealth and land since the Spanish regime. Recognized as a solution to the incessant problem of poverty, the Philippine Government, through the

Constitution, has focused on policy on equitable distribution of land and wealth as a pre-requisite to achieving a balanced ecology. Corollary to such Constitutional policy are the enactment of progressive asset reform laws on the alienation of lands and their use, resource conservation and protection, and recognition of the rights of farmers, indigenous communities, and other marginalized groups – which included the Indigenous Peoples Rights Act (Republic Act/RA 8371) or IPRA legislated in 1997. This marked the Philippines to hold the first country in Southeast Asia to enact a policy that recognizes, protects, and promotes the rights of indigenous cultural communities/ indigenous peoples (ICCs/IPs). Such rights include, among others, the right of ownership, right to develop lands and natural resources, right to stay in their territories, right to return to their territories in cases of displacement, right to regulate the entry of migrants and, right to resolve conflicts through the enforcement of customary law (IPRA, 1997).

### THE INDIGENOUS PEOPLES RIGHTS ACT (IPRA) AND ITS IMPLEMENTATION

IPRA recognizes the rights of ICCs/IPs over their ancestral domains and provides for a process of titling of lands through the issuance of Certificates of Ancestral Domain/Ancestral Land Titles (CADTs/CALTs). 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. 3b).*
- *It shall include ancestral land, forests, pasture, residential, agricultural, and*

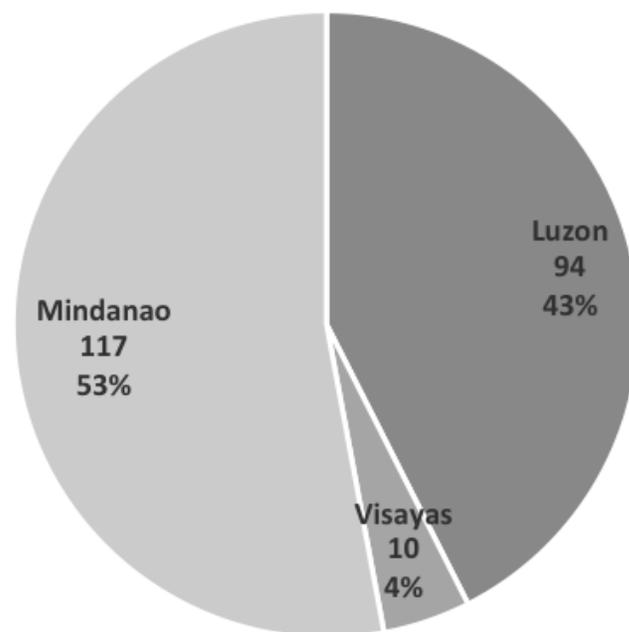


Figure 1. Approved CADTs in Luzon, Visayas, and Mindanao.

Source: NCIP, 2018.

*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).*

Following an application of a new claim<sup>1</sup> and issuance of Certificate of Ancestral Domain/ Land Claim (CADC or CALC), a CADT or CALT shall be awarded to the community. CADTs or CALTs are tenurial instruments that shall foster legal recognition and respect of the community's right to traditionally manage, control, use, protect, and develop their ancestral domain in perpetuity.

<sup>1</sup> Entails submission of a valid perimeter map, evidences and proofs, and the accomplishment of an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP).

Governance of CADTs, however, 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 ICCs/IPs.

After more than two decades, 221 CADTs were awarded to ICCs/IPs benefiting 1,206,026 individuals. It covers a total area of 5,413,772.71 hectares, equivalent to 18 percent of the total land area of the Philippines. Some 53 percent, or more than half (117) of the CADTs approved are in Mindanao, while 94 CADTs (43 percent) are in Luzon and 10 CADTs (5 percent) are in the Visayas.

This is highly commendable and, as reported, there is no other country in the world that can lay claim to a similar accomplishment. However, in the span of eight years (2002 to 2010), only 156 CADTs were approved or equivalent to 19.5 CADTs per year. This figure dropped drastically in the next seven years to 9.2 CADTs per year, from 2011 to 2018, when only 65 titles were approved.

Among the major reasons for the delays in title approvals (in 2011 to 2018) is 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.

