

# **INFLUENCE OF LAND GOVERNANCE ON JOB CREATION IN MINDANAO (MIN-LGAF AND JOBS) FINAL REPORT**

**PREPARED FOR THE WORLD BANK**

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**Floradema C. Eleazar, Roel Ravanera, Jose Gatus and  
Bonapart Masangcay**

**LAND AND GOVERNANCE INNOVATIONS CONSULTANTS, INC.**



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## LIST OF ACRONYMS

A&D	Alienable and Disposable
A2A	Anywhere to Anywhere Service
AAB	Authorized Agent Bank
ADB/JFPR REGALA Project	Asian Development Bank/Japan Fund for Poverty Reduction Support to Local Government Revenue Generation and Land Administration Reforms Project
ADB-RETA	Asian Development Bank – Regional Technical Assistance
ADR	Alternative Dispute Resolution
ADSDPPs	Ancestral Domain Sustainable Development Protection Plans
AFFLA	Agroforestry Farm Lease Agreements
ALI	Agrarian Law Implementation
APJR	Action Program for Judicial Reform
ARB	Agrarian Reforms Beneficiaries
ARMM	Autonomous Region for Muslim Mindanao
AusAID	Australian Agency for International Development
AVAs	Agri-business Venture Agreements
BARC	Barangay Agrarian Reform Committee
BFAR	Bureau of Fisheries and Aquatic Resources
BIR	Bureau of Internal Revenue
BJS	Barangay Justice System
BLGF	Bureau of Local Government Finance
BOI	Board of Investments
BOI-DTI	Board of Investment – Department of Trade and Industry
BOO	Build Own and Operate
BOSSAC	Business One Stop Shop Action Center
BWISER	Biodiversity and Watersheds Improved for Economic Resilience
CA	Commonwealth Act
CAB	Comprehensive Agreement for Bangsamoro
CADTs	Certificate of Ancestral Domain Titles
CALTs	Certificate of Ancestral Land Title
CAO	City Assessor’s Office
CAR	Certificate Authorizing Registration
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CARPER	Comprehensive Agrarian Reform Program Extension with Reforms
CBFM	Community Based Forest Management
CBFMAs	Community Based Forest Management Agreements
CBFMP	Community Based Forest Management Program
CBFMS	Community Based Forest Management Strategy
CBNRM	Community Based Natural Resource Management
CCA	Climate Change Adaptation
CDO	Cagayan de Oro City
CDOC	Cagayan de Oro City
CENRO	Community Environment and Natural Resources Office
CFC	Carabao Farmers Cooperative
CFP	Community Forest Program
CFSA	Community Forest Stewardship Agreement
CGT	Capital Gains Tax
CLOAs	Certificate of Land Ownership Awards
CLUPs	Comprehensive Land Use Plans
CMP	Community Mortgage Program
CNC	Certificate of Non-Coverage
COSLAP	Commission on the Settlement of Land Problems
CPDO	City Planning and Development Office
CREBA	Chamber of Real Estate Brokers Association

CRMFs	Community Resource Management Frameworks
CSCs	Certificates of Stewardship Contracts
CTO	City Treasurer's Office
CWT	Creditable Withholding Tax
DA	Department of Agriculture
DAO	Department Administrative Order
DAR	Department of Agrarian Reform
DAR MFO	Department of Agrarian Reform – Major Final Outputs
DARAB	DAR's Adjudication Board
DARMUPCO	Diamond ARB Multi-Purpose Cooperative
DENR	Department of Environment and Natural Resources
DILG	Department of Interior and Local Government
DMPI	Del Monte Philippines, Inc.
DoF/BLGF	Department of Finance/Bureau of Local Government Finance
DoJ	Department of Justice
DOLE	Department of Labor and Employment
DOST	Department of Science and Technology
DPWH	Department of Public Works and Highways
DPWH-ROW	Department of Public Works and Highways – Right of Way
DRR	Disaster Risk Reduction
DTI	Department of Trade and Industry
DUSGROW MPC	Dapco United Small Growers Multipurpose Cooperative
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Assessment
EMB	Environmental Management Bureau
EO	Executive Order
EPs	Emancipation Patents
FDC	Freedom from Debt Coalition
FGDs	Focus Group Discussions
FLA	Farm Lease Agreement
FLAG	Forest Land Use Agreement
FLAGT	Forest Land Use Agreement for Tourism
FLGA	Forest Land Grazing Agreement
FLGMA	Forest Land Grazing Management Agreement
FLMA	Forest Lease Management Agreement
FLUP	Forest Land Use Plan
FMA	Forest Management Agreement
FPIC	Free and Prior Informed Consent
FTAAs	Financial and Technical Assistance Agreements
GAD	Gender and Development
GDP	Gross Domestic Product
GIS	Geographic Information System
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GoP	Government of the Philippines
HEDCOR	Hydro Electric Development Corporation
HLURB	Housing and Land Use Regulatory Board
HUDCC	Housing and Urban Development Coordinating Council
ICC	Indigenous Cultural Communities
ICCA	Indigenous Community Conserved Areas
ICR	Implementation Completion and Results Report
IDE-JETRO	Institute of Developing Economies-Japan External Trade Organization
IEE	Initial Environmental Examination
IFMA	Industrial Forest Management Agreement
IP	Indigenous Peoples
IPAF	Integrated Protected Area Fund
IPRA	Indigenous People Rights Act
IPS	Indigenous Political Structure

IRA	Internal Revenue Allotment
ISF	Integrated Social Forestry
ISF	Informal Settler Families
IT	Information Technology
JAO	Joint Administrative Order
JMC	Joint Memorandum Agreement
JV	Joint Venture
KARBEMPCO	KENRAM ARBs Multipurpose Cooperative
KBAs	Key Biodiversity Areas
KIDI	KENRAM Industrial Development, Inc.
KKK	<i>Kilusang Kabuhayan sa Kaunlaran</i> (Movement for Livelihood and Development)
LAD	Land acquisition and distribution
LAM	Land Administration and Management
LAMP	Land Administration and Management Project
LAMP2	Land Administration and Management Project Phase 2
LAMS	Land Administration and Management System
LARES	Land Registration System
LARES-LTCP	Land Registration System – Land Titling Computerization Project
LARRIP	Land Acquisition, Resettlement, Rehabilitation and Indigenous Peoples Policy
LASEDECO	Land Settlement and Development Corporation
LDCS	Lot Data Computation Sheet
LEI	Land Equity International Pty. Ltd.
LGAF	Land Governance Assessment Framework
LGC	Local Government Code
LGI	Land Governance Indicators
LGUs	Local Government Unit
LMB	Land Management Bureau
LMS	Land Management Service
LRA	Land Registration Authority
LRA/RoD	Land Registration Authority/Registry of Deeds
LRA-QC	Land Registration Authority – Quezon City
LSDF	Land Sector Development Framework
LTCP	Land Titling Computerization Program
LTI	Land Tenure Instruments
MAG	Mass Appraisal Guidebook
MAPARBEMPCO	Mapantag ARBs Multipurpose Cooperative
METT	Management Effectiveness Tracking Tool
MFDC	Mindanao Farmworkers Development Center
MGB	Mines and Geoscience Bureau
MINDA	Mindanao Development Authority
MJR	Mindanao Jobs Report
MNLF	Moro National Liberation Front
MOA	Memorandum of Agreement
MOPA	Memorandum of Partnership Agreements
MPSAs	Mineral Production Sharing Agreements
MRPAAO	Manual for Real Property Assessment and Appraisal Operations
MSP	Miscellaneous Sales Patent
MTC	Municipal Trial Court
NAMRIA	National Mapping and Resources Information Authority
NARRA	National Resettlement and Rehabilitation Administration
NCIP	National Commission on Indigenous People
NDC	National Development Corporation
NEDA	National Economic and Development Authority
NGOs	Non-governmental Organizations
NGP	National Greening Program
NHA	National Housing Authority
NIPAS	National Integrated Protected Areas System

NISUS	National Informal Settlements Upgrading Strategy
NLSA	National Land Settlement Administration
NPC	National Power Corporation
NRIP	National Resettlement Implementation Plan
OSS	One Stop Shop
PA	Protected areas
PACBARMA	Protected Area Community Based Resource Management Agreements
PAFC	Provincial Agriculture and Fisheries Council
PAFID	Philippine Association for Intercultural Development
PA-LAMP	Philippine-Australia Land Administration and Management Project
PAMB	Protected Area Management Board
PARC	Presidential Agrarian Reform Council
PAWB	Parks and Wildlife Bureau
PBSP	Philippine Business for Social Progress
PD	Presidential Decree
PDR	Philippine Development Report
PENRO	Provincial Environment and Natural Resources Office
PEZA	Philippine Economic Zone Authority
PMC	Philippine Mediation Center
PMRC	Provincial Mining Regulatory Board
PNOC	Philippine National Oil Corporation
PO	Peoples Organization
PP	Presidential Proclamation
PPPs	Public Private Sector Partnerships
PRA	Philippines Reclamation Authority
PRDP	Philippine Rural Development Project
PSA	Philippines Statistical Authority
PVS	Parcel Verification Service
RA	Republic Act
RED	Regional Executive Director
RoDs	Registry of Deeds
ROW	Right of Way
RPTs	Real Property Taxes
RTC	Regional Trial Court
RUPs	Resource Use Plans
SAPA	Special Use Agreements in Protected Areas
SC	Supreme Court
SEARSOLIN	Southeast Asia Rural Social Leadership Institute
SEC	Securities and Exchange Commission
SEF	Special Education Fund
SGLG	Seal of Good Local Governance
SHFC	Socialized Housing and Finance Corporation
SIFMA	Socialized Industrial Forest Management Agreement
SLUP	Special Land Use Permit
SMVs	Schedule of Market Values
SOP	Standard Operating Procedure
SPLULA	Special Land Use Lease Agreement
SSS	Social Security System
TADECO	Tagum Agricultural Development Company
TFLA	Tree Farm Lease Agreement
TJRC	Transitional Justice and Reconciliation Commission
TLAs	Timber License Agreements
TNCs	Transnational corporations
TRO	Temporary Restraining Order
UDHA	Urban Development and Housing Act
ULIS	Unified Land Information System
UPLB	University of the Philippines at Los Baños

US	United States
USAID	United States Agency for International Development
WADECOR	Worldwide Agricultural Development Corporation
WB	World Bank
WWII	World War II

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The authors hope that this document will be useful in crafting a roadmap for overcoming weaknesses in land governance in Mindanao, and help foster the creation of more and better jobs for its people.

# ANALYSIS OF THE INFLUENCE OF LAND GOVERNANCE ON JOB CREATION IN MINDANAO (MIN-LGAF AND JOBS)<sup>1</sup>

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## 1.0 Introduction and Overview

The World Bank is preparing a Mindanao Jobs Report (MJR) that aims to better understand the jobs challenge and identify recommendations on how to create more and better jobs in the region.<sup>2</sup> The MJR represents the regional analysis of the Philippine Development Report (PDR) Creating More and Better Jobs<sup>3</sup> which identified key constraints and recommended an agenda for sustaining inclusive growth and addressing the jobs challenge.

The PDR acknowledged that among the factors that hindered the creation of more and better jobs - weaknesses in land governance play a key role. Central to this is **insecure property rights** which have undermined incentives to private investments and, combined with low public investment, has reduced agricultural productivity and increased food prices. This is one of the root causes which slowed the structural transformation process in the agriculture sector which in turn prevented it from contributing to creative job destruction – that is unleashing excess labor from the rural sector to better paying and more productive jobs in the urban centers.

The large extent of untitled lands that are devoted to residential uses also stymies land market activity, and prevents the claimant from fully accessing formal credit for property development, or acts as disincentives to invest in making the land more productive.

The **reactive nature of land use planning and zoning**, results in the proliferation of informal settlement enclaves, uncontrolled spatial development, and undue pressure on public investments and public provision of services.

On **property valuation and taxation**, the need to rationalize the property tax system and outdated schedule of market values at LGUs have been identified as constraining the generation of much needed revenues to fuel inclusive growth; and attain more equitable tax burden.

In terms of promoting investments, the **overly bureaucratic and centralized procedures in the country's land administration system** create a weak collateral system thereby limiting access to finance.

The **weak system of securing long-term property rights on land** (through such forms as ownership, lease, patents, or other usufruct rights) affects the country's ability to attract foreign direct investments, limits opportunities for investors to access finance.

Most of the above issues have been expounded through the Land Governance Assessment Framework (LGAF) which was carried out in 2013.<sup>4</sup> In responding to the needs of the MJR, a more focused assessment of land governance issues in Mindanao was carried out utilizing the LGAF process and methodology.

For purposes of this study, the following definitions were adopted:

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<sup>1</sup> For a summary version, please refer to the Synthesis Report of this study.

<sup>2</sup> In the context of this report, and the Min-LGAF Jobs Study, jobs mean what people do to make a living. It can be wage work or self-employment. It can be formal or informal work. Good jobs are those that raise living standards and productivity, and improve social cohesion. Jobs are the most important manifestation of inclusive growth. (Concept Note – MJR).

<sup>3</sup> World Bank, September 2013. **Philippines Development Report: Creating More and Better Jobs.**

<sup>4</sup> Eleazar, F., B. Garcia, E. Guiang, A. Herrera, L. Isorena, R. Ravanera and E. Serote. August 2013. **Improving Land Sector Governance in the Philippines: Implementation of Land Governance Assessment Framework (LGAF)**

*Governance* – “the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services.”<sup>5</sup>

*Land governance* – “includes the ways property rights to land (for groups and individuals) are defined and can be exchanged and transformed; the way in which public oversight over land use, land management, and taxation is exercised; the type of land that is state owned; the way such land is managed, acquired, and disposed of; the nature and quality of land ownership information available to the public and the ease with which it can be accessed or modified; and the way in which disputes are resolved and conflict is managed.”<sup>6</sup>

## 1.2 Objectives and Scope of the Min LGAF Jobs Study

The study “Analysis of Influence of Land Governance and Employment Creation in Mindanao” (herein referred to as Min-LGAF and Jobs) aims to contribute to the analytical work that was carried out under the MJR through a more focused assessment of land governance in Mindanao. The take off point was the Philippines LGAF Report<sup>7</sup> mainly to set the policy and institutional climate, while working with Mindanao data, to assess the various indicators. As expected, the assessment differed between Mindanao and the Philippines in some indicators due to the unique socio economic and cultural framework prevailing in the region; as well as the historical and political context of land administration and management therein. It should also be noted that the indicators have been revised following the completion of the Philippines LGAF, and were therefore assessed accordingly.

The study was guided by the following hypotheses:

*Land investments create jobs. Investments flow when lands are free of encumbrances, where tenure rights are recognized and enforced, land market transactions are open and transparent, disputes are fairly and quickly settled, and land management and administration is efficient and effective. Moreover, good land governance creates a policy environment that stimulates economic activities among local investors and rights holders - for them to access credit and invest in business undertakings that generate jobs.*

The revised LGAF covers nine modules, 27 dimensions and 117 indicators (Table 1).

**Table 1. LGAF Modules, Dimensions and Indicators**

Modules	Indicators	Dimensions
Module 1 – Land Rights Recognition	2	11
Module 2 - Rights to Forest and Common Lands & Rural Land Use Regulations	2	14
Module 3 - Urban Land Use, Planning, and Development	5	14
Module 4 – Public Land Management	3	14

<sup>5</sup> World Bank, 2007. *Strengthening World Bank Group Engagement on Governance and Anticorruption*. Washington, D.C.: Joint Ministerial Committee of the Boards of Governors of the World Bank and the Fund on the Transfer of Real Resources to Developing Countries, as cited in Deininger, Klaus, Harris Selod and Anthony Burns. 2012. *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector*. The World Bank. Washington D.C.

<sup>6</sup> Deininger, Klaus, Harris Selod and Anthony Burns. 2012. *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector*. The World Bank. Washington D.C.

<sup>7</sup> Ibid.

<b>Modules</b>	<b>Indicators</b>	<b>Dimensions</b>
Module 5 – Transfers of Large Tracts of Land to Investors	4	19
Module 6 – Public Provision of Land Information: Registry and Cadastre	5	19
Module 7 – Land Valuation and Taxation	2	6
Module 8 – Dispute Resolution	2	7
Module 9 – Institutional Arrangements and Policies	2	13
<b>TOTAL</b>	<b>27</b>	<b>117</b>

The assessment covered the following:

*Land Rights Recognition* – examined the policies and practice in recognition of a continuum of rights held by individuals; as well as the extent to which these are respected and enforced. It also looked at individual and group rights to land and natural resources.

*Rights to Forest and Common Lands & Rural Land Use Regulations* - assessed the process of legalization and codification of rights and ownership to forestlands and other resources, including customary rights to forest and common lands. It also assessed the extent to which land use and management regulations in rural areas (including zoning and land use planning mechanisms) are justified and transparent.

*Urban Land Use, Planning and Development* - examined restrictions on land rights and whether these are conditional on adherence to unrealistic standards. It also looked at transparency in land use and management regulations - whether these provide significant benefits to society, and not just for specific groups. It also looked at the efficiency of land use planning in major cities; the speed and predictability of enforcement of restricted land uses, and whether development permits are granted promptly and predictably. Finally, it reviewed the tenure regularization scheme in urban areas.

*Management of Public Land* - assessed the extent to which public landholdings are justified and transparently inventoried and managed; whether expropriation procedures are applied in the public interest through clear, transparent, and fair processes involving the compensation of all those who lose rights; and justification and time efficiency of acquisition processes: that is, whether the state expropriates land only for overall public interest and the extent to which this is done efficiently.

*Transfers of Large Tracts of Land to Investors* – reviewed whether transfer of public land to private use follows a clear, transparent and competitive process and whether payments are collected and audited. It also looked at private investment strategy and whether policies and regulations are in place and applied to unambiguously and publicly identify land that can be made available to investors, in agreement with land rights holders. Other indicators measure the effectiveness, consistency and transparency of policy implementation, as well as whether contracts are made public, easily accessible, and monitoring and enforcement of agreements.

*Public Provision of Land Information* – determined whether land information systems provide sufficient, relevant, and up- to-date data on land ownership to the general public and accessibility, affordability, and sustainability of land administration services.

*Land Valuation and Taxation* - investigated the transparency of valuations for tax and compensation purposes, and whether these are applied uniformly, updated regularly and publicly accessible. It also looked at efficiency in collection of land and property taxes.

*Dispute Resolution and Conflict Management* – assessed whether responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against. It also measured the proportion of land affected by pending conflicts and trends over the years.

This study did not assess the dimensions associated with the institutional and legal framework since national laws and policies are the same between the Philippines and Mindanao. Nonetheless, a discussion was made of the implications of these to land governance in Mindanao. The assessment of *legal and institutional framework* – covers: (i) clarity of mandates and practice; and (ii) equity and non-discrimination in the decision making process that draws inputs from all concerned. With respect to the first indicator, the assessment determines whether institutional mandates concerning regulation and management of the land sector are clearly defined, duplication of responsibilities is avoided and information is shared as needed. On the other hand, the second indicator examines whether the legal framework is non-discriminatory and that institutions to enforce property rights are equally accessible to all.

### 1.3 LGAF Process

The Min-LGAF and Jobs Study followed the process of the LGAF which involved:

- Review of indicators, dimensions and definitions
- Preparation of Tenure Typology, Institutional Mapping, and Expert Investigations
- Panel Workshops
- Preparation of Panel Aide Memoire and Draft Report

### Review of LGAF Definition of Terms, Indicators and Dimensions, and Data Sources

Based on the review by the Study Team, explanatory notes on some LGAF definition of terms were made, particularly in the context of Philippine laws and statutes.

The review of LGAF indicators enabled the identification of dimensions that are important for the analytical work required for the MJR. The possible sources of data for all the indicators and dimensions were likewise determined.

### Preparation of Tenure Typology, Institutional Mapping and Expert Investigations

The team set out to review the tenure typology that was prepared for the Philippines LGAF and updated it to suit the Mindanao situation. Alongside with this, an assessment of the legal framework for land tenure in the Philippines was made, and assessed against implementation in Mindanao. The report was made available to the World Bank team who participated in the panel workshops to serve as background paper for the Mindanao LGAF.

Investigation of indicators and dimensions were allocated among the team members as shown in Table 2.

**Table 2. Expert Investigation of LGAF Modules**

Expert	Modules
Public Land Policy Expert	Module 1 – Land Rights Recognition
	Module 2 - Rights to Forest and Common Lands

Expert	Modules
	& Rural Land Use Regulations Module 4 – Public Land Management
Mindanao Land Policy Expert	Module 5 – Transfers of Large Tracts of Land to Investors Module 8 – Dispute Resolution
Land Information/GIS/Mapping Expert	Module 6 – Public Provision of Land Information: Registry and Cadastre
Land Governance Expert/Coordinator	Module 3 - Urban Land Use, Planning, and Development Module 7 – Land Valuation and Taxation Land Tenure Typology and Institutional Mapping
All Members	Institutional Arrangements and Policies <sup>8</sup>

Administrative data were collected from the agencies, websites, and other official sources. To the extent that no data are available, these were supplemented by interviews and meetings to discuss the various topics. Particularly useful was the briefing for DAR Undersecretary, who provided the much needed updated data on status of CARP implementation in Mindanao. The team also did a lot of research on literature and related studies, to reinforce the assessments of various dimensions.

The Expert investigations produced background papers for each Module and suggested scores for each dimension, supported with analysis. These were distributed to the panels and used as reference during the Workshops.

### Panel Workshops

Four panels were constituted to present the preliminary analysis, subject these to validation and additional inputs by independent Experts, government representatives and practitioners. These reviews were organized in early December 2015, centered around related themes.

**Table 3. Min- LGAF and Jobs Panel Workshops**

Panels	Participants	Schedule and Venue
<b>Panel 1</b> Module 1 – Land Rights Recognition Module 5 – Transfers of Large	DAR Central and Regional Offices, DENR Region X, Miarayon-Lapok- Lirongan-Tinaytayan-Talaandig Tribal Association, NCIP Region X, DA Region X, MINDA, DENR-MGB Region X,	December 2, 2015  Xavier University – SEARSOLIN

<sup>8</sup> Module 9 on Institutional Arrangements and Policies was planned to be discussed at a Policy Forum, as part of the wrapping up of the Min-LGAF and Jobs review; but this event was not organized. The team did not assess the dimensions under this Module, rather; the related institutional and policy issues were discussed as they were raised in the other Modules, and during the validation workshops.

Tracts of Land to Investors	Cagayan de Oro Chamber of Commerce and Industry, United Rubber Producers and Processors Association, Land Bank of the Philippines, World Bank	Cagayan de Oro City
<b>Panel 2</b> Module 4 – Public Land Management Module 8 – Land Dispute Resolution		December 3, 2015 Xavier University – SEARSOLIN Cagayan de Oro City
<b>Panel 3</b> Module 2 - Rights to Forest and Common Lands & Rural Land Use Regulations Module 6 - Public Provision of Land Information: Registry and Cadastre	Philippine Business for Social Progress, (PBSP), Register of Deeds/Land Registration Authority, (RoD/LRA), Geodetic Engineers of the Philippines, MINDA, NCIP Region XI, DENR Region XI, Davao City Assessors Office, DA Region XI, Chamber of Real Estate Brokers Association (CREBA), Sisters of Charity of St. Charles Borromeo, World Bank	December 9, 2015 MINDA Conference Room, SSS Building, Davao City
<b>Panel 4</b> Module 3 - Urban Land Use Planning and Development Module 7 - Land Valuation and Taxation	RoD Davao City, Assessors Office and Planning and Development Office (Davao City), Geodetic Engineers of the Philippines (Mindanao chapter), BIR Region 12, World Bank	December 10, 2015 Tropika Hotel, Davao City

Panel members include representatives from government agencies, private sector, professional organizations, local government, NGOs, and indigenous peoples. The presence of Secretary Gil de los Reyes of DAR in Panels 1 and 2 provided for a more insightful discussion of the issues, current initiatives to address these, and the possible solutions.

During the workshop, the World Bank presented the context of the MJR and the evolving storyline, both for the agrarian and urbanizing Mindanao. The Min – LGAF and Jobs Study was also discussed, in terms of how the study will deepen the analysis of the land governance dimension of the MJR.

Experts presented backgrounders on the Modules and the associated issues, after which the relevant indicators and dimensions were discussed. The active participation of members enabled excellent discourse on the dimensions being reviewed, where they first considered the initial rating suggested by the Expert, followed by the panels’ own score based on additional information, inputs from the members, and appreciation of the current situation.

#### **Preparation of Panel Aide Memoire and Draft Report, Validation Workshops**

The Panel Workshops were documented in Aide Memoire and submitted to the World Bank. A Synthesis Report was prepared in January and presented at a session in Manila, together with the results of other background studies on MJR. A validation workshop was held in Davao and Cagayan de Oro in March, and the results presented again in July 2016 with MINDA officials and staff.

The main findings were incorporated in the MJR, where the Team provided inputs and comments to the main report.

## 2.0 Historical and socio political context of land in Mindanao

Land governance is of particular interest to Mindanao because it is perceived as a driver in unlocking its economic potential that has constrained not only the island's development but also that of national progress.

Mindanao is endowed with rich natural resources of vast plains in varying altitudes having fertile soils and relatively free from typhoons. Thus, its economic contribution has been mostly in agriculture and agribusiness, becoming a world exporter of a number of agricultural products.

These abundant resources, however, have not been maximized due to overlapping and competing land claims, weak governance and low institutional capacities. These challenges have also contributed to high incidence of poverty in these areas. For the period 2006-2012, five of the country's 10 poorest provinces were in Mindanao, with Lanao de Sur having the highest poverty incidence at 67.3%.<sup>9</sup>

In the formulation of Mindanao 2020 - the peace and development framework of the Mindanao Development Authority (MinDA), management of land, environment and natural resources is one of the key guiding principles identified in moving the island forward. But the task ahead on land governance is not simply an administrative or a management problem. These land issues, often resulting in conflicts and violence, trace their roots to social injustices in the colonial past. Improving land governance, therefore, will have to be grasped from a historical and broader socio-cultural perspective.

### 2.1 Brief Settlement History of Mindanao

Mindanao was the destination of migrant Filipinos from Luzon and the Visayas in the last century starting in the early 1900s and picking up after World War II. This movement of people is partly explained by the abundance of unoccupied and unutilized land until the late 1800s as the Muslim community successfully resisted Spanish domination of Mindanao. The island remained isolated from the Spanish control after more than 300 years of occupation.<sup>10</sup>

This situation, however, changed when the Philippines was ceded to the Americans under the Treaty of Paris in 1898. The Americans were able to neutralize the resistance and contained the rebellions. "By 1916, the Moros had been disarmed, the threat of attack had been greatly reduced, and during the following year, the United States military forces were withdrawn leaving the administration of the Island in the hands of the local civil authorities"<sup>11</sup>.

Though not fully subdued, it ushered a relatively peaceful environment. With a more democratic governance system supported by Christian Filipinos, Mindanao was unlocked to local settlers as well as foreign investors<sup>12</sup>.

The extent of migration can be observed in the increase in population density from 1900 to 2000 (Table 4). In 1898, Mindanao was reported to have a population of 500,000 and a

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<sup>9</sup> The 10 Poorest Provinces in the Philippines –...<http://faq.ph/the-10-poorest-provinces-in-the-philippines/>

<sup>10</sup> As an indication of this resistance, friar lands distributed in Mindanao was limited to only 41.1 hectares out of the total of 10,000 hectares distributed for the entire country (from DENR Consolidated Land Sector Report, December 31, 2014).

<sup>11</sup> Wernstedt, Frederick L. and Paul D. Simkins. **Migrations and the Settlement of Mindanao**. The Journal of Asian Studies, Vol. 25, No. 1 (Nov., 1965), pp. 86-87.

<sup>12</sup> Ibid

population density of 14 persons per square mile. In 1948, population density has grown to 75 persons per square mile<sup>13</sup>. Mindanao’s density in 2000 has grown to 134 per sq km<sup>14</sup>.

**Table 4. Population density in the Philippines by major regions  
(1898, 1948, 2000, per sq mile)**

	1898	1948	2000
Mindanao	14*	75*	134**
Philippines	66***	NA	255^

Sources:

\*Wernstedt, Frederick L. and Paul D. Simkins Migrations and the Settlement of Mindanao. The Journal of Asian Studies, Vol. 25, No. 1 (Nov., 1965), pp. 86, 90.

\*\*NEDA, 2015.

\*\*\*1903.http://www.hbs.edu/faculty/publi.

^PSA, 2015.

## 2.2 Facilitating Factors

The ever-increasing land settlement in Mindanao is an outcome of numerous factors. It is partly political as the Philippine Government wanted to defuse the rebellion in the north triggered by farmers’ clamor for greater and more equitable access to land resources. Partly, it is economic as the utilization of rich land and natural resources provided business and substantial returns given the demand for food and agricultural products.

### Institution of New Land Laws and Systems

Anchored on the Regalian doctrine where all lands are declared to be the property of the state, the Americans introduced the Torrens System of land registration. One of the first acts along this direction was the enactment by the US Congress for the Philippine Commission of the Public Lands Act of 1903, “*an act prescribing rules and regulations governing the homesteading, selling, and leasing of portions of the public domain of the Philippine islands including issuance of patents without compensation to certain native settlers*”. This act, together with the succeeding laws, provided the legal framework for the extensive land occupation in Mindanao.

The Public Lands Act of 1903 did not only streamline homesteading but facilitated the entry of investors by allowing them to “*lease any tract of unoccupied, unreserved, non mineral agricultural public lands . . . not exceeding one thousand and twenty-four hectares.*”

The limit of 1,024 hectares was imposed by the US Congress and “was a compound of altruism and the desires of beet and cane sugar interests in the United States to forestall Philippine competition. The limit on size of holdings precluded the development of large plantations on Mindanao and, quite probably, served to hold the population growth of the Island to levels well below what they might have been otherwise”<sup>15</sup>.

