



Policy Brief

PHILIPPINES

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RIGHT TO LAND TENURE

Bridging Customary Practices and Land Tenure Rights

Introduction

Land tenure security is the bedrock of indigenous peoples' sustainable development and as such, the indigenous peoples of the Philippines are motivated to secure their lands and territories because of their desire to secure the future of their children.¹

This policy brief summarizes key findings and recommendations on land tenure in a study done by Tebtebba, entitled “*Pagsasalinhahi: Asserting and safeguarding Indigenous Peoples' Rights for the Next Generation.*”

The Philippine Indigenous Peoples' Rights Act (IPRA) provides legal protection for indigenous peoples' rights to their lands, territories and resources. The IPRA details indigenous peoples' rights to ancestral domains, which include the right of ownership, right to develop lands and natural resources, right to stay in the territories, right in case of displacement (temporary or permanent resettlement and right to return), right to regulate entry of migrants, right to safe and clean air and water, right to claim parts of reservations, the right to resolve conflict and delineation and recognition of ancestral domains.²



The legal protection for indigenous peoples' rights to their lands, territories and resources is theoretically recognized though rarely exercised. This is evident in the long and tedious process in the processing of official land titles. The basis of state titling has also compromised the spiritual, cultural and traditional practices of the indigenous peoples.

¹ Leah Enkiwe-Abayao, College of Social Sciences, University of the Philippines Baguio.

² Republic Act No. 8371.



Land Tenure and Children

The desire to secure ownership of ancestral domains cannot be separated from the need to strengthen the transmission of knowledge to the indigenous youth and children. In the collection of data, the children of the communities involved were key informants and part of the Focus Group Discussions. During community consultations in Aramaywan, Quezon, Palawan, the children expressed their interest to know more about their ancestral domain and their willingness to participate in activities related to customary and official tenure systems.

The children also expressed desire to know the boundary markers of their ancestral domain, the different sections that comprise it, and the knowledge relative to the growing of important local food products in their ancestral domain.

There is an urgent need to respond to the desire of the children while they still manifest this desire. In some cases, children and young adults are already lured to the immediate and temporary rewards of commercial activities and feel no affinity to their ancestral domain.

It is also essential for the children and the youth who are to inherit the ancestral domain to participate in

matters that relate to securing land tenure and other issues related to their ancestral domain. This will not just serve to facilitate customary practices but will create an intrinsic understanding, appreciation and value for their ancestral domain.

The existence of legal instruments to secure ancestral domain does not prevent the continuous customary practices that help identify and secure territory. Some indigenous communities are of the belief that the legal instruments protects and strengthens their claim to their ancestral domain whereas others consider the legal instruments as a threat to their land tenure.

Factors that Support Land Tenure Rights

Official recognition of Indigenous Peoples' Rights to their Ancestral Domains

The Certificate of Ancestral Domain Title (CADT) serves as the official recognition of indigenous peoples' rights to their ancestral domain. The Tagbanua and Pala'wan of Quezon, Palawan recognize the importance of the CADT despite customary land tenure mechanisms in place. Because of the aggressive promotion of commercial ventures in southern Palawan, they believe that securing a CADT will help them secure their lands.

Ancestral Domains are protected, valued and used by indigenous peoples

In the Philippines, use of ancestral domain is according to customary practices and principles. The participants of the research affirmed the continuity of these traditional practices. The communities adhere to customary practices that promote sustainable use of resources. This is evidenced by their identification of protected sacred sites.

Community maps of the Tagbanua and Pala'wan described the components of their ancestral domain,

which included forests, water systems, agricultural areas and sacred places. Knowledge of these sacred sites is essential so as to ensure that the Local Government Units respect these sites in their tourism-related plans.

The Ata and Bukidnon of Salvador-Benedicto, Negros Occidental noted that part of their activities to protect their ancestral domain is the planting of trees that are important to them.

The Dumagat-Agta of General Nakar, Quezon also identified sacred sites. They have also identified sanctuaries within their domain and shared their practice of prohibiting the use of soap in the Masla River to keep the water clean.

Factors that Weaken Land Tenure Rights

Problematic system of implementation of land tenure rights of indigenous peoples

An identified weakness in implementation of land tenure rights would be the lack of support from the National Commission on Indigenous Peoples (NCIP), the government agency mandated to protect and promote the interest and well-being of indigenous peoples. The NCIP administers the process of official recognition in coordination with other state agencies such as Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR) and the Land Registration Authority (LRA).

The joint DAR-DENR-LRA-NCIP Administrative Order 01 of 2012 has been identified as a problematic policy to the recognition of ownership of the ancestral domain of indigenous peoples. This Administrative Order states that land titles with contentious issues or conflicting claims between and among the agencies involved would mean the suspension of the titling and registration for CADTs or CALTs by NCIP. There are other concerns with the Joint Administrative Order but, overall, applica-

tions for CADTs remain pending with no possibility of immediate resolution.