### **EMERGING ISSUES FACED BY THE IPS**

However, a closer look, 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 ICCs/IPs.

The Commission on Audit (COA) Review of NCIP performance for 2011 corroborates non-compliance of NCIP personnel to the regular processes and to the approved Work and Financial Plans (WFP) of the CADT applications. It stated, “the process of CADT application was not in consonance with the approved WFP [Work and Financial Plans], this resulted in the delayed processing of CADT application which deprived the IPs of their rights provided for in Sec. 7, of the IPRA.”<sup>2</sup>

- **Policy and Jurisdictional Overlaps.** In efforts to provide just land allocation for all purposes – i.e. food production, settlements, infrastructures, and other commercial needs such as tourism, mining, and industrialization – the Philippine government has enacted various laws on land specific to these uses. Resource governance in the country, however, took on a sectoral approach in enacting laws establishing administrative agencies, and resolving disputes – resulting to overlaps in policy provisions and implementation jurisdictions. In the case of policies on resources within ancestral domains, boundary delineation overlaps of titles and resolution of disputes, among others, have become a major concern with NCIP, Department of Agrarian Reform (DAR), and Department of Environment and Natural Resources (DENR). To address these concerns, these agencies together with

<sup>2</sup> NCIP-COA-ES2011, Commission on Audit, Quezon City Philippines



Leaders and some members of the NAMAMAYUK during one of their activities within the GLTN SALaR project. (photo by Xavier Science Foundation, Inc.).

Land Registration Authority (LRA) issued a Joint Administrative Order (JAO) #01 of 2012. Specifically, the JAO 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 CADTs/CALTs. However, its implementation 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 as outlined. 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 LRA” (De Vera, 2018).

- **Commercial Pressures.** With economic growth and globalization, but with limited available lands in the downstreams, ancestral domains have become

attractive to investors resulting to encroachments of various industries in these areas. 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, IPs have to contend with these initiatives that have their own legal mandates such as the Economic Zones and the Mining Acts.

- **Poor land governance and administration.** With multiple laws on land administration, there are at least 19 government agencies<sup>3</sup> involved in land administration. This results in a complex web of overlapping bureaucratic functions and processes in each of the areas of land classification: (a) conduct and approval of land surveying;

<sup>3</sup> 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.

(b) disposition of land; (c) maintenance of maps and records; (d) compilation of maps and land information; and, (e) land valuation. This provides an enabling environment for institutionalized chaos characterized by bureaucratic “turf-wars.” At the same time, accessibility of administrative and management information varies as responsible agencies have their own information management systems.

- **Implementing Rules and Regulations (IRR) of the Expanded National Integrated Protected Area System (ENIPAS).** On 22 June 2018, Republic Act 1738 or the Expanded National Integrated Protected Areas System (ENIPAS) was enacted into law and has declared in policy that the traditional resource governance of ICCs/IPs shall be recognized within State-declared protected areas (PAs). This reveals the inherent inter-dependency of nature conservation with the recognition and respect of the traditional governance of ICCs/IPs.

The ENIPAS is significant since 75 percent (96 of 128) of the key biodiversity areas in the Philippines are within the traditional territories of ICCs/IPs. Also, there are at least 84 ancestral domains that fall within 62 PAs affecting a total of 1,227,158.97 hectares of ADs nationwide.

In a National Orientation of IPs on the ENIPAS organized by the Philippine Indigenous Community Conserved Areas Consortium (BUKLURAN) last 25 March 2019, its members gathered to discuss and provided comments on the IRR of the said law. The BUKLURAN statement outlined the following critique:<sup>4</sup>

- The ENIPAS IRR should not reduce self-determination of ICCs as stated in the IPRA in that native titles of ICCs must be recognized regardless if the State has been able to issue CADTs/CALTs;
- Indigenous governance, land ownership patterns, and sustainable traditional resource rights should be recognized, respected, protected, promoted, and remain central to formulating and implementing policies and programs on biodiversity conservation within ADs;
- Indigenous governance and customary law shall prevail where ancestral domains share boundaries with PAs, and that indigenous political structures and customary decision-making, conflict resolution, and traditional justice systems should be recognized and adopted, and that delineation of zones should be a joint undertaking of ICCs/IPs, the DENR, and others stakeholders;
- Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs) should prevail over management plans in ancestral domains sharing boundaries with PAs, and shall form part of the Protected Area Management Plan (PAMP) and thus be allocated resources for the implementation thereof;
- Voices of IPs should be meaningfully and well-represented in the PAMB with at least one to three representatives per ICC affected by PAs selected through legitimate and recognized processes per their customary governance systems;
- Enforcement of environment and natural resources laws within ancestral domains affected by PAs such as