### Land Settlement Programs

Though settlers would have to contend with sporadic rebellions and continuing resistance of Muslim communities, Mindanao’s abundant resources easily attracted migrants. Starting in the

<sup>13</sup> Ibid

<sup>14</sup> NEDA, 2015.

<sup>15</sup> Wernstedt, Frederick L. and Paul D. Simkins Migrations and the Settlement of Mindanao. The Journal of Asian Studies, Vol. 25, No. 1 (Nov., 1965), p. 87.

1940s, the Philippine Commission instituted resettlement policies and programs to facilitate the movement of migrants from Luzon and the Visayas.

In line with this, a number of resettlement agencies were established starting with the National Land Settlement Administration (NLSA) that operated from 1939 to 1950. Though temporarily suspended during World War II (WWII), it was able to resettle 8,300 families. The Land Settlement and Development Corporation (LASEDECO) that resettled 1,500 families followed NLSA. Then finally, the National Resettlement and Rehabilitation Administration (NARRA) covered around 250,000 hectares involving some 69,000 individuals. It established six settlement areas located at Tubod (Lanao del Norte), Wao (Lanao del Sur), Maramag (Bukidnon), Santo Tomas (Davao) and at Carmen and Tulunan (Cotabato)<sup>16</sup>.

Between the 1948 and 1960 census enumerations, “the population of Mindanao grew from less than three million to slightly more than five million persons, giving the island a rate of population increase more than double the national average”.<sup>17</sup>

Moreover, voluntary migration from the Visayas followed. Migrants from the Visayan area came mainly from Cebu, followed by Bohol, Leyte and Iloilo. The magnitude and the long historical contact between the Visayas and Mindanao may explain why Cebuano is the established mother tongue in many of the provinces in Mindanao.

By 2000, Christian Filipinos constituted over 70% of the population in Mindanao. The Muslims constituted 19.9% while the indigenous communities 8.2%. Muslims have been confined to ARMM where they comprise 89.1% of the population.

**Table 5. Mindanao Population by Ethnic Groups, 2000 (in '000).**

Region	Christians	%Share	Muslims	%Share	Lumads	% Share
Region IX	2,264	73.4	558	18.1	264	8.5
Region X	2,525	92.0	19	0.7	200	7.3
Region XI	4,318	83.3	142	2.7	721	13.9
Region XII	1,756	67.7	727	28.1	109	4.2
Region XIII	1,958	93.6	9	0.4	125	6.0
ARMM	204	8.5	2,147	89.1	60	2.5
<b>Mindanao</b>	<b>13,025</b>	<b>71.9</b>	<b>3,601</b>	<b>19.9</b>	<b>1,478</b>	<b>8.2</b>

*Source: Census of Population, 2000, National Statistics Office.*

### Entry of Agribusiness Corporations

A few years after the enactment of the Public Land Act of 1903, abaca (Manila hemp) corporations started operations in Davao province with Japanese capital. “By 1935, 16,000 Japanese lived in Davao province and Japanese corporations controlled an estimated 141,000 acres of abaca land. Several coconut plantations were established on the periphery of the Island

<sup>16</sup> Ibid, p. 92.

<sup>17</sup> Republic of the Philippines, Department of Commerce and Industry, Bureau of the Census and Statistics, **1948 Census of the Philippines, Population Classified by Province, by City, Municipality, and Municipal District**, and by Barrio, Manila, 1951 and Census of the Philippines: 1960, **Population and Housing, I, Report** by Province-Abra to Zamboanga del Sur, Manila, 1962. (As taken from Wernstedt and Simkins)

and, in 1926, the Philippine Packing Corporation (Del Monte) established a pineapple plantation on leased land in Bukidnon.”<sup>18</sup>

The second half of the century marked the entry of more agribusiness corporations to Mindanao partly assisted by the government. The National Development Company (NDC), a state-owned company via Commonwealth Act 182 mandated to function as the government's investment arm, leased out to Philippine Packing Corporation 8,195 hectares of land in Bukidnon for pineapple production<sup>19</sup>. Over the years, NDC continued its agricultural engagement and did the same for Dole Philippines for banana plantation and NDC Guthrie for oil palm.

Today, it is reported that “agricultural plantations, mostly owned by transnational corporations (TNCs) and primarily geared to export markets, occupy almost 500,000 hectares, or 12% of Mindanao’s agricultural land. They produce rubber, cavendish bananas, pineapple, palm oil, cacao, and sugarcane”.<sup>20</sup>

### 2.3 Land Governance Issues and Challenges

As in the situation in the entire country, land governance in Mindanao is plagued with a multitude of issues including problematic titling, fraudulent transactions, unregistered informal transactions, boundary disputes, competing claims, overlapping agency jurisdictions and slow resolution of land disputes. These will be discussed in more detail in the subsequent reports, but a brief description of these issues is presented here.

What makes land governance more complex and intricate in Mindanao is the long history of colonization and domination that have resulted in unjust land appropriation and dislocation of original occupants without clear and just resolutions. The problem is political that has to be resolved politically. Mindanawons,<sup>21</sup> in general, have this feeling of discontent of being neglected by what they call the “Imperial Manila”.

On top of this is the current increasing commercial pressures on land brought about by big agricultural and mining investments that have displaced or deprived farmers and indigenous communities of their subsistence and livelihood.

#### Overlapping Laws, Agency Jurisdictions and Weak Institutional Capacities

Land governance issues in the country specifically of competing claims, overlapping jurisdictions of land agencies and inadequacy in implementing rules and regulations are reflected in the local situation. A policy review on land governance conducted by the Regional Land Use Committee of the Regional Development Council in Northern Mindanao (Region 10) highlights these concerns: absence of precision mapping and cadastral surveys, lack of common base map, issuance of mother certificate of land ownership agreement (CLOAs) over timberlands, forest reserves and pasture areas and creation of LGUs within timberlands or protected areas.

It also identified various issues related to the enactment of the Indigenous Peoples Rights Act (IPRA, RA 8371) such as overlapping jurisdictions, conflicting registration of titles, and approval of boundary surveys.

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<sup>18</sup> Wernstedt, Frederick L. and Paul D. Simkins **Migrations and the Settlement of Mindanao**. The Journal of Asian Studies, Vol. 25, No. 1 (Nov., 1965), pp. 87.

<sup>19</sup> NDC website.

<sup>20</sup> Ocampo, S. [Big plantations create big problems in Mindanao](#) in his column in the Philippine Star, October 31, 2015.

<sup>21</sup> A term used to refer to the citizens and inhabitants of Mindanao, MinDA 2020.

### Customary Rights Overlapping with Legal Rights

At the core of these problems is the continuing claim of the Muslims and the indigenous communities for self-determination to practice their own system of governance including that of governing land and other resources. They have held to their own traditional system and practice of customary rights.

Though there are indications among the Muslims that this is changing as may be gleaned from the recent Comprehensive Agreement for Bangsamoro (CAB), there are unmet demands for reparations for lands taken away from them either forcefully or by some legal maneuverings that they do not recognize in the first place.

### Increasing Commercial Pressures on Land

The growing investments in agriculture have intensified competition for lands. Though the entry of corporations had been recorded in the early years of the last century, these investments are increasing with the greater demand for food and the liberalization of the economy. Unfortunately, these investments are replete with stories of forced evictions, displacement of communities and deprivation of livelihood of local residents.

Similarly, mining investments are growing as indicated by the long list of mining applications. Many of these mining operations, unfortunately, overlap with the ancestral domain of indigenous communities and government policies over these resources have inherent contradictions. As reported in MinDA 2020, “provisions of IPRA and the Philippine Mining Act of 1995 disagree with respect to the mandated processes and the authority over resource permits and land use development.”<sup>22</sup>

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<sup>22</sup> MinDA. Mindanao 2020: Peace and Development Framework Plan (2011-2030). Davao City, 2012. P 27.

### 3.0 Overview of Land Tenure and Land Allocation in Mindanao

Recognition of and respect for existing rights to land, natural resources and property improves tenure security. Both legal frameworks and informal tenure systems can provide tenure security depending on the strength of and adherence to tenure systems and related institutions.<sup>23</sup>

The 1987 Philippine Constitution declared that all lands of the public domain belong to the State (Art. 7, Sec. 2). State ownership is premised on the Regalian Doctrine (*jura regalia*), the legal concept employed by the Spanish Crown in claiming exclusive dominion over the Philippine archipelago upon conquest in 1521. Under this doctrine, title to all lands became vested in the Crown, and private ownership was acquired only through royal grants or decrees. This was continued during United States (US) colonization, the Philippine Commonwealth period under the 1935 Constitution, and subsequently reiterated in the 1973 and 1987 Constitutions. The Constitution classified the public domain into agricultural, forest or timber, mineral lands or national parks (Art. 7, Sec. 3). Of these, only public agricultural lands may be alienated (i.e., subject of private ownership) and further classified by law according to use (Art. 7, Sec. 3).

The Civil Code of the Philippines (Republic Act 386) provides the general controlling guidelines on property ownership including guidelines governing the leases and rentals of urban and rural lands.

On November 6, 1902, the Philippine Commission enacted Act 496 known as the Land Registration Act that established the Torren's System of Registration in the Philippines. The Cadastral Act (Act 2259) was enacted on February 11, 1913 and provided for compulsory registration of land titles with private ownership. The enactment of the Public Land Act of 1936, otherwise known as Commonwealth Act 141 provided measures by which public agricultural lands can be disposed or alienated through homestead, free patent (by prescription), sale or leases.

The 1988 Comprehensive Agrarian Reform Law (CARL) broadened the scope of rural land reform by including private and public agricultural lands regardless of crops and tenure arrangements, and providing for support services to agrarian reform beneficiaries. DAR's Comprehensive Agrarian Reform Program (CARP) operation was primarily in the acquisition and redistribution of private agricultural lands. However, through Joint DAR-DENR Memorandum Circular 14 and 19 in 1997, the agency also acquired jurisdiction over public A&D agricultural lands that are in excess of the allowed retention limits. For lands with tenants but not covered by CARP, DAR's leasehold operation provides opportunity for formalizing land owner – tenant relationships through a leasehold contract.

Customary ownership rights over ancestral lands are recognized in the Constitution and Indigenous Peoples' Rights Act (IPRA) – RA 8371.

While forest lands cannot be alienated or disposed, Presidential Decree 705 or the Revised Forestry Code of the Philippines (and subsequent administrative issuances) provide for a regime of recognition and formalization of occupation and use in public forest through a variety of instruments such as Certificate of Stewardship Contract (CSC), Community Based Forest Management Agreements (CBFMA), Industrial Forest Management Agreement (IFMA), Socialized IFMA (SIFMA). The National Integrated Areas Protected Systems (NIPAS) Act on the other hand, provide for the recognition of tenure of protected area occupants through Protected

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<sup>23</sup> Land Governance Assessment Framework. 2015. Annex 5: Explanatory notes on Indicators and Dimensions. 2015.

Area Community Based Resource Management Agreements (PACBARMA). Tenure holders are given long term access rights to forest lands, its resources and protected area resources usually for 25 years, renewable for another 25 years.

The table below indicates that the current legal infrastructure provides for recognition of rights of both urban and rural population, either through customary or statutory tenure regime.

**Table 6. Legal Framework for Recognition of Various Tenure Types<sup>24</sup>**

Tenure Type	Legal Recognition
Registered/Titled individual property ownership -Agricultural Free Patents -Homestead Patents -Agricultural Sales Patents -Emancipation Patents -Certificate of Land Ownership Awards -Judicial Decrees/titles	RA 386 as amended (Book II of the Philippine Civil Code – Property Ownership and its Modifications); PD 1529 or the Philippine Land Registration Decree of 1978. CA 141; PD 27; RA 6657
Registered/Titled group/common ownership – Collective Certificate of Land Ownership Award (CLOAs)	RA 6657 (Comprehensive Agrarian Reform Law); RA 386 Book II; PD 1529
Unregistered individual private ownership	RA 386 Book II – Civil Code; CA 141 (Title III, Chapter VIII, Section 65); RA 730; RA 10023 (Residential Free Patent); PD 1529;
Unregistered occupation and use in public A&D lands	RA 386 Book II – Civil Code; CA 141, PD 1529
Occupation and use in private lands (Agricultural tenancy)	RA 6657; RA 386 Book II and Book III
Unregistered ownership by government agencies	RA 386 Book II – Civil Code; RA 10023
Occupation and use in public forest and other state lands	RA 386 Book II; PD 705 (Forestry Reform Code of the Philippines); CA 141; RA 8550 (The Fisheries Code of 1998)
Ancestral domain claims of Indigenous Peoples	RA 8371 – The Indigenous Peoples Right Act of 1997; RA 386 Book II

**Notes:**

**Unregistered individual private ownership** refers to land which have qualified with the 30 years prescription and occupant have been deemed to have acquired an imperfect title.

**Unregistered occupation and use in public A&D lands** refers to occupation in public alienable and disposable lands that have not yet complied with the period of prescription such as former forest lands recently released as A&D

**Agricultural tenancy** is defined as “the physical possession by a person of land devoted to agriculture, belonging to or legally possessed by another for the purpose of production through the labor of the former and of the members of his immediate farm household in consideration of which the former agrees to share the harvest with the latter or to pay a price certain or ascertainable, whether in produce or in money, or both.” (RA 1199 [1954], sec. 3)

The distinction between A&D and non A&D is important because only the former can be privately owned and titled. Figure 1 shows the modes of disposition and use of lands of the public domain. Table 9 on the other hand, presents the summary accounting of lands, the agencies involved in disposition and management, and the policies that govern these.

<sup>24</sup> Adopted from Eleazar, F., B. Garcia, E. Guiang, A. Herrera, L. Isorena, R. Ravanera and E. Serote. August 2013. **Improving Land Sector Governance in the Philippines: Implementation of Land Governance Assessment Framework (LGAF).**

The entire island of Mindanao encompasses some 10.2 Million hectares, roughly 34% of the country's total land area. The proportion of alienable and disposable (A&D) lands is smaller at only 4.1 Million hectares, while its forestlands comprise 6.06 Million hectares, or with a ratio of roughly 40:60. In the Philippines, the proportion of A&D to forestlands is 47:53. There remains some 414,913 hectares of unclassified public forest in Mindanao, which is about 55% of the entire country's record. These lands have to undergo further survey and validation to determine if these need to be released as A&D or should be retained as part of the forestlands.

**Table 7. Land Classification in Mindanao**

Land Classification	Philippines	Mindanao	% share
<b>Total land area</b>	<b>30,000,000</b>	<b>10,202,192</b>	34%
1. Certified A&D	14,194,675	4,136,032	29%
2. Forest lands	15,805,325	6,066,160	38%
2.1 Unclassified Public Forest	755,009	414,103	55%
2.2 Classified Forests	15,050,316	5,652,057	38%
<b>A&amp;D to Forestlands Ratio</b>	<b>47:53</b>	<b>40:60</b>	

Source: Philippines Forestry Statistics. 2013

Figure 2 presents the land classification map in Mindanao.

Region XII has the largest area of unclassified forestlands (218,000 hectares) followed by ARMM with 94,673 hectares. The top provinces with the biggest areas of unclassified forestlands are listed below. Altogether, these provinces account for 86.2% of all unclassified lands in Mindanao, or 47.4% of all such lands in the country.

**Table 8. Mindanao Provinces with Largest Areas of Unclassified Forestlands**

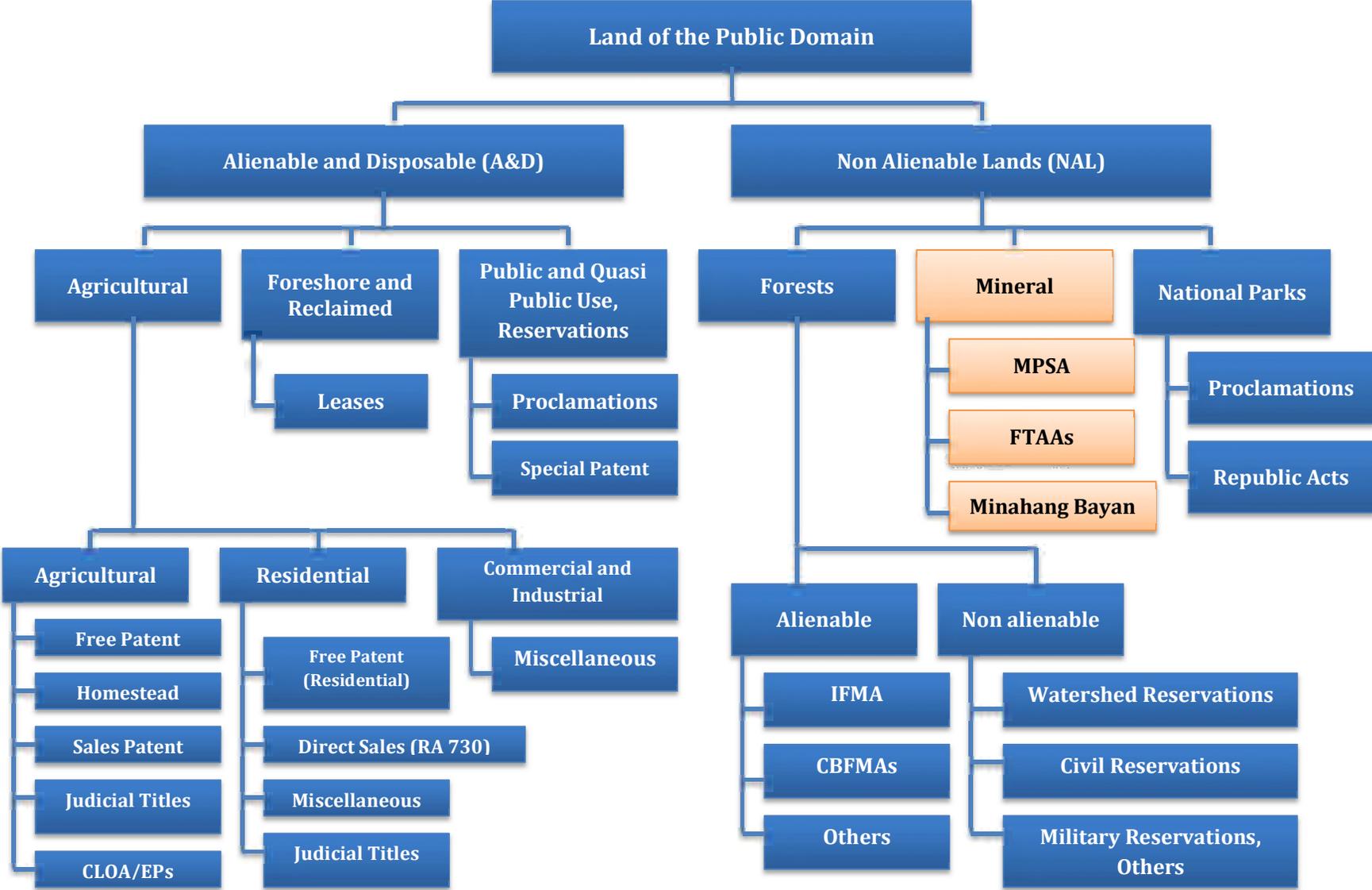
Provinces	Area (hectares)
South Cotabato	168,369
Sulu	66,284
Bukidnon	52,602
Sultan Kudarat	45,806
Tawi tawi	24,864
<b>TOTAL</b>	<b>357,925</b>

Source: NAMRIA. Land Classification Status by Region and Province, 2006.

Table 10 shows the land classification status of Mindanao by provinces and regions.

The sections below present the status and accounting of inalienable lands of the public domain: forestlands, national parks, and mineral lands.

**Figure 1. Disposition of Lands of the Public Domain**



**Table 9. Policies and Institutions Governing Land and Resource Use Rights Recognition in the Philippines<sup>25</sup>**

Major Land Classifications in the Philippines	Agricultural Lands (A&D)	Forestlands	National Parks	Mineral Lands
<b>Extent of Rights Recognized and Instruments Issued</b>	<p><b>Full ownership through:</b></p> <ul style="list-style-type: none"> <li>- Titles (Judicial and Administrative)</li> <li>- Free Patent (agricultural and residential)</li> <li>- Miscellaneous Sales Patents</li> <li>- CLOA, Emancipation Patent (EP)</li> </ul>	<p><b>Land is inalienable</b></p> <ul style="list-style-type: none"> <li>- Resource use rights only through long term leases issued over production forests</li> <li>- CBFMAs</li> <li>- IFMAs</li> <li>- Other instruments</li> </ul>	<p><b>Land is inalienable</b></p> <p>Resource use rights given only to recognized communities inside protected areas (Protected Area Community Resource Management Agreements- PACBRMA)</p>	<p><b>Can exist in both A&amp;D and forest lands</b></p> <p>Rights to subsurface resources only through long term agreements:</p> <ul style="list-style-type: none"> <li>- Mineral Production Sharing Agreements</li> <li>- Financial and Technical Assistance Agreements (FTAAs)</li> </ul>
<b>Policies Governing Rights Recognition</b>	<p>Public Land Act (CA 141)</p> <p>Residential Free Patent Act (Republic Act 10023)</p> <p>Comprehensive Agrarian Reform Law</p> <p>Comprehensive Agrarian Reform Program</p>	<p>Presidential Decree 705</p> <p>Executive Order 23 (Ban on Logging in Natural Forests)</p> <p>Executive Order on CBFM</p> <p>DENR-DILG Joint Memorandum Circular on Forest Co Management</p>	<p>Republic Act 7586 (NIPAS Act)</p> <p>Republic Act 9147 (Wildlife Act)</p> <p>PA Specific Legislations</p>	<p>RA 7942 (Philippine Mining Act)</p> <p>Executive Order 79 (Institutionalizing and Implementing Reforms in the Philippine Mining Sector)</p> <p>RA 7076 – Peoples Small Scale Mining Act</p>
<b>Agencies Responsible</b>	<p><b>Titling:</b> DENR and LRA</p> <p><b>Redistribution:</b> DAR</p> <p><b>Use regulations:</b> LGUs</p> <p><b>Registration:</b> RoDs of LRA</p>	<p><b>DENR-</b> for issuance of long term leases</p> <p><b>Individual tenure/lease holders</b> – once disposed</p> <p><b>LGUs</b> – for co managed forest lands</p>	<p><b>DENR/BMB</b> through Protected Area Management Boards (PAMBs)</p> <p><b>LGUs</b> – for local conservation areas and Critical Habitats</p> <p><b>IP communities</b> – for indigenous community conserved areas</p>	<p><b>DENR MGB</b> – issuance of large scale mining permits, MPSAs and FTAAs</p> <p><b>LGUs</b> – for small scale mining permits</p>
<b>NCIP – issuance of ancestral domain titles (CADTs) over 7.7 million hectares of claims</b>				
<b>Total Area (Philippines) = 30 Million ha</b>	<b>14. 2 Million hectares</b>	<b>15.8 Million hectares</b>	<b>5.436 Million hectares (240 PAs)</b>	<b>601,679 hectares covered by 338 MPSAs</b>
<b>Total Area (Mindanao) = 10.2 Million hectares</b>	<b>4.136 Million hectares (29%)</b>	<b>6.07 Million hectares (38%)</b>	<b>1.425 Million hectares = 62 PAs (26%)</b>	<b>247,619 hectares (41%) covered by 107 MPSAs (32%)</b>

<sup>25</sup> Adap

Discussion on Biodiversity Corridors in the Philippines. 11 November 2015. Ninoy Aquino Parks and Wildlife Center, Quezon City. NOTE: National Parks and Mineral lands can overlap with A&D and forestlands. Likewise, mineral lands can overlap with national parks if rights were given before the site was proclaimed as protected areas.

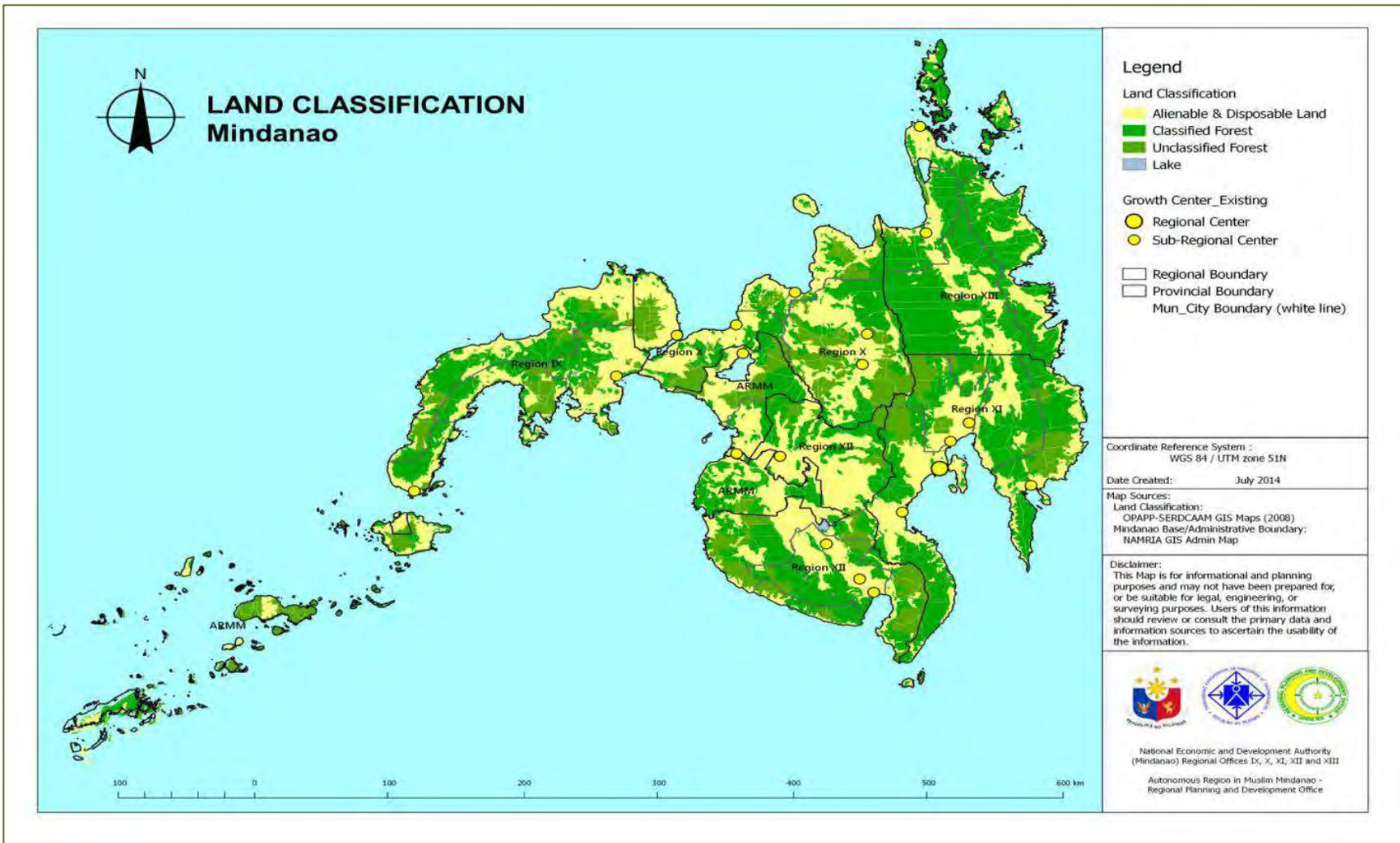


Figure 2. Land Classification Map of Mindanao

**Table 10. Land Classification Status in Mindanao, by Region and Province**

<b>Region/Province</b>	<b>Total Land</b>	<b>A&amp;D</b>	<b>Forestland</b>	<b>% Forestland</b>	<b>Unclassified</b>	<b>Classified Forestland</b>
<b>Region IX</b>						
Basilan	132,723	85,574	47,149	35.52	5,953	41,196
Zamboanga Norte	661,811	262,592	399,219	60.32	4,617	394,602
Zamboanga Sur	805,200	414,294	390,906	48.54	16,093	374,813
<b>Subtotal</b>	<b>1,599,734</b>	<b>762,460</b>	<b>837,274</b>	<b>52.33</b>	<b>26,663</b>	<b>810,611</b>
<b>Region X</b>						
Bukidnon	829,378	337,799	491,579	59.27	52,602	438,977
Camiguin	25,286	21,063	4,223	16.7	0	4,223
Lanao del Norte	309,204	158,473	150,731	48.74	0	150,731
Misamis Occ.	193,932	125,375	68,557	35.35	0	68,557
Misamis Oriental	357,003	174,959	182,044	50.99	0	182,044
<b>Subtotal</b>	<b>1,714,803</b>	<b>817,669</b>	<b>897,134</b>	<b>52.32</b>	<b>52,602</b>	<b>844,532</b>
<b>Region XI</b>						
Davao del Norte	812,975	297,674	515,301	63.38	2,188	513,113
Davao del Sur	637,762	239,015	398,747	62.52	0	398,747
Davao Oriental	516,446	200,944	315,502	61.09	12,188	303,314
<b>Subtotal</b>	<b>1,967,183</b>	<b>737,633</b>	<b>1,229,550</b>	<b>62.5</b>	<b>14,376</b>	<b>1,215,174</b>
<b>Region XII</b>						
South Cotabato	746,876	342,191	404,685	54.18	168,369	236,316
North Cotabato	656,590	149,972	506,618	77.15	3,825	502,793
Sultan Kudarat	471,480	238,383	233,097	49.43	45,806	187,291
<b>Subtotal</b>	<b>1,874,946</b>	<b>730,546</b>	<b>1,144,400</b>	<b>61.03</b>	<b>218,000</b>	<b>926,400</b>
<b>Region XIII</b>						
Agusan del Norte	259,029	66,630	192,399	74.27	0	192,399
Agusan del Sur	896,550	221,628	674,922	75.27	1,125	673,797
Surigao del Norte	273,902	121,573	152,329	55.6	6,664	145,665
Surigao del Sur	455,216	135,066	320,150	70.32	0	320,150
<b>Subtotal</b>	<b>1,884,697</b>	<b>544,897</b>	<b>1,339,800</b>	<b>71.08</b>	<b>7,789</b>	<b>1,332,011</b>
<b>ARMM</b>						
Lanao del Sur	387,289	133,135	254,154	65.62	0	254,154
Maguindanao	504,760	306,622	198,138	39.25	3,525	194,613
Sulu	160,040	47,687	112,353	70.2	66,284	46,069
Tawi-tawi	108,740	55,383	53,357	49.06	24,864	28,493
<b>Subtotal</b>	<b>1,160,829</b>	<b>542,827</b>	<b>618,002</b>	<b>53.23</b>	<b>94,673</b>	<b>523,329</b>
<b>Total Mindanao</b>	<b>10,202,192</b>	<b>4,136,032</b>	<b>6,066,160</b>	<b>59.4</b>	<b>414,103</b>	<b>5,652,057</b>
<b>TOTAL PHILIPPINES</b>	<b>30,000,000</b>	<b>14,194,675</b>	<b>15,805,325</b>	<b>52.68</b>	<b>755,009</b>	<b>15,050,316</b>

### 3.1 Forestlands

Forestlands are part of the public domain where the DENR has main management responsibility. In Mindanao, classified forests constitute almost 60% of the total land area, which makes land and resource utilization a challenge in promoting investments and inclusive economic growth. Resource use rights are administered through a system of granting long-term tenure rights to corporations, organized communities and upland households, and long-term leases for industrial forest management, as well as growing of other commercial crops such as rubber and oil palm.