National development programs threaten security of ancestral domain

There have been several reports of inaction of the NCIP in relation to government personnel implementing national development programs, which do not comply with existing laws. The reports are not limited to government programs but private commercial ventures as well. In line with this, the agro-forestry program of the government has also deprived indigenous peoples from using their ancestral land. The program has also undermined traditional land and forest management practices. Documentation of these cases serves as evidence of the non-fulfillment of the right of indigenous peoples to develop lands and natural resources.

Migrants encroaching indigenous peoples' ancestral domain

During times when indigenous peoples follow the customary practice of a fallow period, migrants use the land and become silent land grabbers as they initially ask permission to use the fallow land and end up declaring ownership of land within the ancestral domain. This is the case in Aramaywan, wherein swidden farmlands that were left to fallow by the Pala'wan were suddenly farmed by Ilongo men.

Corporations grab land and promote commercial use of ancestral domains

Commercialization and commoditization of lands and water resources in indigenous communities weaken land tenure. Among these activities, extractive industries specifically mining is the most threatening. Without the CADT, it is difficult for indigenous peoples to assert their rights to the ancestral domain. There are several incidents of land grabbing as in the case of the Agumil Corporation for palm oil plantations wherein a Free, Prior and Informed Consent (FPIC) was not sought.

Policy Recommendations

Land tenure and children

There is a need to recognize the rights and roles of the indigenous youth and children on delineation of traditional territories. This can be done by the support of youth programs and recognition of youth leaders through the different presidential commissions to give the youth and children a voice in all matters related to land tenure.

Support land tenure rights

It is necessary to legally recognize and protect the rights of indigenous peoples to their lands, territories and resources through appropriate measures and policies, including declaring cultural heritage sites, sacred sites and other areas of spiritual significance to them as No Go zones for extractive industries, aggressive tourism projects and other destructive projects.

Traditional and forest management practices should be emphasized and strengthened instead of undermined by government agencies, specifically the Department of Environment and Natural Resources (DENR). An Executive Order (EO) should be created so that DENR can expand on existing laws thereby recognizing and institutionalizing traditional and forest management practices. This ensures that the DENR does not undermine traditional land and

forest management practices as in the case of the National Greening Program. To align efforts, the government should also review the existing NGP program.

Facilitate/fast track the issuance of CADTs

In order to fast track the issuance of CADTs, the DAR-DENR-LRA-NCIP Administrative Order (AO) 01 of 2012 must be repealed. As long as the AO is being implemented, application for CADTs will remain suspended, considering the complex bureaucratic mechanism necessary to unravel the contentious issues or conflicting claims. This AO has taken hostage the legal instruments that were crafted for the security of land tenure of the indigenous peoples.

Relative to this concern is that the NCIP should undergo a restructuring since the existing structure prevents the agency from fulfilling its mandate. It is also necessary to streamline the omnibus rules on titling to allow indigenous mapping, considering the dearth of personnel in the NCIP.

The budget for the Philippine Indigenous Peoples Ethnographies (PIPE) should also be reinstated so as to contribute to the fast-tracking of delineation of Ancestral Domain.

An AO should be created to clarify the provisions in the IPRA even without the CADT.

This policy brief is developed and based on the findings of the 2017 study entitled “Pagsasalinhahi: Asserting and Safeguarding Indigenous Peoples’ Rights for the Next Generation,” a research led by Wilfredo Vidal Alangui with component reports from Leah Enkiwe-Abayao, Corazon L. Abansi, Maria Victoria P. De Guzman, Bernice A. See, Maria Teresa Guia-Padilla with James Israel Alim and Abigail Kitma and commissioned by Tebtebba, with support from UNICEF and OHCHR. The statements in this publication are the views of the author(s) and do not necessarily reflect the policies or the views of UNICEF and OHCHR.

Please address all inquiries to:



MAIN OFFICE:

No. 1 Roman Ayson Road, Baguio City 2600, Philippines
Tel. No. 63 74 4447703 * Tel/Fax No. 63 74 4439459
Email: tebtebba@tebtebba.org
Websites: www.tebtebba.org, www.indigenousclimate.org

MANILA OFFICE:

Unit 333, Eagle Court Condominium
26 Matalino St., Diliman, Quezon City 1100, Philippines
Tel/Fax No. 63 2 4410336
Email: tebtebba.manila@tebtebba.org

UNITED NATIONS CHILDREN'S FUND

14th Floor, North Tower
Rockwell Business Center Sheridan
Sheridan Street corner Uniter Street
Highway Hills, Mandaluyong City 1550
PHILIPPINES
Website: <http://www.unicef.org/philippines>