<sup>4</sup> These inputs were formally transmitted to the Biodiversity Management Bureau of the Department of Environment and Natural Resources (DENR-BMB) on 28 March 2019, to which the DENR replied that such inputs shall be “seriously considered.”

through *Bantay Gubat* and other programs should be solely deputized to ICCs/IPs in due recognition of their right to govern their traditional territories; and,

- Technical assistance from DENR should be provided only if beneficial and meaningful to ICCs/IPs with the guarantee that their indigenous knowledge, systems, and practices should be recognized, respected, and acknowledged, and should follow modes of support that they identified and approved.

## WAYS FORWARD

While 18 percent of the country has already been legally covered and awarded to IPs, much still needs to be done – largely on the process of survey delineation of ancestral domains. The current delineation process is expensive, long and tedious, focuses more on the technical acceptability of spatial data, often leaves very little participation to the affected communities, and rarely accommodates critical spatial information from the perspective of the local people.

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. Some of the recommendations that IP organizations have outlined include:

- The NCIP should have the political will to assert its authority granted by the IPRA. It should not give up its authority merely based on ensuring harmony with other government agencies. The IPRA is a special law and rightfully challenges the status quo in order to correct the centuries of injustice suffered by the IPs. The NCIP should

take the lead in challenging the national legal system. The very basis of the IPRA is the Native Title, which in itself is already a strong message that IPRA does not recognize the Regalian Doctrine.<sup>5</sup>

- Implement the recommendations of the COA Audit team, which in its report in 2017 recommended that the NCIP: a) revisit the omnibus rules on the recognition and titling of ancestral domains/land on the process flow of delineation, and, b) formulate policies to expedite the compliance of the concerned provincial offices to the delayed implementation on the delineation and recognition of ancestral domain/land titles, and the submission of the necessary reports so as not to further delay the issuance of a CADT (COA, 2017).
- In this regard, equal effort and resources should be allocated to the strengthening of the capacities of communities to active and effectively engage other stakeholders. This shall enable the communities to effectively enforce their traditional governance over their ancestral lands and domains. □

*This document draws heavily from the Philippine Land Watch Country Paper "Governance of Agricultural Lands, Ancestral Domains and Aquatic Resources in the Philippines" prepared by Roel Ravanera for ANGOC as part of the Land Watch Asia campaign with support from the International Land Coalition (ILC). Highlights of the said paper was presented to the Regional Land Use Committee of Region X. For more details, refer to <https://angoc.org/portal/state-of-land-rights-and-land-governance-in-eight-asian-countries/>*

*Additional information are sourced from the paper prepared by Dave de Vera of the Philippine Association For Intercultural Development (PAFID) on "Recognition of Indigenous Peoples' Ancestral Domains" and the BUKLURAN's statement on "Indigenous Peoples' Declaration on the Recognition and Respect of Indigenous Governance in Ancestral Domains Affected by Protected Areas."*

*The views expressed in this brief do not necessarily reflect those of GLTN, UN Habitat, and BMZ.*

<sup>5</sup> A political system which states that all lands are owned by the State.



Mt. Kalatungan elders conduct a ritual for the GLTN SALaR project during the Training of Trainers on Landscape Governance held in Valencia, Bukidnon (photo by Jerome Dumlao, ANGOC).