The accounting of forestlands (Table 11) revealed that in the Philippines, 3.38 million hectares are essentially under open access conditions, meaning there are no designated forest manager or entity/organization tasked to ensure sustainable management of forestlands. This is quite huge, constituting about 11.2% of the nation's land area.

The vast extent of the Mindanao region's forest area and resources are evident in the following:

- Almost 700,000 hectares of forestlands are covered by industrial forest management agreements, mainly by corporations. This figure represents 65% of the total area covered under IFMA in the Philippines;
- One quarter of all remaining forestland grazing agreements are in Mindanao;
- More than 800,000 hectares of forestlands are managed under community based forest management agreements, making this program an essential component of poverty reduction, sustainable forest management and economic growth. These areas constitute 50% of forestlands covered by CBFMAs in the country.
- More than 700,000 hectares of forestlands are not covered by any form of tenure instrument (see notes)
- There remains more than 400,000 hectares of unclassified public forests in Mindanao. Immediate attention to complete the delineation of final forest line is essential to determine the appropriate management regime for these lands.

Although forestlands cannot be alienated, the weak management and protection by DENR has resulted in the de facto conversion of forest areas into agricultural uses, as well as the expansion of settlements, barangay centers and local governments in the uplands. There are no comprehensive estimates of the population occupying the forest lands, national parks and other portions of the public domain. In 2000, it was estimated that some 20 Million Filipinos, representing about 26% of the country's population, live in the uplands<sup>26</sup>. In the 1980s, a more comprehensive study was undertaken which estimated that about one third of the population live in the uplands.<sup>27</sup>

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<sup>26</sup> [www.fao.org/docrep/009/ag256e/AG256E02.htm](http://www.fao.org/docrep/009/ag256e/AG256E02.htm).

<sup>27</sup> Cruz, Ma. Concepcion, et.al. **Population Pressure and Migration: Implications for Upland Development in the Philippines**, Journal of Philippine Development, 1988, Vol. XV, No. 1-b.

**Table 11. Land Tenure Instruments (LTI) in Forest Lands**

No.	LTI Type	Philippines <sup>28</sup>		Mindanao <sup>29</sup>	
		Number	Area (has)	Number	Area (has)
1	Timber License Agreement (TLA)	3	177,085.00	1	23,790
2	Industrial Forest Management Agreement (IFMA)	146	1,034,192	83	672,613
3	Socialized Industrial Forest Management Agreement (SIFMA)	1,872	35,918	74	8,813
4	Agroforestry Farm Lease Agreements (AFFLA)	8	1,275	0	0
5	Tree Farm Lease Agreement (TFLA)	75	6,815	7	620
6	Forestland Grazing Management Agreement (FLGMA & FLGA)	325	89,634	53	23,131
7	Special Land Use Permit (SLP)	175	889	2	11
8	Special Land Use Lease Agreement (SPLULA)	17	87	2	2
9	Forest Land Use Agreements for Tourism Purposes (FLAgT)	32	992	0	0
10	Special Forest Land Use Agreement (FLAg)	15	2,592	0	0
11	Community-Based Forest Management Program (CBFMP)				
11.1	CBFM Agreement	1,790	1,633,892.11	726 <sup>30</sup>	815,587
11.2	Other CBFM Tenure (CSC, FLMA, CFSa, CFP, etc.)	3,314	3,200,024.02	0	0
12	CADTs and CALTs	414	4,392,129.25	76 <sup>31</sup>	3,377,601
13	PACBRMA (protected area community based resource management agreements)	58	22,240.03	16 <sup>32</sup>	19,883.20
14	Areas under Other Management Arrangements				
14.1	Philippine National Oil Corporation (PNOC)		266,326.00		1,000 <sup>33</sup>
14.2	National Power Corporation (NPC)		337,721.00		
14.3	National Irrigation Administration		22,243.00		
14.4	Co-Management Agreement with LGUs	153	485,536.65		
	<b>TOTAL TENURED</b>	<b>8,427</b>	<b>11,668,974.71</b>		<b>4,943,049</b>
	Total classified public forest		15,050,316.00		5,652,057
	Untenured		3,381,342		709,008
	Unclassified public forests		755,009		414,913

**Notes:**

- *Ancestral domains can also be issued over A&D lands, while portions of CADTs overlap with other tenurial instruments*
- *Most terrestrial protected areas are within forestlands*

<sup>28</sup> Philippine Forestry Statistics, 2011. Note that this does not reflect the 4.06 million of terrestrial protected areas in the Philippines.

<sup>29</sup> Philippine Forestry Statistics, 2013

<sup>30</sup> ARMM not included

<sup>31</sup> Approved CALTs & CADTs as of 2014

<sup>32</sup> As of December 2013

<sup>33</sup> PAFC Areas (alternative fuels) as of 2009. <http://www.pnoc.com.ph/images/2009-AR.pdf>

### 3.2 Terrestrial Protected Areas or National Parks

Mindanao is rich in biodiversity, harboring a wide array of ecosystems that are important habitats of globally important species. The region is the site of the following identified biodiversity corridors:

- Eastern Mindanao
- Central Mindanao
- Kitanglad-Ligawasan
- Malindang
- Zamboanga Peninsula

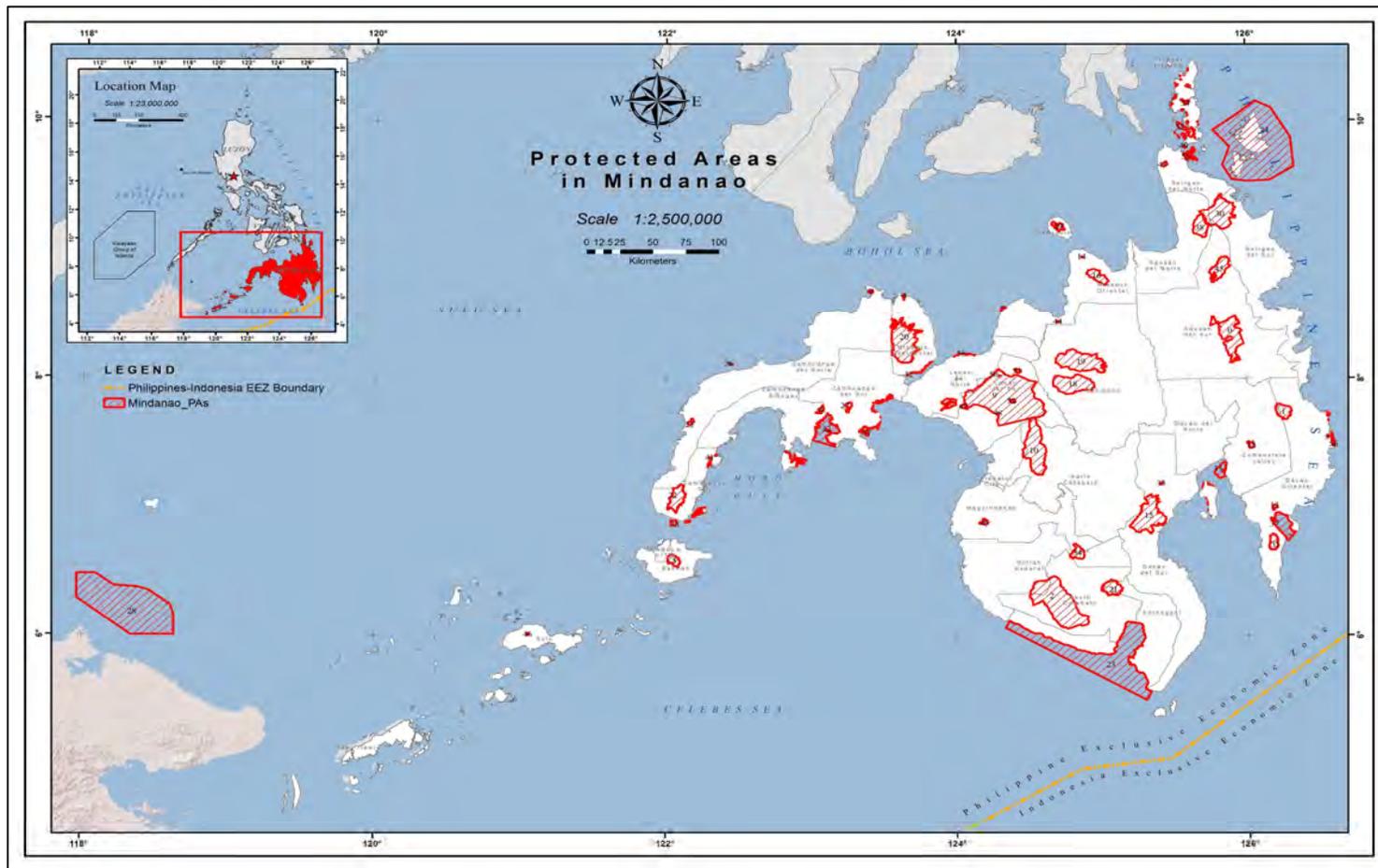
Thus, there are 62 protected areas that have been established in Mindanao, covering a total of 1.425 Million hectares. These represent about 26% of the country's established protected areas. Considering the wide distribution of key biodiversity areas (KBAs) in Mindanao that have not yet been established as PAs, it is reasonable to expect this number and area to increase.

**Table 12. Protected Areas in Mindanao**

<b>Region</b>	<b>Number of PAs</b>	<b>Area (in hectares)</b>
Region 9	13	293,966
Region 10	12	103,966
Region 11	10	91,753
Region 12	5	383,120
Region 13	11	369,440
ARMM	11	184,297
<b>Mindanao</b>	<b>62</b>	<b>1,425,834</b>
<b>Philippines</b>	<b>240</b>	<b>5,436,223</b>

Protected areas established through the NIPAS are off limits to mining, except if they have secured prior rights before PA establishment. PAs are also not to be alienated, as part of the public domain or protected estate. Communities however, who have been occupying portions of protected areas are given long term tenurial instruments called PCBARMA provided they meet the criteria of number of years of stay prior to PA establishment.

Protected areas can also support socio economic activities or investments, as magnets of ecotourism. Designated zones within protected areas can be used for development purposes provided these are consistent with the PA management plan. Users are given special use agreements in protected areas (SAPA) to undertake selected activities within



**Figure 3. Distribution of Protected Areas in Mindanao**  
 Source: Biodiversity Management Bureau, November 2015

PAs, provided certain fees are paid, as approved by the Protected Area Management Board (PAMB).

By virtue of their locations, many PAs also overlap with ancestral domain claims or CADTs of indigenous peoples. A Joint DENR-NCIP Memorandum Circular has been issued recognizing IP rights within protected areas. Moreover, the recent approach to recognize indigenous community conserved areas (ICCAs) within IP domains has addressed the long-standing tensions between IPs and PA establishment.

The DENR, through the National Mapping and Resources Information Authority (NAMRIA), is conducting delineation and mapping of all PA boundaries in order to clearly identify the PAs on the map, and serve as tool for appropriate management and zoning. Boundaries of PAs that have been established through legislation under the National Integrated Protected Areas System (NIPAS – Republic Act 7586) can be demarcated on the ground. In the Philippines, there are only thirteen such legislated PAs, five of which are in Mindanao. These are: Mt. Malindang National Park; Mt. Kitanglad National Park; Mimbilisan Protected Landscape; Mt. Apo Natural Park; and Mt. Hamiguitan Range Wildlife Sanctuary<sup>34</sup>.

### 3.3 Mineral lands

More than half of the estimated mineral wealth of the Philippines is found in Mindanao, where almost 50% of gold and 65% of nickel reserves of the country are located.<sup>35</sup>

The manner of mineral exploration and development is done through the issuance of mineral production sharing agreements (MPSAs), Financial or Technical Assistance Agreements (FTAAs), and Exploration Permits (EPs) issued by the DENR Mines and Geosciences Bureau (MGB). Small-scale mining operations are also widely practiced, though the LGUs are given the authority to issue permits through the Provincial Mining Regulatory Board (PMRC).

In 2014, the Mindanao region has 117 mining tenements, which is 30% of the country's total. Figure 4 shows the distribution of mining tenements in Mindanao.

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<sup>34</sup> PAWB Technical Bulletin No. 2013-01. List of Protected Areas under the NIPAS. January 10, 2013.

<sup>35</sup> Billedo, Elmer. 2014. Powerpoint Presentation entitled **Responsible Mining in Mindanao: A Way to Look Forward**. Presented at the League of Municipalities of the Philippines, Mindanao Island Cluster Conference, October 2014, Clark Pampanga. (Imp.org.ph; accessed November 15, 2015)

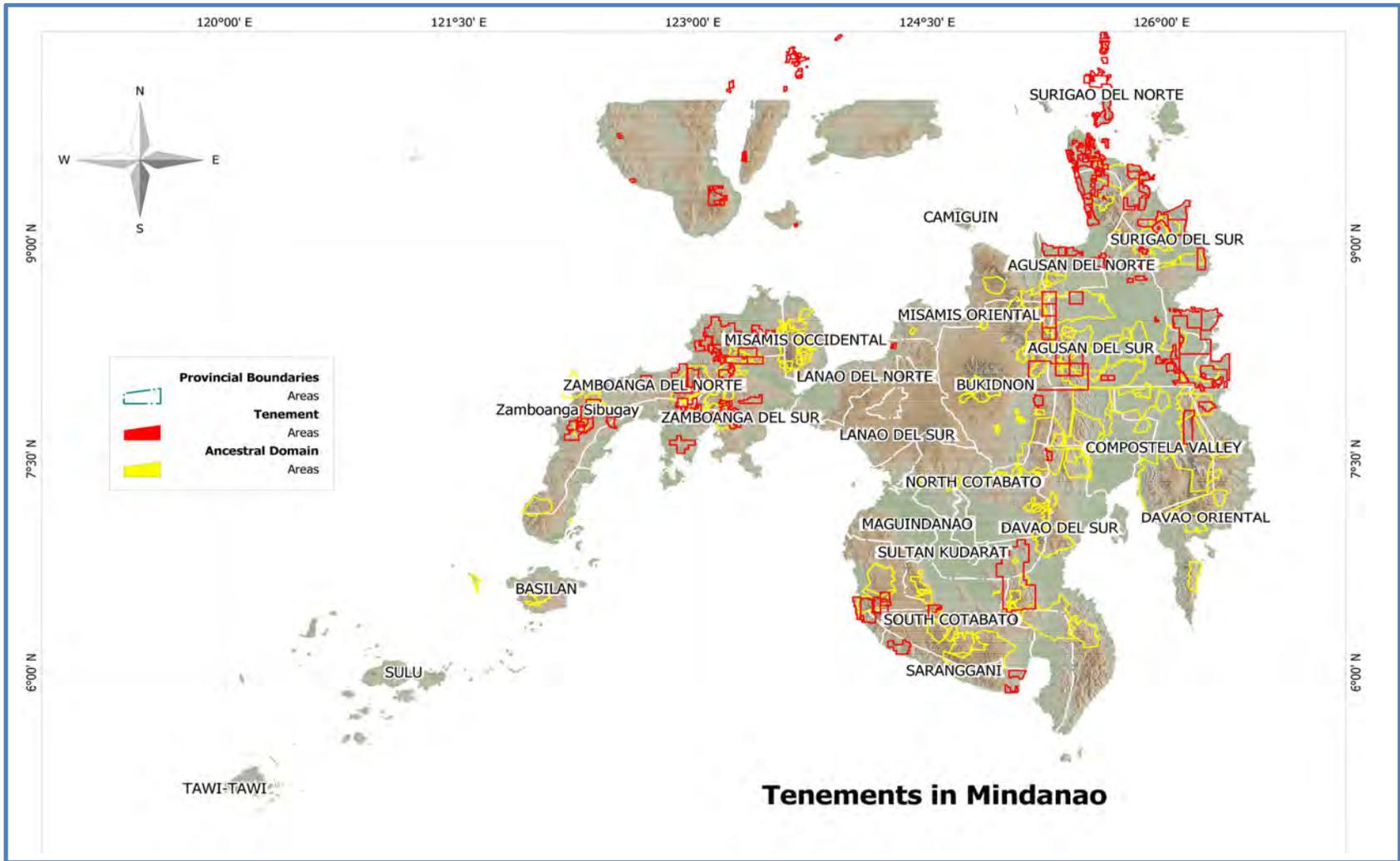


Figure 4. Mining Tenements Map of Mindanao  
 Source: PAFID, 2015.

**Table 13. Approved Mining Tenements, Philippines and Mindanao  
(as of August 2014)<sup>36</sup>**

<b>Mining Contracts/Permits</b>	<b>Philippines</b>	<b>Mindanao</b>
Exploration Permit	36	10
Mineral Production Sharing Agreement	339	106
Financial or Technical Assistance Agreement	6	1
<b>TOTAL</b>	<b>381</b>	<b>117</b>

**Table 14. Approved Mineral Production Sharing Agreements in Mindanao  
(as of June 30, 2015)**

<b>Region</b>	<b>Number</b>	<b>Area (in hectares)</b>
Region 9	17	56,438
Region 10	5	1,228
Region11	26	47,771
Region 12	5	17,440
Region 13	54	124,742
ARMM	No data	No data
<b>Mindanao</b>	<b>107</b>	<b>247,619<sup>37</sup></b>
<b>Philippines</b>	<b>338</b>	<b>601,679</b>

Source: MGB website (mgb.com.ph); accessed Nov 15, 2015

**Table 15. Operating Metallic Mines in Mindanao and Philippines<sup>38</sup>**

<b>Number of Operating Metallic Mines</b>	<b>Mindanao</b>	<b>Philippines</b>
Nickel Mines	20	28
Gold Mines	4	7
Copper Mines	2	5
Chromite Mines	1	2
Iron Mines	1	4
<b>TOTAL</b>	<b>28</b>	<b>46</b>

<sup>36</sup> Ibid.

<sup>37</sup> Excludes 23,571 hectares of FTAA under Saguitarius Mines, Inc.

<sup>38</sup> Ibid.

Region 13 hosts the most number and covers almost half the area under MPSAs in Mindanao. In Dinagat islands for example, there are 19 MPSAs, mostly located in identified mining reservation. Both Surigao del Sur and Surigao del Norte have twelve approved MPSAs each. This is consistent with the findings that the eastern seaboard is particularly rich in mineral resources.

Conflicts in resource use have erupted in mining areas, particularly between indigenous peoples, local governments and mining companies. Failure to properly secure Free Prior and Informed Consent (FPIC) from IP communities have always been cited as an issue, and/or lack of clarity as to the real IP leaders who should be consulted and give their consent. In other areas, LGUs have issued local Ordinances declaring mining moratorium. Moreover, conflicts with biodiversity conservation objectives have been raised as serious concerns, in light of the overlaps between KBAs or biodiversity rich areas and presence of rich mining deposits. These have caused instability in the mining industry and placed current and potential investments at risk.

Executive Order 79 has been issued to resolve these concerns, whereby among others, protected areas have been declared as no go zones for mining. However, this does not take into account potential new PAs such as biodiversity rich Dinagat islands which is now practically covered by approved MPSAs.

The government likewise implemented policy reforms in the mining sector through EO 79. Among the key features of the enhanced policy include:

- Performance review of existing mining operations and cleansing of non-moving mining rights holders;
- Freeze in granting of mineral agreements pending new legislation on revenue sharing;
- Grant of mining rights thru competitive public bidding;
- Declaring abandoned ores and tailings as assets of the State for bidding;
- Development of downstream industries for the mineral sector;
- Constituting the Cabinet-level Mining Industry Coordinating Council;
- Rationalizing small-scale mining activities;
- Addressing conflicts between Local Ordinances and national laws;
- Creating a One Stop Shop for all mining applications;
- Joining the Extractive Industries Transparency Initiative;
- Creation of a decentralized database for the mining industry;
- Creation of an integrated map system for mining;
- Creation of an anti-illegal mining Task Force; and
- Use of Programmatic Environmental Impact Assessment in mining.

### **3.4 Ancestral Domains**

The recognition of customary rights by indigenous peoples communities (IPs) is strongly protected by the Constitution and more specifically through the Indigenous Peoples Rights Act (IPRA). The National Commission on Indigenous Peoples (NCIP) has undertaken a program of survey, mapping and registration of ancestral domains with the aim of issuing a certificate of ancestral domain title (CADT). Since the program started in 2002, a total of 159 CADTs have been approved and registered covering 4.392 million hectares involving 921,918 IP population. When combined with 257 certificates of ancestral land titles (CALTs), covering some 17,293 hectares; these represent about 56% of the total area occupied by some 12-15 million IPs in the Philippines. More detailed discussion on this is presented in section 4 – Module 1.

## 4.0 Assessment of Land Governance in Mindanao

This section presents the results of assessment of LGAF indicators for each Module, as validated by the panels. While the legal and institutional framework that prevail essentially follow national statutes, the nuances of implementation in Mindanao are noted in the assessments.

### 4.1 Land Rights Recognition

#### Assessment of Indicators

##### Indicators Assessed:

LGI 1.1 Recognition of a continuum of rights: the law recognizes a range of rights held by individuals (including secondary rights of tenants, sharecroppers, women etc.)

LGI 1.2 Respect for and enforcement of rights

#### LGI - 1.1 Recognition of a continuum of rights

***1.1.1 a - There are laws that legally recognize a range of individual rural land rights, the strength of which depends on the classification of the land. Occupants of A&D lands enjoy full ownership rights while those occupying public lands are given only usufructuary and possessory rights. - D***

Legal recognition of individual rural land ownership rights is possible only once government has released portions of the public domain as A&D. These are then disposed of through various modes as depicted in Figure 1. The main law that governs individual rural land rights recognition of ownership is CA 141 that mandates three agencies to perform titling functions (Table 16).

**Table 16. Agencies Involved in First Time Titling of Agricultural A & D Lands**

Agency	Title Issued	Legal Basis	Remarks
DENR	Free Patent	CA 141 – Public Land Act	<ul style="list-style-type: none"> <li>Requires 30 years of continued possession prior to April 1990 by himself or predecessors in interest</li> <li>Maximum allowed is 12 hectares (combined area of all lands); beyond 5 hectares subject to CARP</li> <li>5 year restriction on transfers</li> </ul>
	Homestead Patent <sup>39</sup>	CA 141 – Public Land Act	<ul style="list-style-type: none"> <li>Requires actual occupation and residence; applies to land which are unoccupied at the</li> </ul>

<sup>39</sup> A married woman can now apply for a patent application under DAO-2002-13 dated June 24, 2002. This is in accordance with Article II, Section 14 of the Constitution and Republic Act No. 7192 otherwise known as the "Women in Development and Nation Building Act" as implemented by DAO No. 98-15 of May 27, 1998 on "Revised Guidelines on the Implementation of Gender and Development (GAD) Activities in the DENR". This Administrative Order gives

Agency	Title Issued	Legal Basis	Remarks
			time of application <ul style="list-style-type: none"> <li>• Maximum allowed is 24 hectares (combined area of all lands)</li> <li>• 5 year restriction on transfers</li> <li>• Used by non-Christian Filipinos to apply in reservations set aside for so-called "non-Christian tribes" (should not exceed 4 hectares) to secure permits for cultivation. Permittee has priority to apply for Homestead Patent. (section 21)</li> </ul>
	Sales Patent	CA 141 – Public Land Act	<ul style="list-style-type: none"> <li>• Acquisition of land through sale through public bidding</li> <li>• Maximum allowed is 124 hectares</li> <li>• 10 year restriction on transfers</li> </ul>
LRA	Judicial Titles	CA 141 – Public Land Act	<ul style="list-style-type: none"> <li>• Requires 30 years of continued possession</li> <li>• No restriction on transfers</li> </ul>
DAR	Homestead and CLOAs	Proclamations	<ul style="list-style-type: none"> <li>• Disposed to qualified CARP beneficiaries</li> <li>• Applied in lands turned over to DAR for disposition (Reservations or Proclamations)</li> <li>• Maximum area is five hectares</li> </ul>

However, the application of national laws which are based on the Regalian Doctrine had a negative impact in the Bangsamoro region as these replaced traditional and long held notion of land rights recognition and concept of ownership, thus leading to conflicts.

Moreover, the fact that three different agencies (DENR, LRA and DAR) issue titles on agricultural lands without strong coordination and common map projection has increased the risk that double titles can be issued on the same property. Both DENR and LRA reviews and approves subdivision surveys to create new parcel records without sharing of map systems further increases the risk. There are no estimates of the extent of the problem, but it is common knowledge that there are overlaps in the issuance of multiple titles on the same land.

For people occupying non-alienable and disposable lands, there is no systematic recognition of their land rights. In the public forests for example, the granting of individual certificate of stewardship contracts (CSCs) under the Integrated Social Forestry (ISF) Program is more of a strategy for forest management rather than recognition of individual land rights. Most of the CSCs that have been issued by DENR 25 years ago are expiring; and now there is an ongoing review and validation to determine if these are still being used as intended by the original beneficiaries, and therefore the need to extend validity for another 25 years.

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women, equal right as men in filing, acceptance, processing and approval of public land applications.

**1.1.1 b - In Mindanao, only 50.18% of all rural and urban lands are protected through formal titles. The rights of a large portion of occupants of forest and other public lands are not protected in practice. - D**

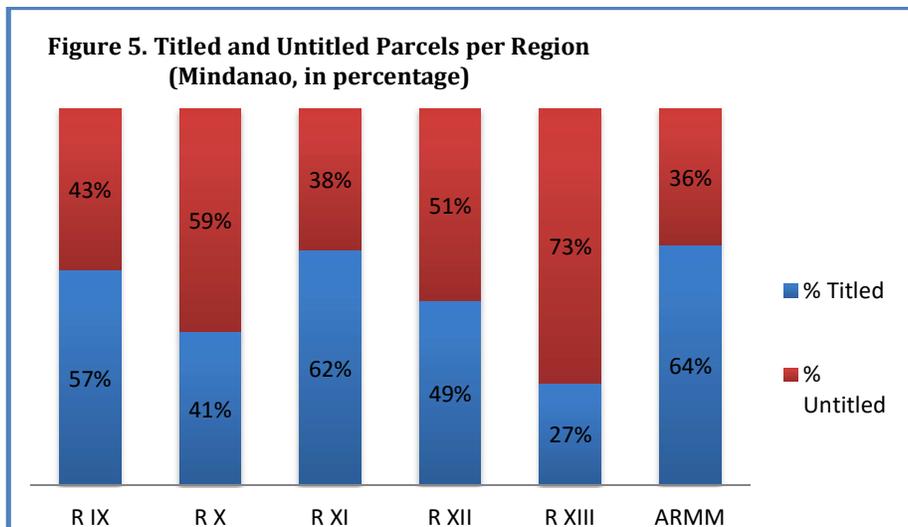
This figure is low, compared to the total Philippines, which has 54% titled parcels, and in Luzon, which has an estimated 61% titled parcels. With so many parcels outside the formal system, the constraints to investments and land market remains, particularly in Mindanao.

The Land Tenure Study estimated that there are 4.49 Million parcels in Mindanao, almost half of which are still untitled.<sup>40</sup> These represent 20% of the total estimated untitled parcels in the Philippines<sup>41</sup>;

Based on the database generated from this study, the following observations can be drawn:

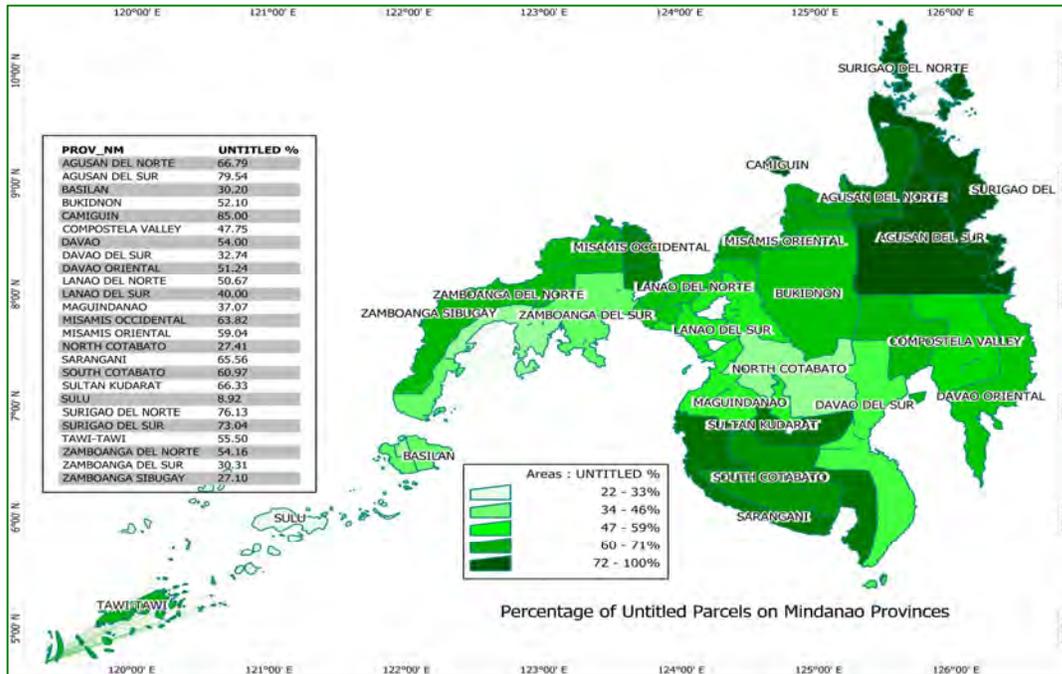
- Region 13 has the most number and largest proportion of untitled parcels in Mindanao (Table 17 and Figures 5 and 6);
- The ARMM region has the least number of parcels, and also with the least proportion of untitled parcels;
- ARMM has the highest average parcel size among the six Mindanao regions;
- Compared to national average parcel size of 0.78 hectares per parcel, Mindanao regions have overall, larger parcel sizes between 0.80 to 1.6 hectares. (Figure 8).

The above statistics could change once the data from cadastral survey involving documentation of parcels are analyzed. This could explain why there are fewer parcels and less number of untitled parcels estimated in ARMM, as the cadastral survey in ARMM has been completed only in December 2015. The parcel estimates do not distinguish between lands that are devoted to agricultural, residential and other uses.



<sup>40</sup> Philippines-Australia Land Administration and Management Project. September 2004. **Land Tenure Status Report Book 1 – Results.** While the report gave some caution in the use of data, it provides so far the best estimates of titled and untitled parcels in the country. All parcel data were based on tax parcels, as neither DENR nor RoDs/LRA cannot provide data on the parcels. The calculation of titled parcels is based on estimates of the assessor from land tax declaration certificates that show land title number. The number of total land parcels is based on an estimate of the ratio to tax parcels.

<sup>41</sup> The Land Tenure Study estimated the number of untitled parcels in the Philippines at 11.18 million.



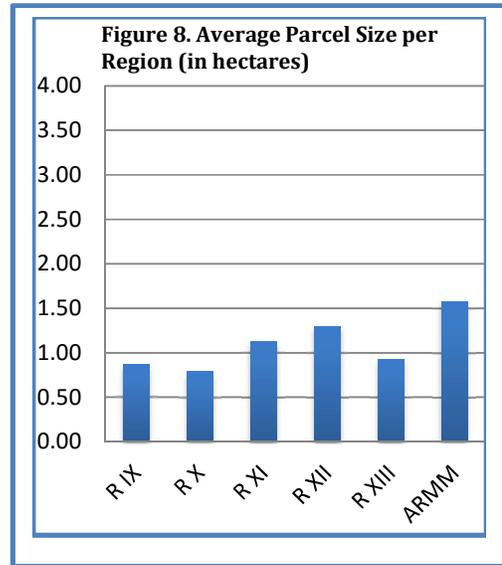
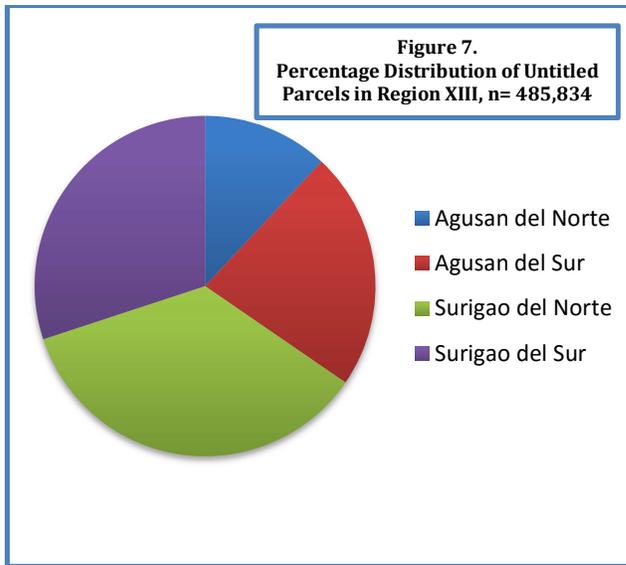
**Figure 6. Distribution of Untitled Parcels in Mindanao  
(Based on Land Tenure Study, PA-LAMP)**

**Table 17. Estimates of Titled and Untitled Parcels in Mindanao**

Region	Province	Total Number of Parcels	Total No. of Titled Parcels	Total No. of Untitled Parcels	% Untitled Parcels
IX	ZAMBOANGA DEL NORTE	500,224	224,589	275,635	55.10%
	ZAMBOANGA DEL SUR	333,542	232,856	100,686	30.19%
	ZAMBOANGA SIBUGAY	97,619	74,484	23,135	23.70%
<b>Subtotal</b>		<b>931,385</b>	<b>531,929</b>	<b>399,456</b>	<b>42.89%</b>
X	BUKIDNON	297,440	129,213	168,227	56.56%
	CAMIGUIN	55,394	8,309	47,085	85.00%
	MISAMIS OCCIDENTAL	167,809	61,306	106,503	63.47%
	MISAMIS ORIENTAL	288,117	131,065	157,052	54.51%
<b>Subtotal</b>		<b>808,760</b>	<b>329,893</b>	<b>478,867</b>	<b>59.21%</b>
XI	COMPOSTELA VALLEY	94,369	48,721	45,648	48.37%
	DAVAO	190,538	83,012	107,526	56.43%
	DAVAO DEL SUR	292,685	243,541	49,144	16.79%
	DAVAO ORIENTAL	103,078	52,962	50,116	48.62%
	LANAO DEL NORTE	174,275	105,657	68,618	39.37%

Region	Province	Total Number of Parcels	Total No. of Titled Parcels	Total No. of Untitled Parcels	% Untitled Parcels
<b>Subtotal</b>		<b>854,945</b>	<b>533,893</b>	<b>321,052</b>	<b>37.55%</b>
XII	NORTH COTABATO	234,265	178,715	55,550	23.71%
	SARANGANI	69,938	27,322	42,616	60.93%
	SOUTH COTABATO	296,406	111,750	184,656	62.30%
	SULTAN KUDARAT	121,149	35,482	85,667	70.71%
<b>Subtotal</b>		<b>721,758</b>	<b>353,269</b>	<b>368,489</b>	<b>51.05%</b>
XIII	AGUSAN DEL NORTE	110,042	51,835	58,207	52.90%
	AGUSAN DEL SUR	137,428	27,610	109,818	79.91%
	SURIGAO DEL NORTE	221,827	50,138	171,689	77.40%
	SURIGAO DEL SUR	198,282	52,162	146,120	73.69%
<b>Subtotal</b>		<b>667,579</b>	<b>181,745</b>	<b>485,834</b>	<b>72.78%</b>
ARMM	BASILAN	60,277	42,074	18,203	30.20%
	LANAO DEL SUR	228,256	136,952	91,304	40.00%
	MAGUINDANAO	158,329	101,845	56,484	35.68%
	SULU	37,221	33,894	3,327	8.94%
	TAWI-TAWI	24,053	9,041	15,012	62.41%
<b>Subtotal</b>		<b>508,136</b>	<b>323,806</b>	<b>184,330</b>	<b>36.28%</b>
<b>Total</b>		<b>4,492,563</b>	<b>2,254,535</b>	<b>2,238,028</b>	<b>49.82%</b>

Source: Philippines-Australia Land Administration and Management Project. September 2004. *Land Tenure Status Report Book 1 – Results.*



The top five provinces with the highest number of untitled parcels are shown in Table 18 below. Combined, these provinces account for almost a million or almost half of untitled parcels in the entire Mindanao region.

**Table 18. Top Five Provinces in Mindanao with the Highest Number of Untitled Parcels**

Province	No. of Untitled Parcels	% of total Parcels in Province
Zamboanga del Norte	275,635	55.10 %
South Cotabato	184,656	62.30 %
Surigao del Norte	171,689	77.40%
Bukidnon	168,227	56.56%
Misamis Oriental	157,052	54.51%
<b>TOTAL: 5 Provinces</b>	<b>957,259</b>	

It is important to note that based on DENR estimates, there are 1.1 Million hectares of A&D lands that need to be titled, comprising of only 45,000 parcels. (Table 19) Region 9 was estimated to have the most number of parcels yet to be titled. Surprisingly however, the number of parcel estimates is considerably too small in number compared to the area. It could be that the areas remaining would be close in both estimates given that residential plots would have smaller areas, but the number of parcels between the two sources needs to be reconciled.

While there is no complete picture of all registered titles in agricultural areas, the extent of distribution among farmer households can be inferred from the coverage of Comprehensive Agrarian Reform Program (CARP). Since the program started, a total of 1.9 Million hectares of agricultural land have been distributed to an estimated 1 Million beneficiaries. In Mindanao, the total accomplishment of the CARP land tenure improvement program is shown in Table 20.

**Table 19. Land Disposition in Mindanao**

	Classified A & D Lands	Administratively Titled		Judicially Titled		Turned-over to DAR, KKK, others		Transferred to other agencies /proclamation		Others		Remaining	
		No. of lots	Area (Has.)	No. of lots	Area (Has.)	No. of lots	Area (Has.)	No of lots	Area (Has)	No. of lots	Area (Has)	No of lots	Area (Has)
<b>Region 9</b>	656,804	145,491	253,159	21,690	55,986	4,361	44,988	479	7,539	0	52,278	925	280,415
<b>Region 10</b>	935,696	623,711	546,177	41,498	81,182	66,194	87,851	136	50,594	1,427	68,014	0	102,099
<b>Region 11</b>	790,653	95,484	113,471	6,386	40,193	322	7,026	202	11,358	20	187	0	618,416
<b>Region 12</b>	1,055,955	62,431	201,320	414	1,212	367	2,519	58	317	15,233	17,895	16,380	114,475
<b>CARAGA</b>	582,351	229,863	385,228	19,406	36,585	10,933	46,297	30	6,366	32,209	38,541	28,071	92,013
<b>ARMM</b>	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>	<b>4,021,459</b>	<b>1,156,980</b>	<b>1,499,357</b>	<b>89,394</b>	<b>215,161</b>	<b>82,177</b>	<b>188,684</b>	<b>905</b>	<b>76,175</b>	<b>48,889</b>	<b>176,918</b>	<b>45,376</b>	<b>1,105,320</b>

Source: Consolidated Land Sector 2nd Semester Statistical Report, DENR-LMB as of Dec 31, 2014

**Table 20. Distributed Lands in Mindanao through CARP**

Region	Scope	Area Distributes (hectares)			Number of ARBs
		Private Agricultural lands	Non private agricultural lands	Total	
<b>9</b>	239,026	142,500	84,365	226,865	129,773
<b>10</b>	370,130	143,506	190,818	334,324	214,679
<b>11</b>	261,312	171,529	74,980	246,509	178,065
<b>12</b>	720,466	222,192	444,726	666,918	276,923
<b>13</b>	304,230	81,147	186,566	267,713	133,104
<b>ARMM</b>	332,755	138,242	82,242	220,484	70,042
<b>TOTAL</b>	<b>2,227,919</b>	<b>899,116</b>	<b>1,063,697</b>	<b>1,962,813</b>	<b>1,002,586</b>

*Source: DAR MFO as of 2014*

One of the major reasons for the failure of titling program is the long period it took the government to complete cadastral surveys in the country. Cadastral surveys define the boundaries of LGUs which becomes the basis of their internal revenue allotment (IRA), determines the parcels and document the claims of those who have been in possession of land. Since the cadastral survey program was undertaken in 1913 with the enactment of Commonwealth Act 2259 or the Cadastral Act, only 753 cities/municipalities or 46% of the total local government units have been cadastrally surveyed or completed until 2009. These cover a total land area of 13.8 Million hectares.

With the priority given under the Aquino administration to completing the program, all the cadastral surveys, from political subdivisions to lot surveys, have been completed. In the ARMM area, the survey was completed only in December 2015. Validations are still on going as of writing of this report.

While the completion of lot surveys will greatly facilitate titling, it is important to consider the following:

- Many past survey records have been missing or lost in the files of DENR, thus necessitating re surveys or reconstruction from available sources to be useful for titling;
- Many completed surveys were defective, thus not useful for titling activities. Further review of completed surveys is necessary to determine which ones are erroneous and should therefore be repeated;
- The long lag time between completion of lot surveys and actual adjudication and titling has resulted in outdated claimant records. LAMP2 experience bear that in areas covered by old surveys, there have been informal transfers, subdivisions and consolidation, sometimes death of the original claimant that makes adjudication lengthy, difficult and expensive (in the case of parcel requiring subdivisions prior to titling);
- There are large areas covered by judicial proceedings, meaning the survey and title claims have been lodged at the Courts (in anticipation of the judicial process of titling) and would need a lengthy process of individual parcel application for cancellation with the Courts through the Office of Solicitor General before administrative titling can proceed. This is the case for some areas within Cagayan de Oro City, for example.

With the issuance of Joint DENR-DILG Memorandum Circular on LGU led titling, many local governments have entered into Memorandum of Partnership Agreements (MOPA) with the DENR to fast track the titling process. This follows from the LAMP2 model wherein teams of DENR-LGU systematic adjudication are created. However, it would require massive effort and large amounts of resources to address the titling backlog in the country, particularly in Mindanao.

**1.1.2 and 1.1.3 - Customary rights, as well as indigenous rights to land and forests are legally recognized, but these are only partly protected in practice - between C and D**

The IPRA recognizes customary rights, which carries with it rights to land and resources within the ancestral domains of indigenous peoples.

In Mindanao, it is estimated that there are 1.5 million indigenous peoples (or collectively called as *lumads*), or roughly 11.5 % of the country's total estimated IP population. As of 2014, a total of 76 CADTs have been issued over 1.98 million hectares of land (Figure 9). Of these, only 13 were registered at the RoD, while an additional 63 CADTs are awaiting registration.

An additional 80 CADTs in Mindanao are on process, representing 1.39 Million hectares. When combined with the CADTs already issued, the total number of CADTs in Mindanao would reach 156, covering over 3.37 Million hectares of land area. This represents about 33% of the total area of the entire region, or about half of its forestlands. Figure 9 also shows the potential CADT areas, or ancestral domains of indigenous peoples groups.

**Table 21. CADTs Issued in Mindanao**

REGION	NO. OF CADTs	TOTAL AREAS (hectare)	No. of IP Right Holders	Registered CADTs	For Registration
Region 9	11	142,853	41,760	4	7
Region 10	16	242,986	57,315	4	12
Region 11	15	722,027	134,939	0	15
Region 12	14	377,584	148,826	2	12
Region 13	20	496,437	73,187	3	17
<b>Mindanao</b>	<b>76</b>	<b>1,981,887</b>	<b>456,027</b>	<b>13</b>	<b>63</b>
<b>TOTAL</b>	<b>159</b>	<b>4,392,129</b>	<b>921,918</b>	<b>41</b>	<b>118</b>

**Table 22. Mindanao CADTs on Process**

Region	No. of on-process	Estimated area (in Hectares)	No. of on process CALT App.	Estimated area (in Hectares)
Region 9	12	253,287		
Region 10	32	309,229	9	6,558
Region 11	12	270,372	3	17
Region 12	13	160,109	7	9,303
Region 13	11	402,717	1	1,648
<b>Mindanao</b>	<b>80</b>	<b>1,395,714</b>	<b>20</b>	<b>17,526</b>

Region	No. of on-process	Estimated area (in Hectares)	No. of on process CALT App.	Estimated area (in Hectares)
<b>Total</b>	<b>166</b>	<b>2,913,859</b>	<b>125</b>	<b>18,526</b>

Source of Data: *Status of Delineation and Titling of Ancestral Domains and Lands*. NCIP Powerpoint Presentation during the Second National ICCA Conference, Crowne Plaza, October 2014.

Indigenous peoples can enter into joint venture agreements with third parties for management and development of portions of their CADTs following their ancestral domain sustainable development and protection plan (ADSDPP). So far, only a few IP groups have entered into agreements for these types of activities due to their weaknesses as organizations, and mistrust of other parties due to histories of exploitation.

Because of the potential scope of CADTs in Mindanao, it is essential to complete the mapping and recognition of ancestral domains to clearly delineate their coverage and avoid the risks of creating overlaps with other tenure rights. The implementation of Joint DOJ-DENR-DAR-NCIP Circular needs to be reviewed as it has been identified as one of the bottlenecks in registration. Likewise, budget constraints on the part of NCIP have prevented the acceleration of mapping, delineation and CADT issuance all over the country. Boundary disputes have also been identified as one of the reasons delaying issuance of CADT.

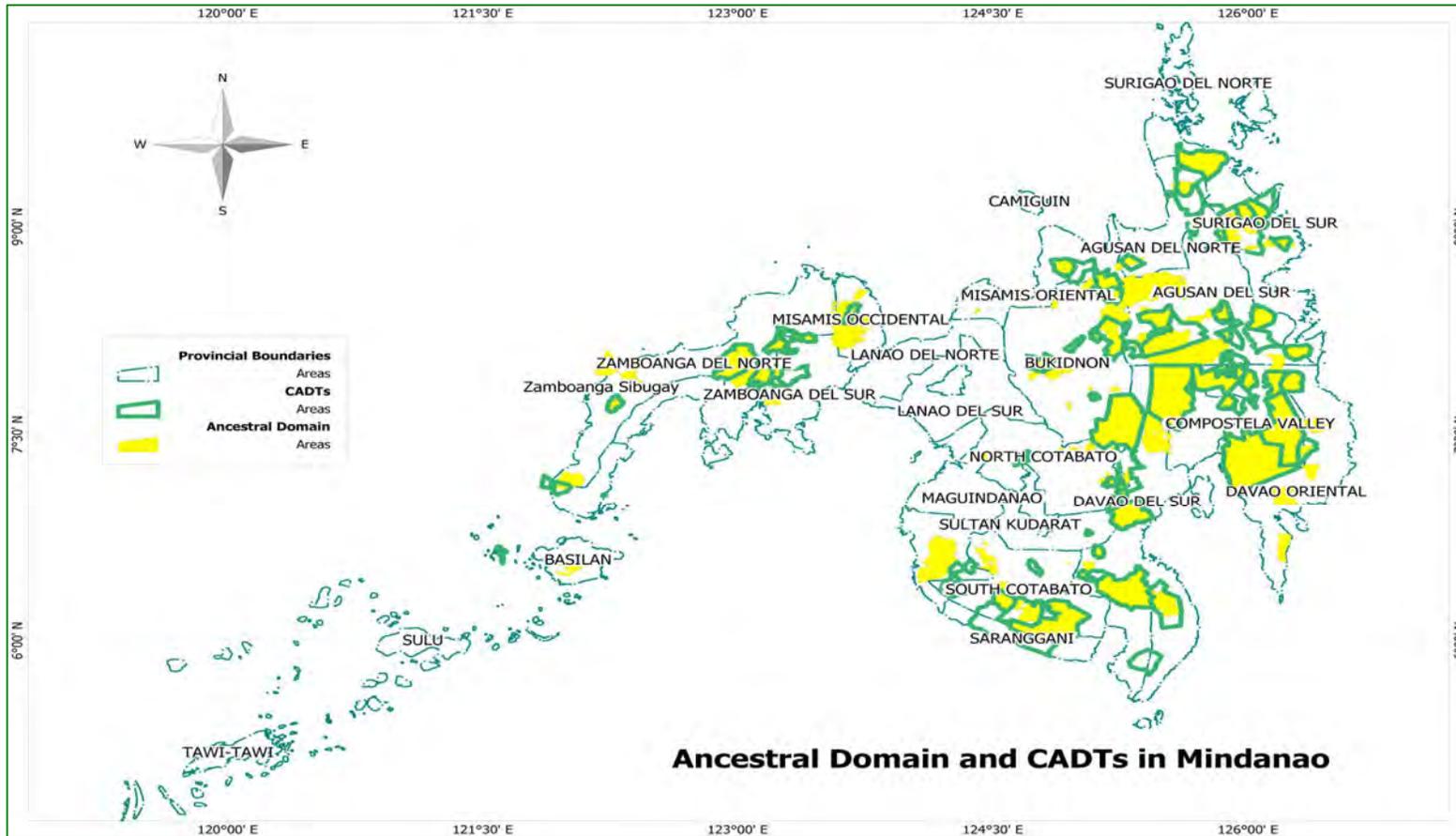
The procedures for determination of the metes and bounds of ancestral domains as basis for CADT follow a self delineation process, where NCIP or the IP community engages Geodetic Engineers or partners with NGOs to conduct survey and mapping. The flaw in this procedure is that while there are provisions in existing guidelines to share the survey plan with DENR, DAR and LRA for purposes of common projection; in practice, many CADTs have been issued in areas where tenure instruments have already been issued by DENR. There are also documented cases of titles, and certificates of land ownership awards (CLOAs) that have been issued within CADTs.

**1.1.4 - Existing legal framework recognizes urban land tenure rights except for informal settler families who constitute about 13% of the urban population in Mindanao - B**

Titling of urban lands for residential, commercial and other purposes through the judicial titling procedures is possible through the Land Registration Act, Cadastral Act and Property Registration Act. Other policies which support titling in urban areas is Commonwealth Act 141 which allows titling through Miscellaneous Sales Patents. Republic Act 730 provides for titling of lands actually used for residential purposes without the requirements of public auction (direct sale).

The Residential Free Patent Act (RA 10023) relaxed all cumbersome titling procedures in residential lands that have been classified as public alienable and disposable lands. It essentially extended the titling instrument which used to apply only to public A&D agricultural lands. The law reduced from 30 to 10, the number of years of actual possession required before a patent can be issued. It also removed the five-year restrictions on transfers and mortgage that used to apply to agricultural Free Patent.

This would be the fastest and economical option to title the remaining untitled residential lands in Mindanao. The DENR actually has a program to enter into partnership agreement with LGUs to accelerate titling through the Residential Free Patent option. However, if the lands are covered by cadastral proceedings (i.e., if there have been earlier applications lodged with the Courts), then substantial delays are expected, as this would require taking these out of the Court system before administrative titling can proceed.



**Figure 9. Map showing location of Ancestral Domain Claims and CADTs issued in Mindanao**

*Source: Based on data from PAFID, 2015.*

**Table 23. Agencies Involved in First Time Titling of Residential/Urban Lands**

Agency	Title Issued	Legal Basis	Remarks
DENR	Free Patent Residential	RA 10023	<ul style="list-style-type: none"> <li>• Requires 10 years continued possession</li> <li>• Land should be in areas zoned as residential by the LGU</li> <li>• For highly urbanized cities, the area shall not exceed two hundred (200) square meters.</li> <li>• For other cities, the area shall not exceed five hundred (500) square meters.</li> <li>• For first class and second class municipalities, the area shall not exceed seven hundred fifty (750) square meters.</li> <li>• For all other municipalities, the area shall not exceed one thousand (1000) square meters</li> <li>• No restriction on sale, transfers, or conveyance</li> </ul>
	Miscellaneous Sales Patent	RA 730	<ul style="list-style-type: none"> <li>• Involves sale without public bidding</li> <li>• Applicant must have occupied in good faith the land applied for and constructed a house thereon where he/she and family is actually residing</li> <li>• Maximum area is 1,000 sq m.</li> <li>• Not subject to restriction on sale, mortgage or transfers<sup>42</sup></li> </ul>
	Miscellaneous	CA 141 – Public Land Act	<ul style="list-style-type: none"> <li>• Involves sale thru bidding</li> <li>• No restriction on transfers or conveyance, mortgage</li> </ul>
LRA	Judicial Titles	CA 141 – Public Land Act	<ul style="list-style-type: none"> <li>• Requires 30 years of continued possession</li> <li>• No restriction on transfers or conveyance, mortgage</li> </ul>
National Housing Authority	Special Patents	Urban Development and Housing Act  (RA 7279)	<ul style="list-style-type: none"> <li>• Proclaimed lands for socialized housing are disposed of to informal settler families</li> </ul>

However, the rights of urban informal settlers in private and public lands are not recognized by law. As a form of protection, the Urban Development and Housing Act was enacted in 1992, which defined the legal framework for urban land reform and housing for informal settlers, slum dwellers, and other underprivileged. It also disallows summary evictions and demolition

<sup>42</sup> Presidential Decree No. 2004 dated December 30, 1985 amended Section 2 of Republic Act 730.

of dwelling units without due process and adequate resettlement. The UDHA also established clear policy and process through which the rights of ISF can be formalized either through on-site development or relocation. LGUs were mandated to conduct land inventory, register informal settlers and allocate land for secure tenure. Under the balanced housing development provision, developers are required to allocate 20% of their land or value of subdivision projects to socialized housing.

Mindanao has about 14.7% of the total ISF population as of 2011, or about 221,755 families. These constitute about 12.7% of the total urban population in Mindanao. About 75% or 165,727 ISF live in danger areas. Region 10 has the most number of ISF among all the Mindanao regions.

**Table 24. Informal Settler Families in Mindanao, 2011**

Region	Total ISF	Danger Zones	Areas Earmarked for Government Infrastructure	Government owned lands	Private Lands	Others
Region 9	55,393	44,123	0	6,808	4,462	0
Region 10	82,272	69,781	9,023	496	187	2,785
Region 11	8,255	2,268	0	433	5,554	0
Region 12	14,725	5,255	947	199	8,249	75
Region 13	44,339	15,380	958	20,422	6,687	892
ARMM	16,771	1,920	1,600	12,573	678	0
<b>Total Mindanao</b>	<b>221,755</b>	<b>165,727</b>	<b>12,528</b>	<b>40,931</b>	<b>25,817</b>	<b>3,752</b>
<b>Total Philippines</b>	<b>1,502,336</b>	<b>767,502</b>	<b>52,797</b>	<b>265,361</b>	<b>378,517</b>	<b>38,159</b>

Source: ICF. July 2014. Developing a National Informal Settlements Upgrading Strategy in the Philippines: Final Report.

The estimates definitely need to be updated for proper planning and management of programs in support of formalization.

## **LGI 1.2 Respect for and enforcement of rights**

### ***1.2.1 - Accessible opportunities exist for tenure individualization of group rights. However, the strength of the law, and effectiveness of implementation varies with the type of group rights.***

In the Philippines, there are opportunities for recognition of group rights that protect the collective interests of its members. Analysis of this indicator will look at the strength of group rights recognition, clear definition of boundaries, group membership and decision making mechanisms to provide incentives for sustainable land and resource management.

There are at least four types of group rights that are recognized:

- Collective group rights by farmers' organizations/cooperatives under agrarian reform;
- Community group rights over natural resources in public forest lands
- Collective tenure by informal settler families under the Community Mortgage Program (CMP)
- Customary group rights by indigenous peoples

In the case of customary group rights of indigenous peoples, there are no opportunities for individualization of CADT. Rather, individual of family based CALTs are issued following evidence of individual claims.

The law provides opportunities for those holding collective CLOAs under CARP to individualize their land rights. However, implementation issues have made it difficult to do so - C

Under the CARP, collective CLOAs are given by government to farmers cooperatives/associations, who passed the criteria as agrarian reform beneficiaries (mainly landless and resident of the land, barangay or municipality where the landholding is located). Where no such cooperative or association exists at the time of coverage and acquisition, its formation shall be encouraged, preferably with assistance from NGOs. As of 2012, collective CLOAs have been issued over 2.126 Million hectares in the Philippines. These lands are used for productive agriculture either by the farmer cooperative members themselves or through long-term lease agreements with large corporations.

About 43% of the total collective CLOAs issued in the Philippines are in Mindanao. Out of 914,453 hectares of collective CLOAs, more than half (52%) have been subdivided by DAR (477,096 hectares). It is also important to note that 91% of all collective CLOAs issued are in the name of farmer groups which are not organized, thus raising questions about the group's ability to manage the land collectively, the affairs of the organization, and negotiations with private investors.

**Table 25. Collective CLOAs in Mindanao (Sept. 2015)<sup>43</sup>**

<b>CARP Coverage and CLOAs by Type of Beneficiary Groups</b>	<b>Mindanao</b>	<b>Philippines</b>
Cumulative CARP Accomplishments		
Area (hectares)	1,002,646	
Number of Beneficiaries	129,710	
LAD Balance (hectares)	257,033	
Total Collective CLOAs issued		
Area (hectares)	914,453	2,145,663
Number of Collective CLOAs	74,680	194,453
<i>Of which, subdivided:</i>		
Area (hectares)	477,096	
Number of CLOAs	36,789	
Groups of Farmer Beneficiaries		
Area (hectares)	833,853	2,039,637
Number of CLOAs	73,663	193,312
<i>Of which, subdivided:</i>		
Area (hectares)	455,429	
Number of CLOAs	36,511	
Farmers' Associations		
Area (hectares)	29,612	51,239
Number of CLOAs	300	717
<i>Of which, subdivided:</i>		
Area (hectares)	11,827	
Number of CLOAs	91	
Farmer Cooperatives		
Area (hectares)	50,987	54,787
Number of CLOAs	717	878
<i>Of which, subdivided:</i>		
Area (hectares)	9,840	
Number of CLOAs	187	

<sup>43</sup> DAR, Sept. 2015. Reports on LAD Accomplishments and Balances, CLOA Statistics in Mindanao.

The bulk of collective CLOAs issuance happened in the early 90s in an effort to accelerate CARP implementation. A number of issues have surfaced as a result of such moves such as the following:

- Some LGUs reported that lands covered by collective CLOAs have low rates of payment of RPTs, as there is no clear assigned responsibility;
- A large proportion of collective CLOA holders are not organized farmer associations or cooperatives (Table 25), suggesting that they are not quite mature organizations for collective land management, or in negotiations with large scale land investors in cases of leaseback arrangements; and
- Due to the 10 year deferment of CARP implementation in corporate agricultural lands, there were reports that this window of time was used by owners of large estates to exclude other farmers who are eligible under the program; thus resulting in cases of exclusion and inclusion<sup>44</sup> (Table 26).