### SOURCES AND REFERENCES CITED:

- BUKLURAN. (March 2019). *Indigenous Peoples' Declaration on the Recognition and Respect of Indigenous Governance in Ancestral Domains Affected by Protected Areas*. Quezon City. (Statement)
- Commission on Audit (COA). Executive Summary. *COA NCIP Annual Audit Report Executive Summary*. For various years, 2002-2017. Retrieved from: [https://www.coa.gov.ph/phocadownloadpap/userupload/annual\\_audit\\_report/NGAs/2011/National-Government-Sector/Office-of-the-pres/NCIP](https://www.coa.gov.ph/phocadownloadpap/userupload/annual_audit_report/NGAs/2011/National-Government-Sector/Office-of-the-pres/NCIP).
- De Vera, D. (2018). Recognition of indigenous peoples' ancestral domains. In ANGOC Ed. (2018). *State of Land and Resource Tenure Reform in the Philippines 2018*. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). pp. 75-87.
- National Commission on Indigenous Peoples (NCIP). (2018). *Distribution of approved CADTs Nationwide*. Quezon City: NCIP. [Data set].
- Philippine Institute for Development Studies (PIDS). (2012). *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>.
- Quizon, A., Marzan, A., de Vera, D., and Rodriguez, M. (2018). *State of Land and Resource Tenure Reform in the Philippines 2018*. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). Retrieved from <https://angoc.org/portal/state-of-land-and-resource-tenure-reform-in-the-philippines-2018/>
- Ravanera, R. (2018). Governance of Agricultural Lands, Ancestral Domains, and Aquatic Resources 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*. Quezon City: ANGOC. pp. 222-253. Retrieved from <https://angoc.org/portal/state-of-land-rights-and-land-governance-in-eight-asian-countries/>
- Republic of the Philippines. (1992). *Republic Act No. 8371: Indigenous People's Rights Act*. Metro Manila: Congress of the Philippines.

## PROJECT IMPLEMENTERS AND PARTNERS



The **Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)** is a regional coalition of national and regional CSOs in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. For more information, refer to [www.angoc.org](http://www.angoc.org)



The **Xavier Science Foundation, Inc. (XSF)** is a legal, non-stock, non-profit, non-government organization advocating programs and projects that will alleviate poverty and promote social empowerment.

XSF serves as a conduit of funds to support development projects, innovative programs, fora, and dialogues. For more information, refer to [www.xsfoundationinc.org](http://www.xsfoundationinc.org)



The **United Nations Human Settlements Programme (UN-Habitat)** is working

towards a better urban future. Its mission is to promote socially and environmentally sustainable human settlements development and the achievement of adequate shelter for all. It facilitates the Global Land Tool Network (GLTN) and hosts its Secretariat. For more information, refer to [www.unhabitat.org](http://www.unhabitat.org)



The **Global Land Tool Network (GLTN)** is an alliance of global, regional, and national partners contributing to poverty alleviation through land

reform, improved land management, and security of tenure particularly through the development and dissemination of pro-poor and gender sensitive tools. For more information, refer to [www.gltn.net](http://www.gltn.net)



The **German Federal Ministry for Economic Cooperation and Development (BMZ)** is the primary State development body in Germany. BMZ's governing principle is the

protection of human rights, which includes the right to live in peace and freedom, and to help address the poverty issues in the world. For more information, refer to [www.bmz.de](http://www.bmz.de)

Concerns over food insecurity in developing countries are reflected in the Sustainable Development Goals (SDGs) to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture by 2030. Given that land plays an important role in the livelihoods of most people in developing countries, food security and poverty reduction cannot be achieved unless issues of access to land, security of tenure, and the capacity to use land productively and in a sustainable manner are addressed.

Thus, the Global Land Tool Network (GLTN), as facilitated by UN-Habitat, is implementing "Secure Access to Land and Resources (SALaR)" Project through the support of Germany's Federal Ministry of Economic Cooperation and Development (BMZ), with the overall goal of improving land and natural resources tenure security of rural smallholder farmers in Uganda, the Philippines, and Laos.

In the Philippines, while a number of land laws are being implemented, several gaps need to be addressed to improve the situation of their intended beneficiaries. Hence, "**Improving Tenure Security of Smallholder Farmers in Select Areas in the Philippines**" aims to contribute to the goal of SALaR Project.

This project is implemented by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) in partnership with Xavier Science Foundation, Inc. (XSF), with technical and financial support from Global Land Tool Network (GLTN) and Germany's Ministry of Economic Cooperation and Development (BMZ).

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