**Table 26. Inclusion-Exclusion Cases in Davao del Norte<sup>45</sup>**

Name of Landholding	Cases Started on	Decision Promulgated on	Age (in years)	Number of Farmer Beneficiaries Affected	Current Status
WADECOR	Jan 1998	Dec 2003	5	200	Appeal pending at Court of Appeals
Diamond Farms, Inc.	Apr 1997	Apr 2003	6	142	Pending at Bureau of Agrarian Legal Assistance
FARBEMCO	June 2000	Apr 2004	4	78	
CHECKERED Farms	Sept 1995	Aug 2004	6	301	Under MR
DAPCO	Apr 1999	May 2004	5	230	Under review by DAR
Rebaja Rodrigo	June 1999	Aug 2004	5	123	Pending
TADECO Central	Apr 2000	Apr 2003	3	881	Pending
TADECO	Oct 1998	Apr 2003	5	259	Pending at DAR Region 11
MARSMAN Corp.	Sept 1999	Aug 2004	6	928	Pending at DAR Region 11
WADECOR	Oct 2000	Sept 2004	4	215	Pending; on appeal
DARMUPCO	Mar 1999	Oct 2003	5	712	Under MR; pending
<b>Total No. of farmworkers affected</b>				<b>4,069</b>	
<b>Average age of cases (years)</b>				<b>4.9</b>	

In a study by Quitariano, he cited that the Mindanao Farmworkers Development Center (MFDC), in its 13 years of work - has documented more than 17,000 landless farmers and farmworkers

<sup>44</sup> Quitariano, Eddie L. September 2009. **Land, Foreign Aid and the Rural Poor in Mindanao**. Overseas Aid and Agrarian Reform. Focus on the Global South.

<sup>45</sup> Source: Legal and Paralegal Support Services, Peace Foundation, 2008, as cited by Quitariano, E.

who were either disposed or excluded from the land transfer process during the deferment period of CARP implementation in large corporate farms. These comprise farmers, farm workers, seasonal workers, contractual workers and retrenched farm workers. Accordingly, only 2,118 (11.89%) have acquired land under CARP; and the volume of land acquired represents only 5.2% of total claimed area.<sup>46</sup>

DAR recognizes the cases of exclusion and inclusion cases, and has tasked its field offices to document and validate these through interviews and review of records. Under CARPER (RA 9700), issuance of individual CLOA has since been the general rule.

During the panel review, additional concerns on collective CLOAs were shared by DAR<sup>47</sup>:

- In some cases, not all beneficiaries are named in the CLOA, instead only the name of the association is reflected in the document thus raising serious issues during re negotiations of contracts with the commercial investor; and when some members decide to individualize their certificates. Some high profile cases of these have featured in DAR's exclusion and inclusion process in segregating the group of beneficiaries who decided to opt out of an existing contract.
- While there are clear procedures that have been issued by DAR for the individualization of collective CLOAs (DAR DAO No. 3, series of 1993); a more serious concern is the subdivision of CLOAs where the beneficiaries are not listed in the title. This would entail more rigorous background investigation and validation of individual beneficiary members; and will pose a challenge in ensuring that both the investors and CLOA holders mutually benefit from their partnership. A Department Order was issued by DAR in June 2016 (Administrative Order 3, series of 2016); which seeks to stabilize ownership and tenureship of agrarian reform beneficiaries with CLOAs.
- A more important concern is the screening process that went into the collective CLOA issuance. DAR reported that they have been encountering problems with identifying the beneficiary members, and cases where the names listed are found out to be not qualified.
- Other investigations revealed that areas awarded to CLOAs are not eligible in the first place. There have been many reports of CLOAs encroaching in protected areas, timberlands, and ancestral domains; causing a lot of conflict. The Joint DENR-DAR-DOJ-NCIP Administrative Order was meant to prevent future overlaps in tenure issuance and not to correct mistakes done in the past.
- Issues arise with collective CLOAs named after the cooperatives or associations. In a sense, cooperatives are business institutions prior to award. However, such collective ownership does not reflect the decisions of the individual members who are co owners.

*Collective tenure of communities occupying forestlands are recognized. However, there are no opportunities for individualization of resource use rights - D*

Community Based Forest Management Agreements (CBFMAs) represent the instrument issued by DENR for collective management of portions of the country's productive forest estate. These tenurial instruments have a duration of 25 years, renewable for another 25 years. Recipients of CBFMAs are required to prepare Community Resource Management Frameworks (CRMFs) which is the basis for ascertaining the level of resource utilization. Individual CRMFs would also specify the allocation of lands for specific uses (agriculture, agroforestry, forest production) as well as for protection purposes. In the Philippines, there were 1,184 CBFMAs covering 1.615 Million hectares involving 191,352 households or 1,884 peoples organizations, as of 2013. In

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<sup>46</sup> Ibid, pp. 13. DAR explained that the MFDC bases its conclusion on the labor dispute during this period. The CARP law puts a premium on being a regular worker at the time of end of deferment (1998). New workers were brought in to replace those who were retrenched.

<sup>47</sup> Mindanao LGAF Panel Workshop. December 2, 2015, Cagayan de Oro City.

Mindanao, CBFMAs cover 815,587 hectares involving about 112,068 households in 726 Peoples' Organizations (Table 27).

**Table 27. Distribution of CBFMAs in Mindanao**

<b>Region</b>	<b>Number of CBFMAs/POs</b>	<b>Number of Households</b>	<b>Area Covered (hectares)</b>
Region 9	145	10,948	90,193
Region 10	294	28,537	209,147
Region 11	105	8,367	210,063
Region 12	56	99,43	96,101
Region 13	126	54,273	210,083
ARMM <sup>48</sup>			
<b>Total Mindanao</b>	<b>726</b>	<b>112,068</b>	<b>815,587</b>
<b>Total Philippines</b>	<b>1,884</b>	<b>191,352</b>	<b>1,615,137</b>

*Source: Forest Management Bureau. Philippine Forestry Statistics, 2013.*

If managed well, there is huge potential for CBFMAs to stimulate employment through linkages with markets and value adding through wood processing. In a stocktaking exercise carried out in 2011, it was noted that lack of private sector participation, limited monitoring and evaluation, and unstable resource use policies by DENR have undermined the potential of CBFM as a strategy for reducing poverty and creating employment.<sup>49</sup> In particular, there is no strong policy anchor for CBFM such that over several administrations, government has changed the terms of resource use rights given to communities, thus resulting in sub optimal use of this tenure instrument.

There is no global target or estimates of forest communities who should be awarded group rights through CBFMA. This poses a concern on the adequacy of current coverage vis a vis the need for recognition of resource use rights of people already occupying forestlands.

*Individualization of collective tenure by informal settler families (ISF) under the Community Mortgage Program (CMP) is possible only after the loan has been fully paid, which takes about 30 years - C*

In the urban areas, the rights of ISF are recognized through the CMP, a program under the UDHA (Republic Act 7279). Under the law, underprivileged families with no secure tenure to their land and housing may avail of the program through a loan from the Socialized Housing and Finance Corporation (SHFC). Households must belong to a registered community association to be eligible for financing under the program. The title then that is issued is named after the association, with provision for individualization once the mortgage payment has been

<sup>48</sup> Data on ARMM not available from Philippine Forestry Statistics.

<sup>49</sup> Development Alternatives, Inc., February 2012. **Proceedings of the Consultative Workshop: Stocktaking of CBNRM in the Philippines.** Crowne Plaza Hotel, Pasig City, Philippines. June 30, 2011.

completed. This process usually takes 30 years, during which time some members have informally transferred their rights to other people; and/or disagreements have taken place within the community organization that makes full repayment impossible.

The loan is contingent upon identifying the land, which is used as collateral. There are a number of issues that have beset the formalization of landless urban poor families<sup>50</sup>:

**First**, ISF have been having difficulty finding available land for their housing in the face of refusal of private property owners to sell the land currently occupied by ISF, the high cost of land in major cities, and the absence of a deliberate program to make land available for in city resettlement and on site development of ISF.

**Second**, loan processing has proved difficult because of the legal requirements that have to be complied with by the applicants. Most of these pertain to land issues such as agreements with property owners, existence of liens, encumbrances on the property, missing back titles, extrajudicial settlement and special power of attorney documents, land owners are dissolved corporations, and technical problems such as location in hazard prone areas. At SHFC, these represent 47% of actual cases pending, involving some 9,295 households and involving a total loan amount of Php 680 Million.

**Third**, key shelter agencies such as the National Housing Authority (NHA), encounter technical problems with survey of proclaimed areas for ISF, as well as the existence of many problematic proclamations that make it almost impossible for NHA to dispose the property for socialized housing. These include, proclamations in hazard zones, issuance by Department of Public Works and Highways (DPWH) of eviction notices despite the completion of the housing project by NHA, among others.

Underlying the above issues is the disjointed land records, lack of coordination among agencies, which make it difficult to ascertain the true ownership of properties, and properly conduct complete staff work prior to issuance of proclamations. Combined, these have affected the pace by which the government has responded to the growing landlessness among the urban poor. Based on broad estimates used by the NHA made in coordination with local governments, the number of ISF are about 1.5 Million, or about 15% of the Philippines' total urban population. Based on the National Informal Settler Upgrading Strategy, this estimate still pales in comparison to the numbers indicated by global studies which report that about 30% to 60% of the urban population in the developing world live in informal settlements.<sup>51</sup>

### ***1.2.2 and 1.2.3 - A large proportion of individual land in Mindanao (17% of total area) have not been formally recorded and mapped - C<sup>52</sup>***

In Mindanao, the area in ARMM that is still not completely cadastrally surveyed is 1.7 million hectares, or 17.32% of the Mindanao total land area. Moreover, there are 414,973 hectares of unclassified forestlands which represent 4% of its land area. The classification of these lands have to be done with finality in order to determine if these can be released as public A&D or retained as part of the public forest.

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<sup>50</sup> Land and Governance Innovations, Inc. August 2015. **Understanding Land and Related Constraints in the Provision of Affordable Housing to Informal Settler Families in Metro Manila**: Final Report submitted to World Bank Manila.

<sup>51</sup> ICF. July 2014. Developing a National Informal Settlements Upgrading Strategy in the Philippines: Final Report.

<sup>52</sup> After the completion of the assessment and at the time of writing this report, the cadastral survey for ARMM has reportedly been completed, but still subject to validation. This dimension would then have a rating of A.

The DENR has targeted the completion of all cadastral surveys in the Philippines before the end of the Aquino administration, but this needs to happen for parcel surveys as well.

**1.2.4 and 1.2.5 - The number of informal land sales and lease transactions is high and some are unambiguously identified on a routine basis - C**

During the panel discussions, the members reported that high transfer taxes and estate taxes encourage informality in land transactions. Members shared their personal knowledge of people evading estate taxes by not registering properties. Most cases of informal land sales are witnessed by local officials who attest to the transfer.

In Bangsamoro area, a documentation of informal land markets revealed that this practice thrive because they enable easy entry and exit for farmers and other rural producers who want to access land for crop production. Despite the uncertainty that could provoke violent conflict, these markets persist due to the fragmented nature of land governance in Mindanao – brought about by the shortcomings among national land agencies, and the costliness of the formal land market.<sup>53</sup>

The case study further noted that: “... while transactions are vulnerable to misinterpretation and contestation... these informal agreements has shown remarkable effectiveness in transforming idle land into productive farms, and local strongmen have been relatively efficient in enforcing the terms of informal contracts.” (Gulane, 2014)

In contrast, “formal land markets in Muslim Mindanao where pervasive rent seeking and legal contestation cripples farmers’ ability to engage in production. Worse, studies have shown how these formal land arrangements have actually become sources of violence, especially when they impinge on the informal arrangements concluded at the community level”. (Gulane, 2014)

In a related observation, the informal land market is seen as the coping solution to the fragmented land governance in the Bangsamoro where “sales, mortgage of land are unrecorded officially and publicly, and are done on a “gentleman’s agreement” or by an unregistered document. Usually, a strongman mediates and witnesses the sale/transfer/loan, and the whole situation is tinder to conflict flaring up when there is defection from the agreement by either party, or the strongman himself takes interest in the transaction.”<sup>54</sup>

In terms of informal land leases, the panels opined that existing legal restrictions are routinely neglected in Mindanao. The DAR cited that leases on CARP lands are supposed to be approved by the Presidential Agrarian Reform Council (PARC). However, only one lease has so far been approved by the PARC. There are also other instances where not all members of the cooperative would give consent to lease; but if they accept payment, it would be presumed that consent is given. These are gray areas in lease of collective CLOAs to private sector investors.

**1.2.6 - In more than 90% of the cases, women’s property rights as accrued by relevant laws are effectively recorded - A**

Existing laws do not discriminate the issuance of titles/patents/CLOAs in the name of women landowners, or jointly with spouses. However, gender data is not recorded in the registry.

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<sup>53</sup> Gulane, Judy. International Alert – Policy Brief. April 2014. Land Governance in the Bangsamoro.

<sup>54</sup> Ylagan, Amelia H.C. Business world online. “Economic Hurdles to Peace in Mindanao.” 28 June 2015. (BusinessWorld | Economic hurdles to peace in ...<http://www.bworldonline.com/content.php?section=Opinion&title=economic-hurdles-to-peace-in-mindanao&id=110479>)

Because of this, the panel believed that women's property rights are recorded, except that because the information is not captured, there is no way to monitor this.

In a study on gender and property rights, it was found that one of the weaknesses of recording of women's rights to land and resources is *"the lack of data fields on sex, civil status, and date of birth of applicants and holders of land tenure instruments in many LAM forms (e.g., the Residential Free Patent Application Form, Farmer Beneficiary Application Form or CARP Form 1, Tax Declaration Form, Real Property Field Appraisal and Assessment Sheet, etc.) as well as the lack of information on the sex of registrants and holders of certificates of land titles in the judicial forms and in the land registration system and database of the LRA."*<sup>55</sup>

## Summary and Recommendations

Based on the above information and analysis of indicators, the following points can be said about rights recognition in Mindanao:

- There exists national policies and laws for recognition of both individual and group rights in the rural areas. These afford recognition of long term possession, and provides for affordable processes for securing rights.
- However, these very same laws were responsible for the dispossession of the Moros, as these replaced existing traditional and long held notions of ownership; thus leading to conflict.
- The presence of multiple agencies issuing first time titles on agricultural land, coupled with lack of unified survey projection system and limited coordination, has resulted in overlapping titles on the same properties.
- There remains a large proportion of untitled parcels in Mindanao (50% of total number of A&D parcels); made worse by the long delay in the completion of cadastral surveys in ARMM. In addition to completing the survey, it is essential to locate missing records, repeat erroneous surveys to make them useful for titling.
- Collective CLOAs comprise about 1 Million hectares, of which 378,424 hectares were issued to farmer groups, and still not subdivided. Subdividing these and/or organizing the farmers to develop their capacities would be essential to ensure they have the wherewithal to manage their farms by themselves or negotiate more equitable arrangements with large scale investors.
- The IPRA provides solid policy for recognition of customary rights, but its implementation has to be accelerated to protect their rights, and enable them to negotiate more equitable terms with potential investors. Development of their capacities, formulation of ADSDPPs, and better implementation of FPIC process would be required for IP communities to be better engaged with private sector and other partners to develop their ancestral domains.
- Almost 50% of CBFMAs are in Mindanao, covering about 800,000 hectares of forestlands. These have the potential to generate employment, reduce poverty and stimulate rural economy. However, the unpredictable policies in recent years has stymied the ability of these lands to meet these objectives.
- There is no law which recognizes long term possession of under privileged families in the urban areas. The process for formalization is tedious and is constrained among others, by finding available land that is affordable to majority of ISF.

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<sup>55</sup> Land Equity International, December 2013. **Promoting Gender Equality in Land Access and Land Tenure Security in the Philippines**. ADB RETA 6143: Technical Assistance for Promoting Gender Equality and Women Empowerment.

The region's allocation of land resources is summarized as follows:

**Table 28. Allocation of Land to Various Uses and Tenurial Instruments in Mindanao**

<b>Land Classification</b>	<b>Area (Million hectares)</b>
<b>Total land area</b>	10,202,192
1. Alienable and Disposable	4,136,032
1.1 Titled Parcels = 2,254,535	
1.2 Untitled Parcels = 2,238,028	
1.3 Covered by CARP = 1,002,646 ha	
1.4 Collective CLOAs = 914,453 ha	
2. Forestlands	6,066,160
2.1 Tenured	4,943,049
2.2 Untenured	709,008
2.3 Unclassified	414,913
National Parks/Terrestrial Protected Areas	1,425,834
Ancestral Domains (CADTs and in process); can cover both A&D and forest lands	3,377,601
Areas covered by mining tenements; can cover any type of land (subsoil)	271,190

In order to properly harness these potentials, the following key challenges should be given attention:

- Accelerate titling of lands, alongside with evaluation of old surveys, completion of remaining areas in ARMM through simultaneous survey and adjudication, and completion of validation of cadastral surveys;

- Improve value adding in forestry, through support to production and bulk marketing of products from CBFMAs and IFMAs;
- Expand tenure coverage to include forest lands under open access conditions;
- Strengthen capacities of IP organizations to enable better returns from management of their ancestral domains, and respect for their rights in the utilization of mineral resources on IP lands;
- Complete the mapping and registration of remaining ancestral domain claims in Mindanao;
- Improve monitoring and safeguards in mining operations, and promote value added through implementation of reforms initiated under EO 79;
- Strengthen management of PAs to deliver ecosystem services, improve investments in ecotourism to generate more jobs;
- Address overlaps in the issuance of titles, CLOAs, tenure instruments, long- term leases and agreements on public lands through greater harmonization of procedures and quality assurance of surveys, mapping and documentation.

## 4.2 Rights to Forest and Common Lands & Rural Land Use Regulations

### Assessment of Indicators

**Indicators Assessed:**

LGI 2.1 Rights to forest and common lands

LGI 2.2 Effectiveness and equity of rural land use regulations

### LGI 2.1 Rights to forest and common lands

#### *2.1.1 - Forests are clearly identified, but responsibility for land use is not well defined – C*

Except for ARMM, the DENR has reportedly completed the delineation and ground demarcation of final forest boundary. Validation is on going, to support the filing of the Bill to legislate the final forest line. This process entailed coordination with local officials and communities, in order to demonstrate the location of boundary markers. Ordinary citizens however, cannot easily distinguish the forest boundary on the ground, particularly in cases where the identified forestland has no or very minimal forest cover.

By law, the responsibility for forestland use rests with DENR, through regulation of activities of various users. The agency issues various tenurial instruments to different groups but this does not cover the entire forestlands, leaving a large portion essentially under “open access” conditions. In Mindanao, the extent of “open access” forestlands reached 700,000 hectares. Proper mapping of these tenurial instruments is essential to determine the overlaps in terms of CBFMAs, CLOAs, IFMAs, protected areas, titled lands, and strategies developed to clarify rights and management responsibilities.

Recently, the enhanced land use planning guidelines of HLURB prescribed guidelines for integrated planning of forestlands with the town center section of the local government territory. DENR has also promoted the preparation of forestland use plans (FLUPs) as a way of allocating open access areas as subject of co management agreements with LGUs. However, this practice has stopped as the DENR unilaterally suspended the implementation of the DENR-DILG memorandum Circular on Co Management.

Thus, while FLUP is now considered embedded in the CLUPs of LGUs, management responsibility still rests with the DENR; thus leaving the LGUs with very marginal roles in forest management.

***2.1.2 - Common lands are clearly identified, responsibility for land use is clearly identified, but implementation is ambiguous – B***

Common lands refer to those under ancestral domain claims and awarded community based forest management agreements (CBFMAs). In the case of the latter, these are commonly managed lands, while in the case of the former, these are traditional or customary lands.

The NCIP and IP communities have identified criteria for the delineation of the extent of ancestral domains. In Mindanao, not all ancestral domains have been clearly delineated and issued CADTs, thus causing uncertainty in the rights of other forest occupants who might be occupying portions of the claimed domains of indigenous peoples. Moreover, existing CADTs have overlapped with other forest and natural resource use rights issued by DENR, due to lack of a common reference map and coordination in delineation.

Thus, while responsibility for management of common lands rest with identified IP communities in ancestral domains, the slow pace of CADT delineation and issuance, the lack of coordination in issuance of forest rights and mapping have affected the security of rights of other occupants or holders of long term leases in forest lands.

This issue of overlaps of claims, tenurial instruments and titles with CADTs was refuted by NCIP. It was argued that CADTs are Torrens titles, and therefore, there could be no overlapping rights on the same land. In cases when this happens, the NCIP explained that other tenurial instruments and prior rights are respected if these were issued before the CADT was issued. This would entail the tenure holder seeking FPIC from the IP community. What happens is that the IP community or the CADT holder, allows the tenure to expire, after which it is no longer given FPIC to renew.

Future overlaps are expected to be minimized with the approval of the Joint DOJ-DENR-DAR-NCIP Administrative Order that prescribes that the CADT survey be shared with DENR, DAR and LRA for projection to determine if there are no overlaps with other rights or claims. These agencies then issue Certificates of No Overlap for the CADT processing to proceed. Titled properties within the proposed CADT are supposed to be culled out before the CADT can be registered. However, because of the preponderance of overlaps, the process is stopped if the agency cannot issue the Certificate. This is one of the reasons why there has been a slow down of CADT registration in the recent years.

RoD is of the view that CADTs are not Torrens titles under the law, but a special kind of title. With the issuance of the JAO, the RoDs have stopped registering CADTs and CALTs in the meantime; as there is no book yet for the registration of these kinds of titles.

***2.1.3 - Rural group rights are formally recognized, but effectiveness of enforcement varies depending on the type of land, the policies that govern recognition, the agency responsible for implementation, and the group which are the targets of those rights***

Except for indigenous groups, other groups are organized for purposes of or as a condition for granting of tenure, rather than recognizing legitimate and already existing organized groups. This is the general case for CLOAs and CBFMs. However, in some instances, there are legitimate organizations or groups that are already in existence before the granting of CLOAs and CBFMs.

*The tenure of indigenous groups is formally recognized and clear regulations regarding groups' internal organization and legal representation exist and can be enforced - A*

There is very strong recognition of group rights of indigenous peoples communities under the IPRA. During the process of CADT award, efforts are made to ensure that the organization represent the indigenous political structure (IPS) in order to avoid cases where the peoples' organizations (POs) that were formed following the CADT are different from the traditional governance mechanisms. There have been experiences where the PO that was set up and registered formally with government have different structures and decision making authorities with the traditional system. This has created problems in the past in terms of representation with outside parties, and created rifts among members of the IP community.

IP groups can gain legal representation by registration as peoples' organizations with either the LGU, the Department of Labor and Employment (DOLE), or with Securities and Exchange Commission (SEC). This becomes essential only to establish themselves as juridical entities in order to enter into agreements with other parties.

#### Collective Group Rights by Farmers Cooperatives/Associations under Agrarian Reform

*In CARP covered areas, the tenure of most groups is formally recognized and clear regulations regarding groups' internal organization and legal representation exist and can be enforced. However, most collective tenure are given to non organized groups with unclear membership. - A*

Under the CARP, collective CLOAs are given by the government to farmers cooperatives/associations, who passed the criteria as agrarian reform beneficiaries. Where no such cooperative or association exists at the time of coverage and acquisition, its formation shall be encouraged, preferably with assistance from NGOs. As of 2012, collective CLOAs have been issued over 2.126 Million hectares in the Philippines. In Mindanao, some 900,000 hectares are placed under collective CLOAs. Most of these lands are used for productive agriculture either by the farmer cooperative members themselves or through long-term lease agreements with large corporations.

As discussed above, there have been issues with the eligibility of members who were awarded CLOAs, signaling deficiencies in the original determination of beneficiaries. These are being investigated, through a process that has been initiated by DAR.

Members need not be organized as farmers' organizations or cooperatives to obtain a CLOA. In Mindanao, 91% of collective CLOAs were issued to farmer groups who were not organized. This has posed issues with representation, organizational capacity, and ability to manage and negotiate with investors.

#### Community Group Rights over Natural Resources in Public Forest Lands

*The tenure of most groups in public forestlands is not formally recognized but groups can gain legal representation under other laws (e.g., corporate laws). The legal organization of such groups however, does not guarantee secure tenure. - B*

In public forestlands, the CBFMAs are used as tenure instruments to recognize the rights of communities to natural resources. These have a duration of 25 years, renewable for another 25 years. Recipients of CBFMAs are required to prepare Community Resource Management Frameworks (CRMFs) that is the basis for ascertaining the level of resource utilization. As of 2013, there were 726 CBFMAs covering 815,587 hectares involving 112,068 households in Mindanao. Individual CRMFs would specify the allocation of lands for specific uses (agriculture, agroforestry, forest production) as well as for protection purposes.

CBFMAs are awarded to peoples' organizations (POs) or cooperatives duly recognized by appropriate authorities. In case the community is not yet organized or registered, then the CBFMA is put on hold. Recently, the DENR has been examining the recipients of CBFMAs wherein it was found out that there are those whose members are not from the community. Cases like these are recommended for cancellation.

***2.1.4 - Users' rights to key natural resources are legally recognized but only some are effectively protected in practice or enforcement is difficult and takes a long time - B***

In public alienable and disposable lands, foreshore areas and in public forestlands, multiple use zones in protected areas - disposition of use rights is through issuance of long term leases, community and individual tenure instruments. However, because there is no complete inventory and mapping of occupants in forestlands, it is not clear how much proportion of these communities have secure users rights.

Moreover, for those with users' rights, there are overlaps of tenure instruments with CADTs, CLOAs, thus making it difficult to enforce and protect the given rights. This is compounded by weak monitoring and enforcement, thus violations and informality is rampant.

***2.1.5 - Multiple rights over common lands and natural resources on these lands can legally co exist only if there is FPIC granted by the indigenous peoples group and/or Joint Venture agreement with another party - B***

In ancestral domain lands, it is legally possible for other parties to have rights over portions of their lands provided there is FPIC given by the community. This is usually made through joint venture agreements, or informally by mere permission given by the community to other parties such as forest communities to gain access to portions of land and resources within their domain.

In some CADTs in Davao, IP communities have forged Memorandum of Agreements (MOAs) with individuals and/or corporate groups to develop and manage portions of their domain such as for resorts, private rest houses, and other uses.

***2.1.6 - It is not legally possible for multiple rights over the same plot of land and its resources (e.g., trees) to co exist - D***

Despite the above, there are cases where long-term leaseholders assign their rights to other parties through sub leasing, in which case, these are considered subsequent rights that are derived from the main rights holders. The granting of resource use rights over portions of the public domain is made on the premise that the rights holder has the financial and technical capacity to manage the land and its resources.

In the case of CBFMA however, entering into Joint Venture with investors is allowed in order to fill in the capital needs for area development. Even IP communities can enter into JV agreements with investors to develop portions of their CADTs in accordance with their ADSDPPs, provided there is FPIC.

***2.1.7 - Co existence of land and mining rights is possible by law, and respected in practice but mechanisms to resolve disputes are often inadequate - B***

According to the Constitution, all sub surface resources (minerals) belong to the State. Thus, the State grants mining permits (exploration, MPSAs, FTAAAs) over mineral rich lands where surface rights have been allocated to either IP communities, forest communities, and other groups or individuals, even in private lands. While there are provisions for royalties to the land surface

owner, this has caused a lot of conflicts that proved difficult to resolve. In Mindanao, opposition to mining, whose rights have been issued by DENR, have resulted in violence particularly in areas occupied by IPs who are opposed to mining.

Moreover, many LGUs have issued local laws specifying mining moratorium over areas where the national government has issued mining rights, causing confusion, and difficulties in enforcement of sub surface rights.

**2.1.8 - The law provides opportunities for those holding group land under customary, group, or collective tenures to record and map land rights if they so desire. Procedures are affordable, and include basic safeguards against abuse. – B**

The following describes the process for the recording and mapping, review and recognition of group tenure.

On CADTs of indigenous peoples

**Table 29. Steps in CADT Issuance**

Steps/Process	Responsible/Comments
<p><b>1. Petition for delineation.</b> This is the start of the process of delineating a specific perimeter of the ancestral domain.</p>	<p>By the NCIP, with the consent of ICC/IP concerned or by the majority of members of the ICCs/IPs</p>
<p><b>2. Delineation proper.</b> This involves official delineation of ancestral domain including census of all community members.</p>	<p>Ancestral Domains Office of the NCIP</p> <p>Due to lack of funds at the NCIP, NGOs and other donors get involved in the delineation, mapping and preparation of documentation report as basis for submission to NCIP En banc to issue the CADT.</p>
<p><b>3. Preparation of maps.</b> This is done on the basis of such investigation and the findings of fact based thereon. This involves the preparation a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein.</p>	<p>Ancestral Domains Office of the NCIP</p>
<p><b>4. Report of investigation and other documents.</b> A complete copy of the preliminary census and a report of investigation, shall also be prepared.</p>	<p>Ancestral Domains Office of the NCIP</p>
<p><b>5. Notice and publication.</b> A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least 15 days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for 2 consecutive weeks to allow other claimants to file opposition thereto within 15 days from date of such publication. In areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute. Mere posting shall be deemed sufficient</p>	<p>NCIP field offices</p>

if both newspaper and radio station are not available.	
<b>6. Endorsement to NCIP.</b> Within 15 days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification.	Ancestral Domains Office of the NCIP
<b>7. Issuance of Certificate of Ancestral Domain Title (CADT).</b> ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census.	NCIP EN Banc
<b>8. Registration of CADTs.</b> The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.	The registration of CADTs at the RoD has been affected by the issuance of Joint DENR-DAR-DOJ-NCIP Administrative Order that require the resolution of overlapping claims such as private titles, and other interests on the land.

This is a very costly process, funded by the government through NCIP, although NGOs and donors also provide funding support to fast track the issuance of CADTs. Estimates from NGOs place the cost at between Php 500,000 to Php 2.5 Million, depending on the extent of the area, the conflicts that exist, and capacity of the IP communities to participate. Recently, there has been severe limitation on the part of NCIP to fund ancestral domain delineation and mapping; which was the main reason for delays in issuance of CADT. Other factors include boundary conflicts with adjacent IP communities, delays in approval or completion of surveys, and/or conflicts in claims with other rights issued on public lands.

#### Community Group Rights on Natural Resources in Public Forest Lands

The DENR field offices maintain an inventory of all CBFMAs issued, along with other attribute data and information on CRMF, etc. These are not linked to the property registry at RoD.

The process for securing a CBFMA is as follows:

**Table 30. Steps in Issuance of CBFMAs**

<b>Steps/Process</b>	<b>Responsible</b>
<b>Identification of CBFMP areas.</b> Conflicting claims are also processed at this stage	Jointly by the DENR and LGU in consultation with local communities
<b>Application by the community/participants.</b> Local communities, represented by existing organizations, or at least ten (10) residents, or their Barangay Councils, may apply in writing to the concerned CENRO for participation in CBFMP.	Potential community participants

Steps/Process	Responsible
<b>Community appraisal and PO formation.</b> The CENRO, in collaboration with duly designated representatives of the concerned LGUs, shall cause the conduct of an initial community appraisal.	CENRO of DENR
<b>Application for CBFMA.</b> Once registered, the PO may apply for a CBFMA by filing an application to the concerned CENRO.	Applicants/community organization
<b>Formulation of Community Resource Management Framework (CRMF).</b> The CRMF shall indicate, among others, the community's and the PO's mission, vision and objectives; a summary of situation analysis	Community organization or People's Organization
<b>Formulation of Resource Use Plan (RUPs).</b> A management and utilization plan for each resource, e.g., timber, rattan resins, covering a specific area of the CBFMA and time period shall be prepared.	Community organization or People's Organization
<b>Annual Work Plan.</b> The operationalization of the CRMF and the RUP shall be embodied in an Annual Work Plan that shall indicate among other things, the specific targets for the year for utilization (based on the RUPs); resource development and protection (agroforestry, tree plantations, assisted natural regeneration, protection activities, etc.); organizational strengthening (training, other skills development) and enterprise development.	Community organization or People's Organization
<b>Interim Resource Use Permit.</b> One of the outputs during community appraisal is to identify existing forest-based livelihood systems that may be enhanced to augment income. The community shall be granted an interim user's permit that shall terminate upon the acceptance of the resource use plans.	DENR

The cost to secure CBFMA is shouldered by the DENR. This is almost free on the part of the applicants.

#### On Collective CLOAs in agrarian reform lands

These are registered at the country's RoDs, which maintain a separate book of CARP titles. As of September 2015, there are 74,680 collective CLOAs issued by DAR in Mindanao, covering 914,453 hectares. The process for registration of collective CLOAs is as follows:

**Table 31. Steps in CLOA Issuance**

Steps/Process
<p>If private lands:</p> <ol style="list-style-type: none"> <li>1. DAR will issue a Notice of Coverage</li> <li>2. Land Bank will compensate the owner</li> <li>3. RoD will issue a title under the name of the Republic of the Philippines</li> <li>4. CLOA will be registered under the name of the group</li> </ol>
<p>If public lands:</p> <ol style="list-style-type: none"> <li>1. The area will be surveyed by a Licensed Geodetic Engineer through DAR</li> <li>2. DENR will review and approve the survey plan</li> <li>3. CLOAs will be registered</li> </ol>

The cost of securing a collective CLOA is shouldered by the DAR, as part of the agrarian reform program implementation.

In many instances, collective CLOAs were issued within public lands, and in some cases, to beneficiaries who are not eligible to receive CLOAs.

***2.1.9 – About 40-70% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded***

**Indigenous lands/CADTs – B**

Only 58.75% of CADTs have been issued out of the total claims in process. These CADTs have been mapped and delineated, but not ground demarcated. This does not include the other claims that have not been documented yet.

The NCIP Region XII claims that in Mindanao, there are about 9.7 million hectares of land that are subject to IP claims. This is 97% of the total land area of the region. Out of these, the NCIP reported the following:

- 24% have approved CADTs;
- 17% have CADTs being processed;
- 40% are identified for CADTs.

**CBFMAs – Between C and D**

There is no ground demarcation of boundaries; only map delineation. It is not known how much of the forest population would need recognition of communal rights, and therefore target of CBFM issuance as there is no complete inventory of population and community groups within forest lands. In the case of CBFM, the instrument is not really a claim to a right in forestlands, but an award from the DENR for rights to use and manage portions of forestlands.

**CLOAs – A**

These are all surveyed and ground demarcated, as basic requirement for issuance of CLOA.

**LGI 2.2 Effectiveness and equity of rural land use regulations**

***2.2.1 - Regulations regarding restrictions on rural land use and transferability effectively serve public purpose but enforcement is weak and difficult. (between B and C)***

There are a number of regulations that restrict rural land use and transferability.

The CARP law prohibits conversion of CARP awarded lands to non-agricultural uses unless clearance is given, and has passed the 10-year restriction period after issuance. The aim is to ensure the beneficiary benefits from the agricultural land that was awarded. In many cases however, this is violated in practice by virtue of spot zoning adopted by LGUs. The 10-year restriction is also being violated through informal sales even if the prescription period has not passed, and in cases where there are still outstanding amortizations. The drivers are increasing demand for land to be developed, expanding urbanization in the fringes of city and town centers and vibrant land market activity.

Forestlands, once classified, have restrictions on ownership, and land use that prohibit their use for short term agricultural cropping and expansion of settlements. However, because of weak enforcement, there have been massive encroachment and de facto cultivation of forestlands for agriculture. Again, this is driven by demand for more areas for agriculture, limited land and weak property rights in the rural areas which drive people and communities to inhabit and

cultivate forestlands. There are no census of population and settlements, and there is no clear long-term strategy on occupation of forestlands.

Protected areas provide restrictions on use depending on the PA management zoning. However, due to weak enforcement and management, there has been conversion of some portions of PAs, particularly those along its boundaries, into agriculture.

Land use within ancestral domains should be consistent with its ADSDPPs, but because of overlaps with other tenure instruments and weak recognition of IP rights, portions of CADTs are being encroached upon and converted to other uses incompatible with ADSDPPs.

Thus, while most of the restrictions are justified for equity and public purposes, weak capacities and the multiplicity of agencies issuing tenurial instruments and recognizing rights diminish the effectiveness of such restrictions. Realities also suggest that such restriction should be revisited to allow flexibility to acknowledge the dynamics of land development process, and respond to market demand.

### ***2.2.2 - Rural lands, that has had a change in land use (classification) assignment in the past 3 years has changed to its destined use (e.g., forest, pasture, wetlands, national parks, etc.) – between B and C***

In the Philippines and in Mindanao, the change is not in terms of use, but in terms of classification (e.g., from forest to protected area) with concomitant changes in allowable land uses.

In some cases, changes to destined use are delayed due to speculation (i.e., mineral reservations), and/or lack of funds and capacity to manage the area based on new designated classification (e.g., protected area).

Nonetheless, changes in land classification are made in a phased manner, such that it is always a rule of thumb that lands are already being actually used de facto before the official land classification takes effect. For example, except for some, large portions of key biodiversity areas are actually being managed administratively as protected areas through local Ordinances and Presidential Proclamations before these are legislated by Congress as part of the protected area estate. The same holds true for ancestral domains – these are informally recognized as claims by indigenous peoples before a confirmation is made with finality after surveys, documentation and registration of CADTs.

### ***2.2.3 - Processes for rezoning are public and clear with effective mechanisms in place to safeguard existing rights and compensation in case of loss in areas where land use is to be restricted***

A - Establishment of **protected areas** follows a 12 step participatory process that involves the public, LGUs, and culminates in the legislation of a law. Once established, prior rights are recognized.

B - Delineation and demarcation of **forestlands** undergoes a process of ground validation to assess actual status and consult with local communities. However, there is no recognition of prior rights. Because there are many CLOAs that have been issued inside forestlands, there are discussions currently on going between DENR and DAR on how the CLOAs can be respected through some alternative tenure instrument.

A - Delineation and demarcation of **ancestral domains** follows a self-delineation process by the IP community. The IPRA specifies that during delineation, existing titles and rights are documented and respected.

However, recognition of prior rights has not been very effective thus resulting in conflicts and confusion on the rights holders. In the case of ancestral domains, the registration of CADTs has been put on hold in view of the need to extract titled properties and CLOAs that were issued inadvertently by the agencies.

#### ***2.2.4 - For protected rural land use (forest, pastures, wetlands, national parks etc.) plans do not correspond to actual use in about 30-50% of the cases - C***

It is widely acknowledged that many portions of the public forests, protected areas, wetlands are used for purposes that are in contravention with regulations on these lands. In Mindanao, forestlands constitute 6 million hectares. However, only 23% of Mindanao has forest cover, signaling massive conversion of the forestlands to other uses such as agriculture, and settlements. Assuming these forests are in forestlands, only about 38% of forestlands are covered with forests.

Wetlands such as Agusan Marsh and Ligawasan Marsh have also been subject to conversion. Supposed to be protected to perform vital ecological functions, the absence of protection measures in Ligawasan Marsh and the ineffectiveness of protection in Agusan Marsh have led to agricultural development activities thus compromising the value of these important peatland forests.

Protected areas have also suffered from conversion to other uses. In Mt Apo and Mt Kitanglad for example, satellite maps on land cover and land use change analysis made by the USAID Project entitled Biodiversity and Watersheds Improved for Economic Resilience (BWISER) indicate portions of protected areas that have been converted to agriculture and other uses.

A study on 60 protected areas in the Philippines, 15 of which are from Mindanao concluded that due to very limited budget, low capacities for implementation, and limited resources, the following threats have been identified thus, resulting in weak management effectiveness of the country's protected area system<sup>56</sup>:

- Increasing conversion of PAs for agriculture and other uses;
- Increasing encroachments, settlements and establishments;
- Unregulated tourism;
- Illegal extraction; and
- Lack of buy-ins and political interventions that are affecting land allocation and resource uses within PAs.

### **Summary and Recommendations**

The assessment of dimensions made under this Module indicate that while restrictions on rural land use were designed to meet public policy objectives, weaknesses in enforcement, lack of resources and capacities of implementing agents mainly: DENR, DAR and NCIP have brought about de facto situations which weakens the resource use rights of forestland occupants, holders of common lands, and ancestral lands of indigenous peoples.

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<sup>56</sup> Guiang, Ernesto S. and Gilbert C. Braganza. 2014. **Report on the Management Effectiveness and Capacity Assessment of Protected Areas in the Philippines**. Published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

Because forestlands constitute more than 60% of Mindanao's land resources, and ancestral domains cover more than 50% of the region's forestlands, it is important that the systems and procedures that are supposed to protect these rights be strengthened. Otherwise, rights holders will not reap the benefits from improved productivity that secure tenure brings, and that investments from outside parties will continue to be exposed to unnecessary risks. Otherwise, these large tracts of land will be taken out of the production chain, or worse, the occupants thereto will not be able to access the resources required to develop and protect these lands.

For forestlands, proper delineation of production and protection forests need to be made; at the same time, undertake a systematic rights recognition of occupants to formalize their possessory and resource use rights to forest resources. These need to be properly mapped, registered, and conflicts/overlaps resolved.

In the case of ancestral domains, it is essential to accelerate the mapping, issuance and registration of CADTs, and assist IP communities to develop quality ADSDPPs, as basis for management of their domains.

Finally, adequate support should be given to the protection of national parks, reserves, watershed reservations, conservation areas so that they can fulfill the public purpose for which they were established. This would require completion of mapping and demarcation, strengthening enforcement capacities, and development and implementation of quality management and business plans for protected areas. This should be complemented by a program to finalize the identification and establishment of protected areas in suitable sites to avoid future conflicts in land use and management. This will remove uncertainties on the eligibility of certain lands for productive use, and create a suitable investment for development of eligible portions of the remaining public lands, forestlands and ancestral domains.

## 4.3 Urban Land Use, Planning and Development

### Assessment of Indicators

#### Indicators Assessed:

LGI 3.1 Restrictions on rights: land rights are not conditional on adherence to unrealistic standards

LGI 3.2 Transparency of land use restrictions: changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups

LGI 3.3 Efficiency in the urban land use planning process: land use plans are current, implemented, do not drive people into informality, and cope with urban growth

LGI 3.4 Speed and predictability of enforcement of restricted land uses: development permits are granted promptly and based on reasonable requirements

#### **LGI 3.1 Restrictions on rights: land rights are not conditional on adherence to unrealistic standards**

***3.1.1 - There are a series of regulations on urban land ownership/transfer that effectively serve public purpose and that are enforced. - A***

In terms of titling, the Residential Free Patent specified limits to the number and size of parcels that can be availed depending on the LGU class, in order to satisfy equity objectives. These are as follows:

- for highly urbanized cities = not more than 200 sq. m.
- for other cities = not to exceed 500 sq. m.
- for first and second class municipalities = not exceeding 750 sq. m.
- for all other municipalities = not to exceed 1000 sq. m.

If the claims exceed these sizes, other modes of titling should be taken, which are more expensive and takes more time to complete.

Each applicant is entitled only to one parcel under the law. Patents issued under this law have no restrictions on transfers and mortgage.

To be eligible for residential free patent, the property must be located in areas zoned as residential in the LGU CLUPs. However, it is common for local governments to issue a certificate that the land is used as residential in cases where this condition is not met, and/or the CLUP is not yet updated. The reasoning is, the issuance of title is primordial to improve tenure security and improve urban land market activity. Thus, while the restrictions on lot ownership size serves equity objectives, the tolerance for deviations from these standards effectively render them not useful.

Davao city is engaged in residential titling through RA 10023, but based on demand. The CPDO supports titling through the issuance of Certification that the lots are within residential zones per the approved land use plan. Other cities, such as Cagayan de Oro, also has an earlier initiative, but is not currently active. Other LGUs in Bukidnon have continuing Memorandum of Agreements with DENR, following the completion of LAMP2, to undertake titling in their respective municipalities and cities.

***3.1.2 - There are restrictions on urban land use along identified riverbanks and easements to reduce risks to natural disasters, but these are not effectively enforced. B***

Civil Code, Water Code, National Building Code, and the Revised Forestry Code specified restrictions on development along waterways and easements to meet environmental objectives, and reduce exposure and damage from natural disasters. In 2014, the DENR, DILG, DOST and DPWH issued a joint Circular defining the hazard areas in Yolanda affected areas. While there is no official definition yet of danger zones, the Joint Circular can be used as starting point for the development of clear guidelines for urban planning.

However, as in many urban centers in the Philippines, these restrictions are not fully enforced. In fact in Mindanao cities, 74.7 % of ISF are in danger zones. The triggers are increasing population in the urban areas due to poverty and landlessness in the rural areas, the high cost of urban land, and lack of integrated urban land use planning and development.

Prohibition on settlements along danger zones has been a challenge for most LGUs. Even in Metro Manila, there is an estimated 104,000 families living in river easements that is now the subject of a Php 50 Billion Fund to resettle to safer grounds. This follows after the great flood "Ondoy". In Cagayan de Oro City, the local government has also embarked on a massive program to relocate ISF along riverbanks and delta following the devastation from typhoon "Sendong" in 2011.

Central to the strategy to address this, along with the uncontrolled growth of informal settlement communities is the development of an effective land use and inclusive urbanization plan that allows for efficient use of space and identify lands for in city formalization of tenure for ISF.

**LGI 3.2 Transparency of land use restrictions: changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups**

***3.2.1 - Urban expansion and accelerated infrastructure development in Mindanao is constrained by land rights issues among those affected. Existing policies for dealing with land rights by those affected conform with international standards if these involve national infrastructure projects only - C***

In recent years, there has been a surge in infrastructure investment in Mindanao, in an effort to correct the imbalance in investments for many years. Thus, for 2015, Mindanao has been allocated the biggest allocation in the DPWH Php 300 billion budget. The allocation for Mindanao is Php 63 Billion (US\$ 1.45 Billion) or 30% of the agency's total budget for infrastructure program. Of these, Php 5.17 Billion will be allocated to ARMM. Under the WB PRDP, the Mindanao region is also expected to receive P5.1 billion for 113 sub-projects.

NEDA reported however, that there have been delays in implementation of major infrastructure projects in Mindanao due to road right of way problems. Among those facing road right of way problems are road projects in Davao city, and in the provinces of Compostela Valley, Davao del Sur and Davao del Norte. The problem on road right of way has also bogged down projects in General Santos City.

Because of the absence of resettlement policy in the Philippines, it is expected that the way land rights will be dealt with will be in accordance with RA 8974 in the case of expropriations involving national infrastructure projects. This law has clear policies for compensation using market rates, but not for income losses. For projects funded by the LGUs, the law that applies is PD 1533 and EO 1035 that uses the assessed values as basis for valuation.

For unregistered properties, there is no legislation that provides for compensation. This is only possible in the case of foreign assisted projects where resettlement action plans (RAPs) are prepared, as basis for compensation. It is therefore essential that in order to speed up infrastructure development, the recognition of rights be fast tracked, and ownership issues clarified.

***3.2.2 - Public input is sought in preparing and amending land use plans and the public responses are used by the official body responsible for finalizing the new plans. The process for doing this is in accordance with government guidelines but the report is not publicly accessible. - B***

Opportunities for engaging the public in the CLUP process are in the following stages:

- Formulation of the city Vision, Mission and Objectives
- Analysis of Existing Situation/Profiling
- Determination of Preferred Urban Form
- Land use allocation
- Development of zoning ordinance

While there are no publicly available reports (on the websites) on public consultations on the

CLUPs of major cities in Mindanao, the assistance of HLURB, NEDA, and other development organizations in the formulation of their CLUPs ensure that the processes of soliciting public input were followed.

In the case of Davao city for example, the CLUP formulation process in 2011 had more than 100 public consultations that were documented and submitted to HLURB. These however, are not published in the City website, and therefore may be available only upon request.

### ***3.2.3 - Approved requests for change in urban land use are swiftly followed by development on these parcels of land - Not assessed***

Based on the Philippines LGAF report, monitoring land use change based on their assigned use is not yet widely practiced in the Philippines. Thus, it is very difficult to determine the rate of change; and whether land use changes are in accordance with the plan or in spite of the plan. Few isolated attempts at analyzing land use change as an integral part of the CLUP planning process were undertaken in Dagupan City, Puerto Princesa City, and Quezon City, with varying results and utility for CLUP updating.

It can be assumed that the speed of land use change is directly related to the rate of urbanization. In Davao city, it is expected that there will be no change in land use for the next five years, based on the City Resolution that approved the current CLUP.

## **LGI 3.3 Efficiency in the urban land use planning process: land use plans are current, implemented, do not drive people into informality, and cope with urban growth**

### ***3.3.1 - There is a policy for low cost housing and services but implementation has major gaps so that the number of those with inadequate shelter actually increases - C***

The national policy for low cost housing and services is provided in the Urban Development and Housing Act (UDHA or RA 7279). However, there is an acknowledged shortfall in the provision of housing and services to a large part of the country's urban population, due to certain inefficiencies, absence of long term ISF formalization program, difficulty in finding land, affordability issues and institutional weaknesses. The national government, through Congress, has initiated a process for progressively and comprehensively addressing these issues that will culminate in a Housing and Urban Development Summit, planned in March 2016.

As of September 2015, the NHA has delivered a total of 48,547 housing units in Mindanao, catering to low income and under privileged sections of the population.

While the government has an active housing program, it is acknowledged that this is not enough in terms of scope and coverage to outpace the demand for formal housing units by the ISF. In 2011, the ISF in Mindanao is estimated at 221,755 or 14.7% of the total urban population. Of these, about 75% or 165,727 families live in danger areas. Region 10 has the most number of ISF among all the Mindanao regions (see Table 26).

### ***3.3.2 - In Davao City, urban spatial expansion is guided effectively by an updated CLUP that is consistent with the Mindanao Framework Plan - A***

Davao is a rapidly urbanizing city in Mindanao, with urbanization rates increasing from 45% in 1970 to 79% in 2010. The MINDA 2020 provides the regional framework plan which cascades into regional and provincial physical framework plans. LGUs refer to these in the preparation of their own CLUPs that are now DRR and CCA sensitive.

Davao city has a current CLUP which is valid for 2013-2022.

**LGI 3.4 Speed and predictability of enforcement of restricted land uses: development permits are granted promptly and based on reasonable requirements**

**3.4.1 - In major Mindanao cities, requirements to obtain a building permit<sup>57</sup> are technically justified, affordable, and complied with - A**

Based on the World Bank Cost of Doing Business Study<sup>58</sup>, Mindanao cities rank high among the other cities in terms of number of procedures to obtain a building permit. Three cities belong to the top 5 of cities with the best construction permitting process (Davao, General Santos and Zamboanga); with Davao as number 1.

A number of requirements have been identified as constraining the procedures for building permit issuance:

**During pre-construction**, the entrepreneur has to obtain preparatory documents—such as the certified true copy of the land title and of the tax declaration of real property, the barangay clearance, the lot plan with the site map from the geodetic engineer, the locational clearance, the building permit and ancillary permits, and the fire safety evaluation clearance. Except for Davao, the following cities in Mindanao – **Cagayan de Oro, Zamboanga, and General Santos** (together with other cities) have more procedural requirements during pre-construction than in any other phase.

Some issues regarding building permit forms have yet to be clearly decided. Under the 2004 Revised Implementing Rules and Regulations of the National Building Code, a building permit application form must be notarized. However, because of a pending case in the Court of Appeals questioning the legality of the 2004 rules, the Department of Public Works and Highways issued a memorandum circular ordering the Office of the Building Official not to use the new forms until the matter is resolved by the high court. Nevertheless, **Zamboanga and General Santos** use the new forms, and thus require notarization.

**3.4.2 - A construction permit for a commercial dwelling in key Mindanao cities can be obtained within three to four months, which is faster than the national average.**

The four major cities in Mindanao, which are being monitored by the WB in its Cost of Doing Business report, all posted lower than national average time to obtain a commercial building permit.

The most efficient is Davao City, which is ranked number 1 with only 27 procedures, while General Santos City is ranked number 3, with 29 procedures.

**Table 32. Number of Days to Issue a Construction Permit, Mindanao Cities**

	Phil	Davao	CDO	Zamboanga	Gen Santos
Rank	99	1	7	4	3
Procedures					

<sup>57</sup> The case study used was a warehouse

<sup>58</sup> <http://www.doingbusiness.org/>

	<b>Phil</b>	<b>Davao</b>	<b>CDO</b>	<b>Zamboanga</b>	<b>Gen Santos</b>
(Number)	24	27	30	32	29
Time (Days)	98 (4.45 months)	57 (2.59 months)	92 (4.18 months)	46 (2.09 months)	71 (3.22 months)
<b>Score</b>	<b>B</b>	<b>A</b>	<b>B</b>	<b>A</b>	<b>B</b>

During the panel workshops, Davao City officials reported that their Standard Operating Procedure (SOP) is to release or act on all requests within 72 hours, or 3 working days.

These records show that there are serious efforts of Mindanao LGUs to increase competitiveness and attract investments.

***3.5.1 - The requirements for formalizing housing in Mindanao cities are clear, but these are not straight-forward nor affordable, thus many applicants from informal areas are managing to satisfy the requirements – between B and C***

The national policy in the UDHA specified various options for formalizing housing for ISF. The law identified the role of local governments in the implementation of socialized housing programs, but the distinction with those of national government is not very clear.

The options are:

- Community initiated housing and on site development through savings mobilization and partnership with various organizations;
- LGU supported initiatives, using their own resources, in partnership with private sector through joint venture arrangements, Public Private sector Partnerships (PPPs), and other modes;
- National government supported initiatives – either from NHA, or through loans from the Socialized Housing Finance Corporation (SHFC) via the CMP or the high density housing program;
- Balanced housing development, through compliance of subdivision developers with provision of 20% of cost or area of their main subdivision projects to socialized housing projects.

The main vehicle has been through the Community Mortgage Program (CMP) of the SHFC, as the main source of low cost finance to construct housing, purchase land, and/or develop the sites where the ISF are located. However, access to financing has been beset with land related cases which hinder the effective and timely disbursement of loans for ISF. The NHA administered programs on the other hand, are also facing issues such as problematic Proclamations, and delays in the issuance of Special Patent for government properties. Peoples’ Organization representatives to the Housing and Urban Development Summit meetings have expressed their lament over the difficulty and complexity of formalization, even in areas that have been proclaimed by government for resettlement housing for ISF.

Mindanao cities have initiated efforts to address the housing backlog, particularly for ISF.<sup>59</sup> However, the estimated cumulative housing need for Mindanao is still high at 303,113 units as of 2011.<sup>60</sup>

<sup>59</sup> GenSan to relocate residents living in danger zones. By [Mindanews](http://www.mindanews.com/top-stories/2013/10/15/gensan-to-relocate-residents-living-in-danger-zones/) on October 15 2013 4:46 pm (http://www.mindanews.com/top-stories/2013/10/15/gensan-to-relocate-residents-living-in-danger-zones/)

**Table 33. Accumulated Housing Need in Mindanao (based on 2010 Census, as of Jan 2011)**

<b>Region</b>	<b>Rent Free w/o Consent and Marginal+</b>	<b>Homeless ++</b>	<b>Dilapidated/ Condemned +++</b>	<b>Doubled up Housing in Accumulated Units++++</b>	<b>TOTAL</b>
Philippines	700,239	4,799	82,692	437,612	1,225,343
Region 9	22,153	7	4,198	11,964	38,322
Region 10	30,250	41	4,657	17,147	52,094
Region 11	41,594	180	4,981	19,345	66,099
Region 12	35,549	106	4,242	14,634	54,442
Region 13	17,048	28	3,483	9,014	29,572
ARMM	21,501	188	2,871	38,024	62,572
<b>TOTAL MINDANAO</b>	<b>168,095</b>	<b>550</b>	<b>24,432</b>	<b>110,128</b>	<b>303,113</b>
As % of Philippines	24%	11.5%	29.5%	25.2%	24.7%

Source: HUDCC, with original tables from Magtulis and Ramos (2013); in Monsod, T. December, 2015. *Rethinking Urban Housing Policy in the Philippines (A Policy Paper for the National Housing Summit)*

+ Identified by tenure, specifically, households living on lots without consent of property owners), as well as by construction material, specifically, structures with made of makeshift/salvaged materials or predominantly of makeshift/salvaged materials, or with no report as to roof or wall, as identified in the Census 2010.

++ Identified by type of building, specifically, living quarters not intended for human habitation, e.g. under the bridge, in cave, in buses, in agriculture/commercial/industrial structures, etc.

+++ Identified by type of repair, specifically, dilapidated and condemned structures. These structures are to be replaced during the planning period.

++++ Estimated number of households doubling-up with another in a housing unit (or total number of households less total number of housing units).

### **3.5.2 - In Mindanao cities with informal tenure, there are strategies and programs to regularize land rights and provide services to existing informal settlers – A**

Davao City has a Shelter Code that guides its Local Shelter Board. This document however, has not been formalized. The Board identifies on-site and off-site settlements, approves funding for land purchase and guides the implementation of socialized housing projects. The Local Housing Board also interacts with key national government housing agencies to collaborate on implementation of housing projects. It has set up a 100 M fund for its Local CMP. Already, it has identified 40 hectares of abandoned export processing zone as settlement site; and is active in utilization of 20% balanced housing development.<sup>61</sup> The city has tagged its ISF, and prospective relocation sites selected.

<sup>60</sup> Monsod, T. December, 2015. *Rethinking Urban Housing Policy in the Philippines (A Policy Paper for the National Housing Summit)*

<sup>61</sup> Mindanao LGAF Panel Workshop, December 10, 2015. Davao City.

Cagayan de Oro has an updated City Shelter Plan for 2014-2022. It estimated that it would need 700 hectares to formalize its ISF. In the aftermath of typhoon “Sendong”, the city has actively implemented a resettlement program for displaced ISF, particularly those who were displaced from their originally occupied riverbanks, easements and delta.

Zamboanga City has active resettlement plan for displaced families. This became acute after the siege from Moro National Liberation Front (MNLF) groups which destroyed houses of thousands of families. Most of the displaced are still residing in temporary evacuation units for lack of resettlement sites, particularly those who have no secure tenure in the urban city.

In majority of municipalities in the country, the shelter plan is simply a template and not implemented either in the local budgetary provision or in line-up of proposed projects. Shelter planning exercises are currently undertaken by HUDCC through its national and regional office. Compliance with zoning areas for socialized housing purposes are reviewed to determine lands classified for this purpose are accessible to public transport and suitable for development. (NISUS, 2014)

As in most urban centers in the Philippines, there remains unmet demand for decent and safe housing for ISF in Mindanao.

## Summary and Recommendations

**As cities in Mindanao transition from agrarian to urban, land use planning and policies will become even more important to ensure a sustainable city.** Effective planning can help manage urban growth, allocate land to its best use, contribute to food security, manage migration, reduce informal settlement, minimize land dispute, control negative externalities (e.g., congestion, pollution, crime), and raise revenues equitably and efficiently.

**However, land use planning and zoning in the Philippines, including some Mindanao cities, tend to be reactive.** Overall, there is a rising concern that cities in the Philippines are not fully functional places to live. Public investments in infrastructure and regulations on land use for housing, commerce, and industry are spatially uncoordinated which reduces the connections between workers and jobs, and residents and amenities, and adds to sprawl and related costs from congestion and pollution. These result in the proliferation of informal settlement enclaves, uncontrolled spatial development, and undue pressure on public investments and public provision of services. Thus, Mindanao cities are experiencing increasing share of informality. In 2011, there were 221,755 informal settler families (ISF), which constitute about 15% of its urban population. Restrictions on use and development on danger zones have left unchecked, such that 75% of its informal settlers live in danger zones. While there have been housing formalization programs, these are still not enough to fill the estimated 303,000 accumulated housing demand as of 2011; which represent about 25% of the country’s total demand. Moreover, urban expansion and infrastructure development in Mindanao is constrained to land rights issues.

Cognizant of the negative consequences of the failure to plan land use, such as those in Manila and Cebu, which are experiencing congestion, major Mindanao cities like Zamboanga is proactively updating its comprehensive land use plans (CLUPS). For instance, Cagayan de Oro City and Davao City updated in 2013 and 2014, respectively.

As magnets of investments, Mindanao’s major cities have also fared better compared to most cities in the Philippines in terms of streamlining processes to register properties, and number of days to issue a construction permit.

For Mindanao cities to be movers of growth in the region, it must address the issues of informal

settlements, and implementation of land use regulations based on CLUPs. These cities must also sustain the initiatives to improve efficiencies in service provision to ease doing business. In addition to the key cities, such good practices should radiate to the other secondary cities in the region.

## 4.4 Public Land Management

### Assessment of Indicators

#### Indicators Assessed:

LGI 4.1 - Identification of public land and clear management

LGI 4.2 - Justification and time efficiency of acquisition processes; the state acquires land for public interest only and this is done efficiently

LGI 4.3 - Transparency and fairness of acquisition procedures: acquisition procedures are clear and transparent and fair compensation is paid expeditiously

#### LGI 4.1 - Identification of public land and clear management

##### ***4.1.1 - Public land ownership is justified by provision of public goods but management responsibility is often at the wrong level of government. - C***

The Constitution clearly stipulated that forestlands, mineral lands, and national parks shall form part of the public domain and shall not be alienated.

PD 705 defines the **major criteria for forestlands** as those lands with 18% slope and over, with minor exceptions such as if titles have been issued previously, or occupied continuously for at least 30 years. The NAMRIA has completed the classification of public forests, and has delineated the locations of the forest boundary. Proposals for Congress are being prepared to legislate these boundaries, in accordance with the law. To date, there remain 755,009 hectares of public forests that have not been classified as to whether these should remain as forestlands or released as A&D lands. About 55% (414,913 hectares) of these remaining unclassified public forests are in Mindanao; mainly in Region 12 and ARMM. Until a decision on these lands is made, the forestlands in Mindanao are placed at 6,066,160 hectares. The location of forestlands and A&D lands in Mindanao is presented in Figure 1.

The DENR, through its Forest Management Bureau and regional offices, is entrusted to manage the forestlands. The agency disposes this function by granting resource use and tenure rights to upland families, communities, and corporations to manage portions of identified production forests. It has also established watershed reservations, and created multi-sectoral watershed management councils and river basin management councils for more integrated approaches to ecosystem management. The DENR also enters into co management agreements with LGUs and supports them in the preparation of forestland use plans (FLUPs) to ensure integration of forest management planning into the LGU. Recently however, the DENR suspended the co management agreements with LGUs.

The **identification of national parks or protected areas** is guided by the NIPAS law of 1992 (RA 7586), which defines protected areas as “identified portions of land and water set aside by

reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation". The Philippines is one of the 17 megadiverse countries in the world which host 70-80% of the earth's biodiversity. The country's richness is manifest by the extent of the key biodiversity areas that have been identified to host globally threatened species, and as centers of endemism (Figure 10).

The DENR, through the Biodiversity Management Bureau and regional offices, is responsible for the management of the protected area system. For each protected area, a multisectoral PA Management Board (PAMB) is established to coordinate management of PAs with local governments, other agencies and sectors. It also partners with local governments, indigenous peoples, and private sector to recognize and support the designation of critical habitats, local conservation areas, and indigenous community conserved areas (ICCAs).

Following the constitution, all **mineral resources belong to the state**. Managed mainly by DENR through the Mines and Geosciences Bureau and its regional offices, the government identifies mineral reservations and administers the issuance of exploration permits, mineral production sharing agreements and financial and technical assistance agreements in the utilization of mineral resources.

In addition to the above, the President issues Proclamations to assign responsibilities to other agencies and instrumentalities, portions of public lands. In Mindanao, these total almost half a million hectares (444,777 hectares).

Table 34 presents a brief analysis of the public good nature of land, as well as assessment of management capacity.

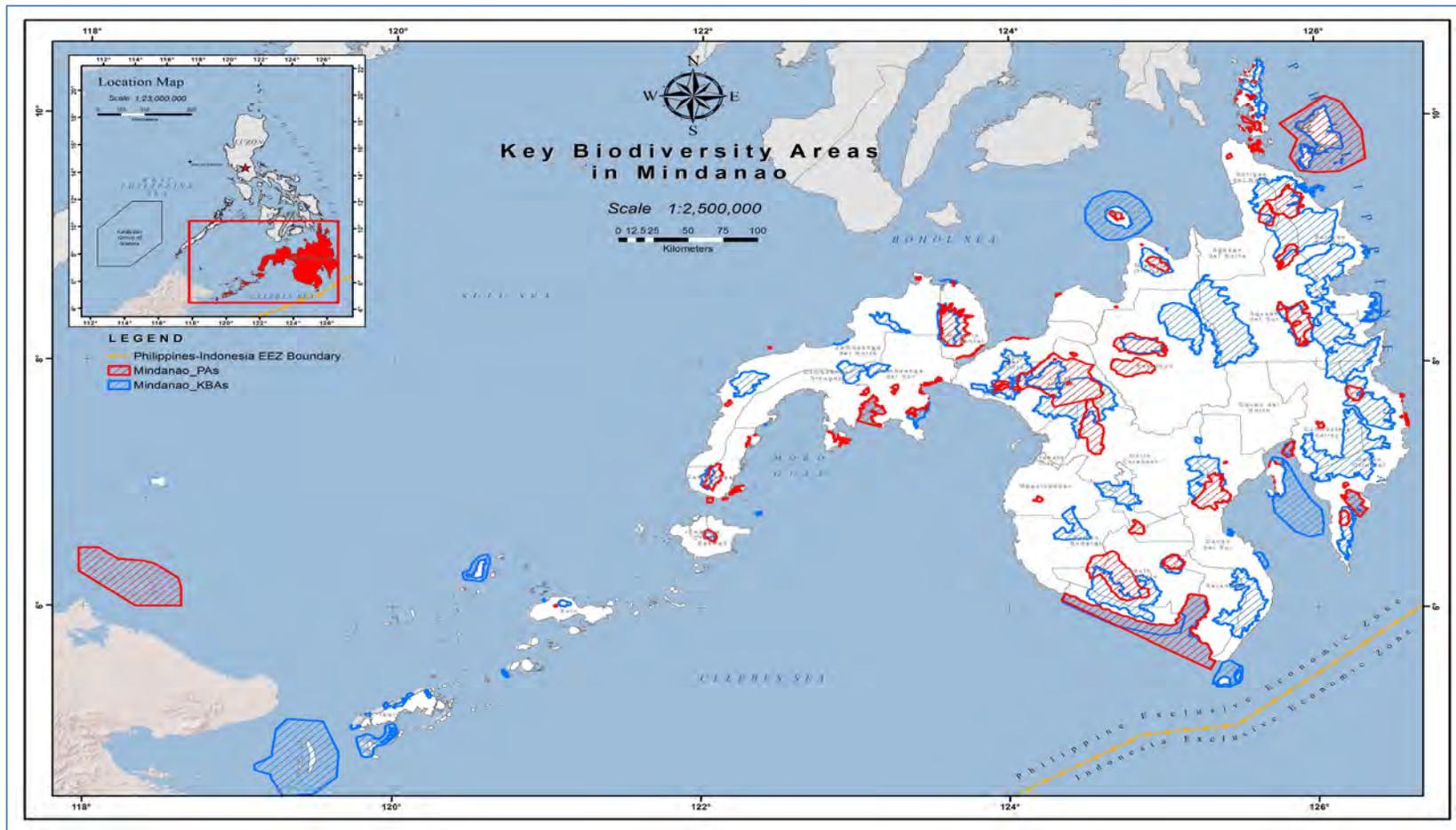


Figure 10. Location of KBAs and PAs in Mindanao  
 Source: Biodiversity Management Bureau, October, 2015

**Table 34. Assessment of Public Good Nature of Public Land and Management Capacity of Designated Institutions**

Public Land	Public Good Generated/Public Interest	Management Responsibility	Assessment of Management Capacity/Resources	Assessment of Public Good Dimensions
Forestlands	<p>Ecosystem services from watersheds and river basins</p> <p>Carbon sequestration</p> <p>Prevention of soil erosion and improving natural resilience from adverse impacts of climate change and climate induced natural disasters</p>	<p>DENR through granting of resource use and tenure rights, JV and co production sharing agreements</p> <p>Partnerships with LGUs, tenure holders, and private sector</p>	<p>During the last 6 years, GoP invested heavily (Php 35 Billion) on National Greening Program to restore forest cover in open and degraded forests. Such investment will be renewed for the next 6 years</p> <p>Resource use is highly regulated to control illegal logging</p> <p>There is high number of people in uplands, creating new and expanding existing settlements</p>	<p>Large portions of forests are identified for production purposes; suggesting need to review public good aspect of forest production</p>
<p>Remarks:</p> <ul style="list-style-type: none"> <li>• There have been proposals to amend 18% slope criteria to 30%; focus on protection forests and subject 18%-30% lands to land use regulations</li> <li>• EO 23 suspended harvesting activities in natural forests thus all production activities are in plantation forests; this essentially expanded the protection forests to cover all old growth forests, and natural forests (even if disturbed)</li> </ul>				
Protected	Conservation of genetic	DENR through	METT assessments reveal	Strong public good

Public Land	Public Good Generated/Public Interest	Management Responsibility	Assessment of Management Capacity/Resources	Assessment of Public Good Dimensions
Areas/National Parks	<p>resources</p> <p>Conservation of threatened and endemic wildlife resources and representative habitats or ecosystems</p> <p>Improving resiliency of natural ecosystems from shocks and adverse effects of monoculture cultivation</p>	PAMBs, LGUs, IP communities	<p>threats not effectively addressed due to limited staff and funding allocations from GoP</p> <p>Limited GoP support affects ability of PAs to attract investments, in turn ability to generate revenues from IPAF, in turn affecting financial sustainability of PAs</p> <p>Some PAs have portions already converted to plantations and other production agriculture</p> <p>Portions of PAs already occupied thus not all PAs perform the function for which they were established</p>	aspect but would need more support to fulfill its objective
Mineral Lands	State ownership to ensure compliance with environmental regulations	DENR through system of granting EPs, MPSAs,	Limited capacities for exploration, so this is done by	

Public Land	Public Good Generated/Public Interest	Management Responsibility	Assessment of Management Capacity/Resources	Assessment of Public Good Dimensions
	and government share in proceeds	<p>FTAAs, JV agreements, or co production sharing agreements</p> <p>LGUs through small scale mining permits</p>	<p>private sector</p> <p>Challenges in government validation of volume of potential deposits, which is key to revenue sharing</p> <p>Issues in environmental compliance and opposition by communities and LGUs</p>	

There is room for greater involvement of local governments, and indigenous peoples in public land management.

***4.1.2 - In Mindanao, there is no complete recording of publicly held land. Only between 30% and 60% of public land is clearly identified on the ground and on maps. C***

The NAMRIA has completed the delineation and demarcation of forestland boundaries, except ARMM. Moreover, more than 1.5 M hectares of tenured areas are not demarcated on the ground. There are maps with the DENR, but these are not delineated on the ground. There are efforts however, to undertake an integrated GIS mapping of all these rights awarded on forestlands.

Protected areas have also been delineated on the map. Only those with legislations however, are to be demarcated on the ground. The absence of well-defined boundaries of PAs have also caused confusion on their actual extent and coverage, thus resulting in occupation and conversion of some parts to other uses. This causes problems on the part of the park managers and staff in enforcement of PA laws.

In many instances, the lack of ground delineation of all these tenure instruments on forest lands have been the reason for overlaps, conversion, occupation by others; thus creating conflicts on the ground, and weak enforcement of use rights. This is compounded by the absence of common projection maps on titles, rights, issued by other agencies or some agencies within the DENR (CADTs by NCIP, Cadastral surveys by LMS within protected areas, etc.)

***4.1.3 - Information on public land is not accessible to the public. - D***

Most cadastral maps are not available to the public, thus affecting ability by LGUs to properly plan and guide the DENR in its titling activities. There are inventories of tenure instruments and agreements issued over portions of the forestlands, but maps are not readily available and not in digital form. This is made worse by the multiplicity of agencies involved in public land management.

The absence of these information has made it difficult for private sector to identify available lands for investments.

***4.1.4 - There is ambiguity in the assignment of management responsibility and capability for different types of public land thus equity and efficiency are often not attained in practice - C***

Management of public lands are clearly assigned mainly to DENR (forests, mineral and protected areas). NCIP and DAR to some extent, have management responsibilities in the disposition of portions of public lands.

There is huge ambiguity however, in the disposition of alienable and disposable public lands, which create a lot of confusion and generate conflicts.

The lack of integrated approach within DENR has resulted in conflicting issuances of leases and concessions (MPSAs in KBAs) in areas with high conservation value, even if not yet declared PAs.

Other agencies, such as NCIP and BMB-DENR have limited resources that greatly affect their effectiveness in supporting ancestral domain delineation and management of PAs respectively.

***4.1.5 - There are significant constraints in the financial and/or human resources capacity which affect their performance of land management responsibilities - C***

There has been significant infusion of resources to National Greening Program (NGP, Php 35 Billion over 6 years) to restore forest cover; and to the cadastral program to complete the remaining un surveyed municipalities (Php 4.5 Billion). The NGP has supported quite a good number of upland communities in improving their incomes. However, not much resources were given to securing resource use rights of remaining upland communities.

There has been limited allocation to the management of PAs that has severely impacted on the protection and investments in putting up of required facilities. Traditionally, PA management receive less than 5% of DENR allocation.

NCIP is severely understaffed with very limited budget such that over the last 3 years, very few CADTs were processed. There are also severe funding constraints in operating budgets which impact on their ability to support IP communities, facilitating FPIC, and provide other services to IP communities.

***4.1.6 - Key information for public land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is recorded or partially recorded but it is not publicly accessible. - C***

Only Region 10 makes available on its website, the list of long term leases and agreements it has issued on forestlands. However, the financial terms are not published in the website.

The MGB lists on its website, all permits and MPSAs, and FTAAAs it has issued, including locations and duration of operations. The financial terms are not published in the website.

For purposes of transparency and accountability, it is important that these information be made available so that the public can also participate in monitoring of performance of leaseholders. These information are also essential for investors looking for land and for those who would be interested in joint venture arrangements with those who already have tenure instruments.

**NOTE: For indicators 4.2 and 4.3, the Phil LGAF was not able to access data from DPWH and PRA, thus the assessment was not complete. The following were based on the Phil LGF results.**

**LGI 4.2 - Justification and time efficiency of acquisition processes; the state acquires land for public interest only and this is done efficiently**

***4.2.1 - Laws provide that expropriation be used solely for public interests, but there is no monitoring of transfers of expropriated lands - A***

In the Philippines, expropriation of private property is solely for public use and interests. In the absence of data however, on transfers of all expropriated land in the country, it is difficult to determine whether portions of these were transferred to private interests. Data on expropriation are scattered among many agencies, and there is very little monitoring on the extent of expropriated land, the amount of compensation, promptness of compensation, and use of expropriated land. These data are also not publicly accessible.

Some reporting and monitoring mechanisms need to be in place to keep track of this function of government. LGUs are also authorized to expropriate by virtue of the LGC, and have done so, for purposes of establishing low cost housing projects, or settlement projects for informal settlers.

A few isolated cases have been reported about LGUs transferring expropriated land for commercial purposes, but these need to be more fully documented. The extent to which portions of these have been transferred for private use is still undetermined.

#### ***4.2.2 - There are delays in the transfer of expropriated properties to their destined use - C***

Speed of use of expropriated land is affected by delays owing to project approvals, negotiations, release of budgets, payments, particularly for foreign assisted projects. Thus, the panel opined that it is safe to say that less than 50% of expropriated land have been transferred to their destined use in the last three years. This does not augur well for good governance.

#### ***4.2.3 - The threat of land acquisition lead to pre-emptive action by private parties - B***

Under the CARP, and under the agreement between DAR and LRA, all parcels subject to coverage have been isolated, and marked. This is to prevent further transaction on the property while the acquisition process is on going. DAR clearance is required if there are applications for subdivision of the subject properties or transfers of ownership. DAR has also published the list of parcels affected by CARP coverage, called its Notice of Coverage. There is also a list of landholdings without notice of coverage.

However, there are anecdotal reports of properties covered by notices that have been successfully transacted at the RoD. These are few, but needs to be carefully monitored in order to determine the extent of the practice, and obtain remedies.

### **LGI 4.3 - Transparency and fairness of acquisition procedures: acquisition procedures are clear and transparent and fair compensation is paid expeditiously**

#### ***4.3.1 - There is inconsistency in the values used to compensate expropriated properties - C***

Only national infrastructure projects have clear policies for expropriation and compensation using market rates (RA 8974). There is currently no policy to provide compensation for income losses. In the case of national infrastructure projects, the BIR zonal value is used as basis for valuation despite the fact that there are other standards cited in said law for valuing land. For other projects, the policies that apply are PD 1533 and EO 1035 which uses the values declared by the owner/administrator or as determined by the Assessor pursuant to the Real Property Tax Code, whichever is lower, as basis for compensation. These values are way below market rates, in some cases undervalued by as much as 1000%; due to the outdated LGUs' schedule of market values; and because SMVs are not based on market prices. These amounts will not enable the affected property owner to find replacement property of equal value.

For unregistered properties, there is no legislation that provide for compensation. In the case of foreign assisted projects where resettlement action plans (RAPs) are prepared, these types of compensation are recommended. The types and estimates of compensation therefore, very depending on the policy of the donor institution on RAPs. The lack of legislation has also affected consistency in implementation. There were even cases where DPWH ROW agents encounter difficulties due to disallowances by the Commission on Audit.

#### ***4.3.2 - Where people lose rights as a result of land use change outside the acquisition process, compensation is not paid. - D***

Establishment of protected areas recognizes prior rights, but only for those which are duly recognized (e.g., titles, mining permits). For informal occupants of protected areas, they are not displaced nor compensated, but given long-term tenurial instruments.

#### **4.3.3 - Only national infrastructure projects pay prompt compensation for expropriated properties - C**

There are varying provisions in existing laws with regard to the promptness of compensation. Most favored are expropriated properties of national infrastructure projects, wherein based on RA 8974, 100% payment should be made immediately to the owners. Payment is based on the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR). Payment shall also include the replacement cost of improvements and/or structures upon filing of the complaint and after due notice.

For projects other than national infrastructure and those projects of the LGUs, property owners are not compensated promptly. In the case of the former, PD 1533 and EO 1035 provide that the government can immediately take possession, control, and disposition of the property upon payment of 10% of the assessed value of the property based on the tax declaration of the owner. In the case of projects of LGUs, the applicable law is RA 7160 that allows the LGUs to take possession of the property upon payment of 15% of the value of the property based on the tax declaration.

#### **4.3.4 - Independent avenues to lodge a complaint against acquisition exist but there are access restrictions (i.e. only accessible by mid-income and wealthy) – B**

There is no national resettlement policy that embodies, aside from proper and prompt compensation and entitlements, grievance redress and sustainable livelihood restoration and improvement program. This policy should apply uniformly to all types of government projects, regardless of the funding source, and the level of who executes it. Such grievance redress system should also be accessible and affordable to poor property owners affected by expropriation. This is made worse by RA 8975 which prohibits the lower courts to issue temporary restraining orders (TRO), preliminary injunctions, or preliminary mandatory injunctions on national government infrastructure projects. While DPWH has a Land Acquisition, Resettlement, Rehabilitation and Indigenous Peoples Policy (LARRIP); it is not founded on legislation, but an Administrative Order issued by the agency. Hence, it has no legislative basis, and therefore, subject to audit interpretations anytime. There is a National Resettlement Implementation Plan (NRIP) which was produced in 2003 through WB support; but this needs updating.

The property owner, as part of its constitutional rights may lodge an appeal through the proper courts, or even the President of the Republic, but as described below, by virtue of Section 11 of Rule 67, said appeal cannot cause any delay on the right of the IA to enter and secure the property for public use or purpose.

R. A. 8975, states that:

*“No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the following acts:*

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;*
- (b) Bidding or awarding of contract/ project of the national government as defined under Sec. 2 hereof;*
- (c) Commencement prosecution, execution, implementation, operation of any such contract or project;*
- (d) Termination or rescission of any such contract/project; and*
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.*

*This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.*

*If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws."*

## Summary and Recommendations

In Mindanao, 60% of the total land area is kept public in order to fulfill aim of providing public goods. However, weak institutional capacities have left many of these lands heavily encroached upon and not fulfilling their purposes. Only 34% of the region's forestlands (or 2 million hectares) are still covered with forests, while only half a million hectares of closed canopy forests remain. The lack of delineation between production and protection forests, and the incomplete recording of publicly held lands also make it difficult to attract investments in these vast tracts of lands.

There are also nine agencies involved in public land management namely: DENR (including its Lands Management Bureau, Forest Management Bureau, Mines and Geosciences Bureau, and the Biodiversity Management Bureau), DAR, BFAR, NCIP, and LRA/RoD. The fact that each of these agencies have their own mandates, are governed by different sets of policies without specific areas of jurisdiction and no clear boundary of operation has made management of public lands a very complex undertaking.

In order to unleash the potential of these lands, it is important that a common spatial framework be adopted by all agencies; make all public land information readily accessible; and strengthen budget and resource provision for agencies such as NCIP and DENR to complete the mapping and confirmation of rights to IP communities and public land occupants.

## 4.5 Transfer of Large Tracts of Land to Investors

### Assessment of Indicators

#### Indicators Assessed:

- 5.1 Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited (with the exception of transfers to improve equity such as land distribution and land for social housing).
- 5.2 Private investment strategy
- 5.3 Policy implementation is effective, consistent and transparent and involves local stakeholders
- 5.4 Contracts involving public land are public, easily accessible, with agreements monitored and enforced

**5.1 Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited (with the exception of transfers to improve equity such as land distribution and land for social housing).**

***5.1.1 - The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is between 50% and 70% - C***

Per DENR DAO 42, series of 1991, and DENR DAO 59, series of 2004, all portions of public forestlands are to be disposed of through IFMA and Forest Land Agreements (Flag) through competitive bidding.

While there are no data available to support estimates of the number of public land leases which went through public auction, it is widely acknowledged that the award of long term leases is based on applications made by potential investors requiring large tracts of land; thus the opportunity for bidding is limited.

Expired pasture lands/grazing lands for re-applications within ancestral domain require FPIC and clearance from NCIP; in Region 10, 49 percent expired pasture lands and for re-applications needs NCIP clearance and FPIC.

***5.1.2 - Between 50% and 70% of the total agreed payments are collected from private parties on the lease of public lands - C***

***5.1.3 - Public land is rarely or never leased (divested) at market prices, in order to attract investments on forest development - D***

There are no available information on collection of payments for leases of public lands. For fishpond lease agreements, rentals are not collected on time. BFAR Region 10 records show that total receivables from fishpond holders amounted to Php 20.4 Million until 2014.

On the other hand, the report of DENR – 10 License, Patent and Deed Division (as of Jan 2015) states that existing pasture land leases/permittees have “satisfactorily complied with terms and conditions of the lease agreement”.

Moreover, lease rentals are very cheap so that it is more expensive to collect than the cost of potential collection. These are part of incentives given by government to encourage investments in sustainable forest management and production.

For industrial forest management agreements, the rental is as follows<sup>62</sup>:

- No rental during the first five (5) years from date of the issuance of the agreement
- From the sixth year to the tenth year, the annual rental shall be fifty (P0.50) centavos per hectare
- Thereafter, the annual rental shall be one peso (P1.00) per hectare.

Guided by equity objectives, leasing out of public forestlands through CBFMAs is exempted from rental payments.<sup>63</sup> The incentives include: (i) exemption from paying rent for use of CBFMA

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<sup>62</sup> DENR Administrative Order No. 42, (August 22, 1991). Revised Regulations and Guidelines Governing the Establishment and Development of Industrial Forest Plantations (IFPs)

areas; and (ii) exemption from paying forest charges on timber and non timber products harvested from plantations in accordance with RA 7161

#### ***5.1.4 - Mechanisms to allow the public to capture benefits from changing land use are rarely used and applied in a discretionary manner – C***

The assessment made in the Philippines LGAF is presented here, since the same policies apply to Mindanao.

The Philippines rates poorly in this dimension. The implementation of relevant policies to enable public capture of benefits arising from changes in permitted land use has largely been ignored; thereby resulting in some members of society unduly benefitting from these. At best, such benefits are captured in changes in property tax assessment, but because the LGU schedule of market values is way below the true market values and almost always out of date, this does not materialize. Full implementation of this law will also prevent those with vested interest to unduly influence the location of major public infrastructure projects for their benefit. In a similar way, compensation for expropriated properties or those affected by ROW or other government projects are not compensated fairly.

There are at least three beneficiaries from whom benefits of public works investments should be captured for the public: the general consumers; the direct users of the facility; and the landowners within the immediate vicinity of the public improvement project. The mechanisms of capture are the consumption tax, user fees and charges, and the special benefit assessment, respectively. The first two are in active use in the Philippines; the third mechanism, though authorized by existing laws, is hardly applied at all.

The law on special benefit assessment or betterment levy has been in existence for nearly three-quarters of a century. It first appeared in the Assessment Law (Commonwealth Act 470) dated June 16, 1939. The same provision was carried over in two other subsequent laws. The special assessment provision was contained in Sections 47-55 of the Real Property Tax Code (Presidential Decree 464) of 1974, then it appeared again as Sections 240-245 of the 1991 Local Government Code (Republic Act 7160). So far there are no records of its application in any part of the country. While some countries, notably Colombia, Mexico, and some states of the United States of America, finance substantial portions of their public works projects through this tax, the Philippines has not even tried to tap this veritable gold mine.

A variation of the betterment levy is however observed to be rampant in the Philippines. This refers to the practice of landowners donating a portion of their land for use as a site for public institutions such as a school, a health center, a barangay hall, and the like, in obvious anticipation of windfalls in the form of business opportunities to be generated by the government project in the immediate vicinity as well as in terms of increases in the value of the remaining portion of their property. In such a transaction, the government does not find it necessary to capture for the public the land value increment because it did not have to pay compensation to the land owner in the first place. The Filipino localism for this practice is “quits”. The Americans have an equivalent practice which they aptly call “wipeouts for windfalls”.

The only mechanism for public capture of the benefits of changed land use from landowners is the real property tax. But the benefits are not captured in real time due to the fact that land value assessment is not done systematically and regularly. The very wide discrepancy between the LGU schedule of market values and the current market values can hardly make up for the

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<sup>63</sup> Section 2 of DENR ADMINISTRATIVE ORDER NO. 96-29; Rules and Regulations for the Implementation of Executive Order 263, Otherwise Known as the Community-Based Forest Management Strategy (CBFMS)

difference in terms of public capture of benefits through property taxes.

It is therefore about time that the government should enforce the existing provisions of sections 240-245 of RA 7160 or the Local Government Code, pertaining to special assessment. The BLGF can assist in developing specific guidelines and appropriate training for LGU Assessors on these.

***5.1.5 - Policy to improve equity in asset access and use by the poor and marginalized groups is in place but is not enforced - C***

The CBFM Program, the issuance of CSCs, Tree Farms, and CADTs are mechanisms by which the poor and marginalized have equal access to public land as assets of production.

Similarly, portions of public lands, such as those held by the National Development Corporation, have been distributed to farm workers through the CARP. Since the program started, a total of 1.063 Million hectares of public lands have been distributed in Mindanao.

However, the benefits that poor communities are supposed to enjoy are threatened by inefficiencies due to overlaps in mandates among agencies, and weaknesses in implementation. Investors had difficulties in identifying land and the rightful landholders, due to property rights that are unclear (in the case of individual beneficiaries of collective CLOAs); imperfect (in the case of untitled lands); or questionable (in the case of CLOAs issued in lands that do not meet the criteria; CBFMs that are in conflict with ancestral domain lands). These situations compromise the intent of the law.

On collective CLOAs, DAR proposed that the poor be allowed to improve access on 2 conditions: 1) be with other poor (form a group) and 2) group to propose to use land based on the options allowed by the government. However, this would require investments in capital, strengthening of the organization, which are not currently in place among the beneficiary groups of CLOAs.

## **5.2 Private investment strategy**

***5.2.1 - A policy to identify land that can be made available to investor exists, based on ad hoc assessment of land potential and limited consultation with communities and is applied in more than 90% of identified cases - C***

Within public forestlands, there is a policy to clearly identify land that can be made available to investors through the IFMA (DENR DAO 92, series of 1991). This is based on assessment of land potential, community consultation, and consultation with LGUs. However, this is not systematically being done. There is no active program that provides information on the location of land where investments can be made. Investors are finding out that even in areas offered by DENR as being available, these are occupied by communities, are covered with conflicts, and some have existing tenure instruments. Investors would have to allocate resources and negotiate with the occupants before any meaningful area development planning can take place. (see Box 1).

### **Box 1. A Case of Large Scale Investment in Forestlands (Davao del Norte)**

The case is about an investment by San Miguel Corporation and Kouk group of Malaysia to develop large tracts of denuded and degraded forestlands in Davao del Norte for food production under a Joint Venture Agreement. This was part of the government's food security program. In all, the venture covered the Davao del Norte Municipalities of Kapalong with 3,246 hectares; San Isidro- 5,860 hectares; Talaingod- 7,860 hectares; and New Corella- 1,552 hectares; for a total Project Area of 18,495 consisting of four (4) separate parcels of forest lands. The Project Area will be developed for the production oil palm / forest trees, cassava, and other appropriate crops under the framework of DENR's Upland Agroforestry Program and its implementing guidelines pursuant to DENR Administrative Order No. 2005-25. The Memorandum of Agreement was signed in 2008.

The formulation of the agroforestry development plan involved more detailed investigation of the area, where it was found out that although without secure tenure, most of the forestlands are under de facto management by local claimants/communities. Most of these areas are actively being cultivated by local farmers (under various forms of claims). Some areas even have land titles already (CLOA), and are supposed to have been set aside as land grants for specific purpose (i.e. Land Grant for the Girl Scouts of the Philippines). But not all areas are optimally used or cultivated. The situation called for adoption of suitable institutional arrangements and resolution of land tenure issues, including benefit sharing.

*Source: Facebook page of Ricardo Umali (cited with permission)*

Investments in ancestral domains are supposedly secured through FPIC, and negotiations with CADT holders. Unifruti in Mt. Kitanglad, Bukidnon may be cited as a good practice. Unfortunately, this is not happening in other similar initiatives. In other cases, IP communities are leasing out portions of their domain to private individuals and small corporations to generate income, but prove mutually beneficial.

Areas identified for mining overlap with other rights and have caused conflicts with LGUs, IP communities and other local communities. Although FPIC is required in areas within ancestral domains, MGB, with minimal consultations, identified mineral reservations. This has created confusion and conflicts. Under E079, no go zones for mining have been identified.

During the panel discussions, private sector representatives lamented the lack of an active program to provide sufficient support to encourage investments involving large tracts of land. In CARP covered areas, the alternative is to engage with collective CLOA holders, but many of them are not organized. To quote the comments of private sector representatives to the panel workshop: *"Even if land is found, the main issue is the clarity of rights – who do we enter into contract to?"*

#### **5.2.2 - Process is in place but many investments go ahead that are either not according to the policy or despite unfavorable outcomes - C**

For mining investments, the law explicitly prohibits mining in old growth forests, national parks, and other areas considered protected. Likewise, no ancestral lands shall be opened for mining operations without the prior consent of the ICC concerned (section 16, Mining Act). There are however, complaints about how this is implemented in practice.

Section 17 of the Mining Act also specified royalty payments for Indigenous Cultural Communities. - *In the event of an agreement with an indigenous cultural community pursuant to the preceding section, the royalty payment, upon utilization of the minerals shall be agreed upon by the parties. The said royalty shall form part of a trust fund for the socioeconomic well being of the indigenous cultural community.*

For some large-scale investments in areas covered by collective CLOAs under the AVAs; investments proceed even with uneven distribution of benefits to beneficiaries. For example: the former NDC owned areas in Agusan del Sur, which is under long term lease with Guthrie Corporation, the rental is only P635 per hectare per year, plus P3,000 economic benefits per year and employment in the company. These agreements were executed before the DAR was able to issue guidelines on the distribution of such lands; and the manner of granting collective CLOAs. There are efforts now to negotiate the terms, and facilitate the identification of families covered in the collective CLOAs.

In the case of leaseback arrangements facilitated through AVA, there are many complaints from the communities: unfair benefit, land displacement, labor issues, environment. Policies are there but in practice favors better the investors.

***5.2.3 - Institutions involved in transferring land to investors are clearly identified but lack either capacity or incentives in ensuring socially beneficial outcomes or their decisions are not always implemented. C***

There are two agencies taking the lead in promoting investments in Mindanao: Board of Investments (BOI) and the Mindanao Development Authority (MinDA).

BOI provides incentives (i.e. tax holidays, tax exemptions, employment of foreign nationals, etc.) and low cost of doing business (i.e. low labor wages compared to US) among other incentives. It also offers a Business One-Stop Shop Action Center (BOSSAC) that facilitates transactions. For agri-business, it targets areas: “those undeveloped alienable and disposable lands, ancestral domains and CARP lands”.

MinDA promotes Investment Corridors in Mindanao identifying areas along development clusters such as Food Basket Cluster and Food, Agribusiness, Industry and Logistics Cluster.

Other agencies administering land, including LGUs, assist in the process. But there is really no such thing as “transferring” land. Usually, the arrangement is for long-term leases and concessions given out by agencies to investors. There is a need for BOI and MinDA to coordinate more with these agencies.

More importantly, the DENR is in charge of approving long-term leases, and identifying portions of the forestlands that could be made available for investors. However, they are not fully equipped, there is no such inventory of lands that could be made available, the information is not widely promoted, and that occupants in these areas do not have tenure or have their rights recognized which make it difficult for investors to negotiate.

***5.2.4 - Public bodies transferring land to investors do not share information and coordinate to minimize and resolve overlaps (including sub-soil). D***

The Joint NCIP-DOJ-DENR-DAR Administrative Order is supposed to further avoid overlaps in the issuance of titles/claims. However, this has essentially frozen further registration of CADTs, as the overlaps or conflicts that were discovered in the process have not been resolved.

It is common knowledge that in many places in Mindanao, there are overlaps between CADTs, CLOA, CBFM, and mining areas awarded for exploration, and even in national parks. These are to be addressed on a case-to-case basis and there is no policy yet to resolve overlaps in areas affected before the issuance of the JAO.

Coordination among land administering agencies is weak. For instance, while Bukidnon has the highest classified fishponds, no FLA permits were issued by DA-BFAR. Similarly, FLA permits are issued in regions where DENR has no classified fishponds.

At the regional level (Region X), the Regional Land Use Committee of the Regional Development Council/NEDA is tasked to resolve these issues but after years of discussions and debates nothing substantial has been accomplished. These agencies have their own respective mandates and jurisdictions as legislated by Congress and are not willing to arrive at useful and implementable compromises.

***5.2.5 - Monitoring of compliance is limited or only part of the results are accessible to the public - C***

Monitoring of compliance is partly carried out but remedial action is not carried out.

Lease rentals are not collected on time. Based on the records of BFAR-10, the total receivables from fishponds leaseholders amounted to PhP 20.4 million until 2014. On the other hand, the report of DENR-X License, Patent, Deed Division (as of Jan 2015) states that existing pasture land leasees/permittees have “satisfactorily complied with terms and conditions of lease agreement”. And yet, reports abound on permits and licenses issued for a specific purpose differ from the actual use of the land.

Minimal staff, huge coverage and resource constraints undermine quality of program implementation.

***5.2.6 - Safeguards to reduce the risk of negative effects from large-scale land-related investments (EIA, SIA, etc.) are partly in line with global best practice and are applied only in an ad-hoc manner. - Between C and D***

The Philippine Environmental Policy prescribes guidelines for EIA and compliance with environmental standards. Under DAR AO9, conditions for approval of any agribusiness venture agreements include social safeguards and environmental considerations in the use of agricultural technology.

Implementation of these policies, however, is to some extent discretionary. Compliance mechanisms are generally weak. This is associated with the fact that compliance monitoring is financed by the investor, which can become self-serving. The same arrangement holds true in securing FPIC. There have been reported cases of development projects proceeding without FPIC, or with FPIC but have been improperly secured – either by not following the process, or from IP leaders who do not represent the community. These have caused confusion and conflict among the community members and between the community and investors.

On mining – there are safeguards defined in policy, but again, monitoring is weak. There have been frequent complaints by LGUs and indigenous peoples of violations and environmental damages; but these do not seem sufficient to stop or suspend their operations.

***5.2.7 - Resettlement policy exists, but is only in part of the cases applied. - C***

All large-scale agricultural investments are not supposed to result in resettlement or displacement. This is not encouraged, nor made a condition for approval.

However, developers/investors are required in their cost-benefit plan to provide relocations for affected communities. For example, STEAG has a relocation site but is insufficient.

There have been cases where in the process of asserting rights to land, which are subject to conflicts with other rights (mining, CADT, IFMA), IP communities have been displaced.

### **5.3 Policy implementation is effective, consistent and transparent and involves local stakeholders**

#### ***5.3.1 - Investors' business plans (application materials) require some evidence of technical viability, community consultation, and availability of resources but this is insufficient to effectively identify project risk ex ante - C***

On the part of DTI, business plans are not required for investment clearance. The role of DTI is to facilitate dialogues with affected farmers.

On the part of the Chamber, there needs to be an entity to whom the business plans should be explained, aside from the community. Having an honest broker such as an NGO should be in place in order to properly translate the proposed terms and conditions of contracts in a way that the community will fully understand.

For leaseback arrangements under agribusiness venture arrangements (AVA) of collective CLOAs, technical viability, community consultations and availability of resources are not required. CLOA holders negotiate freely with investors, in which case, all members in the CLOA should be able to give their consent to the investment proposal. The same holds true for negotiations with IP communities, but in their case, the FPIC is required.

The experience of some agrarian reform beneficiaries (ARBs) who are recipients of collective CLOAs in AVAs through the lease arrangements might be useful at this point. In the case of two ARB groups in Impasug-ong in Bukidnon; farmers settled for very low rental rates (Php 12,000 per hectare per year) for fear of losing land due to accumulated unpaid amortizations. The farmers found themselves not having enough to sustain their daily requirements, but were satisfied by the prospect of keeping their land. Other cooperatives are more fortunate, since they were able to negotiate better terms in the end experiencing improved socio economic status.<sup>64</sup>

In this case, the key is the ability of the ARBs to fully understand the terms of the agreement, and capacity to negotiate the terms. It does not help though, if the ARB is in "distress" (e.g., under threat of being in default in loan repayment).

Another example is the experience of the coop which entered into an agreement with NDC owned property with Guthrie Malaysia where farmers were paid only Php 635 per hectare per year for a 19 year contract. While there are other benefits such as profit share, etc., the farmers attest that they do not fully understand these terms. The coop has since delisted their Officers for mismanagement and on the charge that they fully sided with the corporation.<sup>65</sup>

Other ARB groups are more fortunate, who experienced improved incomes and socio economic benefits after the plantation became fully owned and managed by the coop. In addition to

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<sup>64</sup> DAR Policy and Strategic Research Service Economic and Socio-Cultural Research Division. February 2006. Case Study on the Development Contract (pineapple) and Land Use Management (Banana) Agreement: ARB-Members of the Carabao Farmers Cooperative (CFC) and Del Monte Philippines, Inc. (DMPI) and Skyland, Dole Philippines, Inc. in Barangay Cawayan, Impasug-ong, Bukidnon .

<sup>65</sup> Note. According to DAR, this agreement was executed at the time the new CARP law was signed, and the guidelines for AVA has not been developed yet. DAR Policy and Strategic Research Service Economic and Socio-Cultural Research Division. November 2006. Case Study on Production and Purchase Agreement: KENRAM ARBs Multipurpose Cooperative (KARBEMPCO), Mapantag ARBs Multipurpose Cooperative (MAPARBEMPCO), and KENRAM Industrial Development, Inc. (KIDI) in Isulan, Sultan Kudarat (Oil Palm)

having a more mature and functioning organization, other success factors include the sheer commitment of the members to manage the plantation instead of engaging into leaseback agreements, the fair terms offered by the company, support of an NGO, and having former company officers and managers as ARB members contrary to DAR guidelines. The latter was instrumental in bringing the organization onto a financially viable path, and introducing sound management principles in the affairs of the coop<sup>66</sup>.

For investments in public lands and development of natural resources such as IFMAs and agroforestry lease agreements, indicative management plans, proof of financial capacity are required.

***5.3.2 - The review process for investment application related documents is not uniform and stable over time; in most cases approval is received after more than 9 months from date of submission – Between B and C***

There are existing guidelines for investors on doing business in the country. BOI provide guidelines and cost of doing business in the country, (from business registration, investing in PEZA, information on rates of transport, wages, freights, etc.), see <http://investphilippines.gov.ph/>. DTI explained during the panels that applications are processed with various agencies (example: DENR for EIA), and then reviewed and approved by BOI if covered by incentives. The Chamber however complained that processing time is a moving target, and that there are new requirements all the time. In this regard, the establishment of One Stop Shop (OSS) was recommended.

Aside from business registration, investing on public lands (forest lands) follows DENR guidelines. For example, in IFMA, investor must apply, pay application fee ranging from 12k - 25k (for 500-has up to 20K-has) at the CENRO, submit plan to secure ECC, validated by PENRO and submitted to RED for recommendation to Central Office. Central Office approves or disapproves application (DENR –AO 97-04).

Also, if investment happens to be within CADT areas, investors undergo FPIC process as mandated by NCIP, aside from the processes of DENR.

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<sup>66</sup> DAR Policy and Strategic Research Service Economic and Socio-Cultural Research Division. February 2006. Case Study on Banana Production and Purchase Agreement: Dapco United Small Growers Multipurpose Cooperative (DUSGROW MPC) and Dole Philippines, Inc. -STANFILCO in Barangay Dapco, Panabo City, Davao del Norte (Banana)

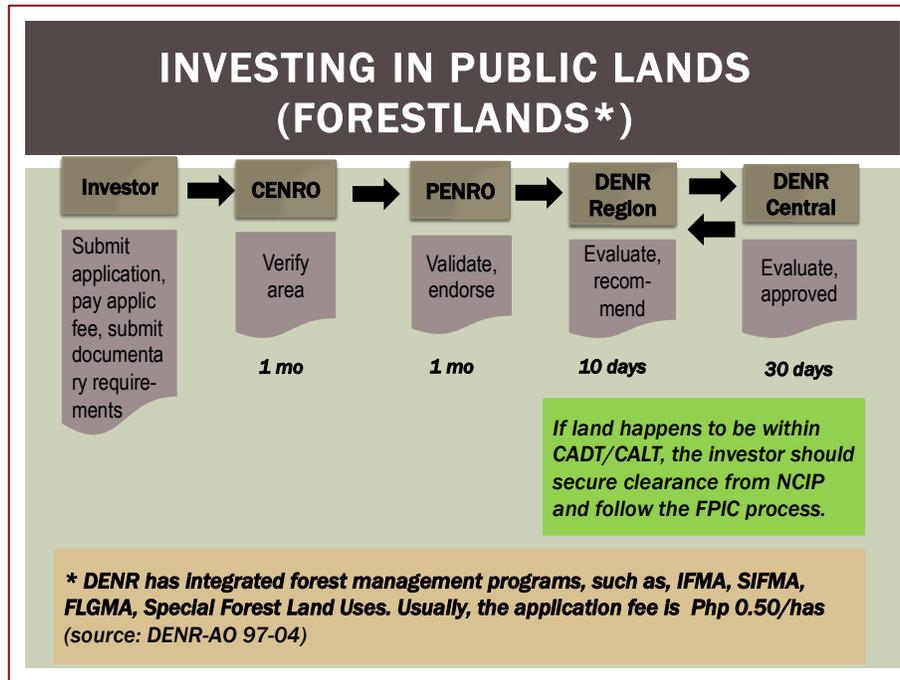


Figure 11. Procedures for Investing in Forestlands

In a 2004 study by University of the Philippines Los Baños (UPLB) on regulatory procedures for forest management agreements, the following key findings related to application requirements were identified<sup>67</sup>:

- Different application fees for various forest management agreements;
- Additional documents required by the different levels of the hierarchy due to differing interpretations of policy statements, in turn leading to delays in processing and approval. This happens despite the DAOs that have been issued that specified the requirements for each.
- Difficulty in securing LGU endorsement thereby causing delays in the processing of applications.
- There are too many levels of authority involved in the processing of applications for various types of forest management agreements at the DENR, thereby causing delays and raising transaction costs on the part of applicants. Sometimes it takes more than a year before forest management agreements are fully processed. Several respondents claimed they spent large amounts in transactions with various levels of the DENR hierarchy for their documents to move from one level to another before these were finally approved.
- Too centralized approval/issuance of various forest management agreements.

The study recommended streamlining and harmonization of procedures among the various forest management agreements to improve transparency, accountability and participatory decision making.

**5.3.3 - Those holding rights to land with potential for investment have clearly defined rights and incentives to properly negotiate but opportunities to obtain relevant information and assistance at reasonable cost are limited. – C**

<sup>67</sup> Forestry Development Center College of Forestry and Natural Resources University of the Philippines Los Baños. April 2004. Simplified and Harmonized Forestry Regulatory Procedures of the Philippines: Terminal Report. Prepared for the DENR-USAID EcoGov Project. ([http://pdf.usaid.gov/pdf\\_docs/Pnadd061.pdf](http://pdf.usaid.gov/pdf_docs/Pnadd061.pdf))

In public lands, many of the occupants have no secure rights to land, and therefore they do not have the incentives and rights to negotiate with investors. In the case of ancestral domains, IP communities in areas where CADTs have not been issued have weakened negotiating rights with potential investors.

Cases documented on contract negotiations reveal that while right holders negotiate freely, their capacity in appreciating the intricacies of the provisions of the contract, especially for long-term contracts, may be insufficient. There are a number of cases where right holders realize the terms are unfavorable and opt to end or amend the contracts.

For growership contracts and leaseback agreements on CARP lands, some CLOA holders change their minds after a few years. Recommendations include shortening the contract period from 15-20 years in the case of contract growing to 5-10 years and for leaseback arrangement from 30 years to 15 years renewable every five years. (refer to discussion above, as cited in footnotes 59-62).

For investments or joint ventures between IP communities and investors, IP communities negotiate freely, but more often they do not have full access to relevant information. In many cases, IP communities have been wary of representations made by investors unless there is assistance from NGOs, or trusted officers from government agencies.

The DTI reported during the panels that there is disclosure by investors, but these are not made fully. Moreover, based on the value chain studies commissioned by WB for the MJR, a common problem is that farmers are not fully aware of the terms of the agreement, and that companies do not want to fully disclose.

The two central issues here are the following:

First, while rights holders have defined rights, the poor performance of agencies confirming these rights has placed in question, the clarity of these rights. Issues of inclusion and exclusion among ARBs in collective CLOAs, the overlaps in issuance of tenurial instruments, and questions on the eligibility of beneficiaries have placed some doubts on whether the investor is negotiating with the proper rights holder.

Second, even if rights holders negotiate freely, the effectiveness of negotiations being equitably beneficial to both parties depends very much on the capacity of the rights holders to understand and assess the terms of agreement presented to them. Thus, it has become common for ARBs and IP communities for example, to request for review or amendment of existing agreements. In CARP covered areas, DAR personnel provide technical assistance to ARBs during the negotiation process, even if they are not party to the agreement. However, in some cases, their participation is not welcome either by the community or the investor partner.

This situation does not only contribute to creating conflict within the community, but also adds to the risks and transaction costs of the investors.

There needs to be some standards that both the government and private sector can adhere to in terms of the minimum set of information that should be made available to the rights holders in order for negotiations to be seen as transparent and accountable.

#### ***5.3.4 - The majority of contractual arrangements do not include information on benefit sharing - D***

For AVA, the negotiations usually take place between the company and the coop Board, and

therefore the rest of the members are not always fully aware of the terms of agreement. The presence of benefit sharing clauses depends very much on the willingness of the company to include these provisions in the agreement. The agreements also vary widely across companies, even if operating in the same area.

Farmers engaged in long-term contracts find themselves locked in for very low land rental rates for a very long time, without provision for increases. In some cases, the price of banana is fixed for a few years. Companies are also not willing to share the buying price of coffee and cacao. Some companies would even recover from CLOA holders, the cost of road within the plantation even if these are supposed to be public goods.

In a report on the series of focus group discussions (FGDs) conducted on AVAs in Region XI participated by various stakeholders including ARBs, investors and government agencies for growership, benefit sharing was discussed but some information were withheld. In lease, and leaseback contracts, discussions focused on land rental but investors' income and liabilities were not disclosed. For growership, investors did not share the prices of products, citing fluctuations in world prices and changes in foreign exchange rates.

When conflicts arise, who should intervene? Some cases have been brought to PARC but PARC does not have the capacity to determine what is fair (e.g. price or amortization). This is a policy gap that needs to be addressed.

#### **5.4 Contracts involving public land are public, easily accessible, with agreements monitored and enforced**

##### ***5.4.1 - Comprehensive and consolidated information on spatial extent and duration of concessions/leases is not readily available to government or different departments rely on different sources of information. D***

Across all agencies, there is no single point where the spatial extent, location and duration of concessions/leases can be publicly accessed. Different agencies maintain their own databases and maps, but even then, not all information are available and not all agencies consistently publish these information.

For mining rights, this information is available at the MGB website. For forest tenure rights in public forestlands, only Region 10 has this information listed in the DENR regional office website. In both cases however, maps are not available.

Not all government agencies disclose this information. Data on ancestral lands (CADT/CALT) are not readily available in NCIP.

NEDA would have some information collected in their database but these are not easily accessible. Data from some regional offices are also not updated.

The absence of such integrated information has contributed to the issuance of multiple rights over the same land. This has created uncertainty both on the property rights of the occupant of the land, and the investments of the concession holder.

In the same UPLB study (footnote 66), this has caused problems in the processing of applications for industrial forest management agreements (See Box 2).

### **Box 2. Issues in Processing of Industrial Forest Management Agreements (IFMA)**

*“Conflicting land uses, claims and tenurial instruments issued due to insufficient, conflicting, outdated, and inaccessible maps, information and database*

A common problem discovered by the DENR and its clients in many regions involves **overlapping tenurial instruments, conflicting land uses and claims over a certain area, after a certain instrument has already been awarded**. This problem is closely related to the previous issue whereby the DENR was unable to undertake the identification and approval of areas open for access. The said procedures entailed the need to update the Registry on available areas for various instruments.

The situation is mainly blamed on the **lack of reliable maps and a dependable information database in many field offices**. Couple this with the **inadequate coordination among the different DENR action officers in the various regional, provincial and community offices, divisions, sections, and even programs**, and the overlap of tenurial instruments and conflicts in land uses over an area result. Although DENR is mandated to establish and maintain an updated registry, **maps of forestland uses and a census of people living in public forestlands, these are often outdated and unreliable, or may sometimes not be readily accessible, if they exist at all**.

Another common problem revolves around the conflict arising from ancestral domain claims over areas for which tenurial instruments have already been issued. A number of IFMA, SIFMA and TLA holders (intending to convert to IFMA) reported that their instruments were issued long before some IPs, or people claiming to be IPs, filed their claims on portions of the IFMA/SIFMA or TLA areas concerned.

*Lack of Forest Land Use Plans in the DENR regional offices*

In most cases, the **DENR people do not really know how much land (and where these are located) has already been allotted for different instruments and is available for open access**. This situation is blamed on the lack of forestland use plans in many regions, as DENR-DILG JMC 98-01 has not yet been properly implemented. DENR-DILG JMC 2003-01 was recently issued to reiterate the implementation of the said policy issuance.”

*Source: Forestry Development Center College of Forestry and Natural Resources University of the Philippines Los Baños. April 2004. Simplified and Harmonized Forestry Regulatory Procedures of the Philippines: Terminal Report. Prepared for the DENR-USAID EcoGov Project. ([http://pdf.usaid.gov/pdf\\_docs/Pnadd061.pdf](http://pdf.usaid.gov/pdf_docs/Pnadd061.pdf))*

### **5.4.2 - There is little third-party monitoring of investors' compliance with safeguards and mechanisms and contractual provisions to quickly and effectively ensure adherence are difficult to access for affected communities. Mechanisms to reach arbitration are difficult to access for third parties. - C**

In general, there is minimal third-party monitoring of investors' compliance with safeguards.

For AVAs, the DAR is able to monitor only if these are registered. However, there are only 13 stock distribution options, so most collective CLOAs with agreements are not being systematically monitored. Strengthening monitoring of AVAs has consistently been a recommendation of the DAR studies.

While not considered third party, DENR is tasked to monitor compliance to environmental safeguards and other terms of the forest management agreement. However, based on the UPLB study, this is not being effectively done due to lack of capacities (Box 3). This could have been

addressed with the recent implementation of the rationalization plan. With the ban on cutting of timber in natural forests, the task of monitoring and enforcement has increased.

### **Box 3. DENR Monitoring of Forest Management Agreements**

*“Inadequate monitoring by DENR of the FMA holders’ implementation of ECC conditionalities and their compliance with other laws, rules and regulations*

The implementation of ECC conditionalities has been given little emphasis ever since the Environmental Impact Assessment (EIA) Law was implemented. Many forest management agreement holders do not have any problem with this as the DENR does only a little monitoring to begin with. Personnel of the EMB regional offices admitted that they have very few personnel and limited resources to closely monitor the activities of thousands of IEE and ECC holders. EMB regional and field personnel can barely cope with the processing of large numbers of applications for IEE/ECC/CNC from various sectors, not just forestry, leaving them with less time for monitoring activities.

Also, there is weak monitoring of the holders’ compliance with conditionalities of forest management agreements and other rules and regulations. DENR field officers blame their inability to regularly and properly monitor the FMA holders’ compliance on DENR’s inadequate resources, i.e., limited personnel and low travel allowances, etc. “

*Source: Forestry Development Center College of Forestry and Natural Resources University of the Philippines Los Baños. April 2004. Simplified and Harmonized Forestry Regulatory Procedures of the Philippines: Terminal Report. Prepared for the DENR-USAID EcoGov Project ([http://pdf.usaid.gov/pdf\\_docs/Pnadd061.pdf](http://pdf.usaid.gov/pdf_docs/Pnadd061.pdf))*

## **Summary and Recommendations**

This Module – Transfer of Large Tracts of Land to Investors – is so central to investments and job creation, and yet, Mindanao fared poorly in the ratings of dimensions. Underlying causes include weak capacities of agencies, lack of coordination, incomplete agency maps, records and data that are independent from other agencies.

In order to unlock the constraints to mobilization of large tracts of land for agriculture and investments, a number of actions are emerging. In crafting these recommendations, it must be recognized that many of these lands are occupied, or at the very least, there are claimants to these lands, both formal and informal. Interventions would have to include an overall field assessment, physical framework planning and should be responsive to the needs of the occupants.

*Conduct an inventory of public lands under long-term lease agreements to determine their current status.* A serious audit of actual uses is necessary to establish whether the lands are still being used for the purpose for which the lease was granted. This is to prevent land banking or speculation, and allow the land to be developed by investors who have the capacity to do so. Priority should be given to the existing TLA, FLGMA, and fishpond lease agreements. The same should hold true for mining areas covered by exploration permits but for which there have been no exploration activities going on.

*Design and implement administrative recourse to addressing current conflicts and overlaps in land and resource use rights.* It is essential that solutions be given to the current dilemma faced in the enforcement of use rights that result from the work of different agencies. For example, in the absence of legislation confirming the final forest line, it would be prudent to carve out areas that

have already been awarded titles by other agencies, following the idea of DAR. In the same way, on the ground negotiations can be made to resolve some of the technical conflicts in resource use, and entitlements of beneficiaries under collective CLOAs. Most of these issues would require dedicated work. The idea of creating task forces for high profile and important cases should be looked at.

DENR to identify and delineate production and protection forests. This is important to determine the parts of the public forests that would be suitable for production purposes, and avoid the awarding of production leases to areas to be set aside for watershed protection, protected areas, wildlife reserves, and similar uses. Once the production areas are established, set these up into management blocks and put up for competitive bidding. There have been plans by the DENR to develop investment portfolios in production forest areas and set up one-stop shops to encourage joint venture and facilitate inflow of investments to manage these well. This can be done with BOI-DTI.

NAMRIA or land classification teams to fast track the classification of some 400,000 hectares of unclassified public forests. A decision has to be made whether to release these as A&D, or retain these areas as part of the public domain. Only after this process has been completed will it be possible to determine the land tenure rights that can be issued to occupants of these lands.

Develop a physical framework plan for Mindanao. This should specify the land use allocations for various purposes, taking into account the long term needs of the region, assessment of its comparative advantage, its land potential, and the current constraints. The Mindanao 2020 can be used as starting point, but the plan needs to have identification over the long-term use of lands to be established as protected areas, mining areas, production forests, agricultural development areas, and expansion of major cities. This should be informed through a participatory process, with key Experts undertaking a land constraints and demand study. In the absence of the National Land Use Act, this plan should serve as the Mindanao long-term land use and management framework that should guide spatial development in the region.

Strengthen IP communities; develop ADSDPPs. CADTs represent large blocks of land, which if harnessed, can contribute to making suitable lands for investments. The key is to ensure there are genuine ADSDPPs that are prepared, to guide the location of investment opportunities. Properly prepared ADSDPPs, supported with community 3D maps, should be able to delineate conservation areas such as sacred grounds, burial sites, traditional hunting areas, and areas which the IP communities want to develop to support their socio economic development. The stigma associated with the entry of investments in IP lands can be erased if there is genuine partnership that is built on trust, respect and recognition of each other's potential. Alongside with this, the strengthening of IP organizations and adherence to proper FPIC processes will be important inputs in ensuring that IP communities are able to negotiate for fair and equitable sharing of proceeds from investments.

Address the issues of inclusion and exclusion of CLOA members involved in agreements with large corporations, or beneficiaries of large agricultural estates. The 10-year delay in the implementation of CARP in large agricultural lands has paved the way for exclusion of what others think should be appropriate beneficiaries of CARP. This has deprived other agricultural workers, of the benefit that should have accrued to them under the program. Considering the amount of time that has lapsed and the effect this have on the operations of these companies, it is urgent that more innovative ways be tested to fast track the resolution of these. This could prove more challenging than the distribution program itself, as this would entail going back to the records, doing validations, and dialogues. NGOs, lawyers, and community development workers can be recruited to undertake these research and documentation, to aid in speedy resolution.

Support collective CLOA members to negotiate fair terms of agreement with large corporations.

Leaseback arrangements have provided opportunities to achieve economies of scale in large operations, and infuse capital in agricultural development to achieve the full potential of the land. However, there have been documented cases of unfair terms entered into by CLOA holders, that usually result in decisions to pre terminate agreements and/or re negotiate. For areas affected by these, a team of Facilitators can be assigned to help the community and the corporation sort out the differences. In the future, it might help if existing packages of assistance, standards, and code of conduct can be reviewed to make sure similar issues are avoided in the future.

## 4.6 Public Provision of Land Information: Registry and Cadastre

### Assessment of Indicators

**Indicators Assessed:**

LGI 6.1 - Mechanism for recognition of rights

LGI 6.2 - Completeness of the land registry

LGI 6.3 - Reliability: Registry information is updated and sufficient to make meaningful inferences on ownership

LGI 6.4 - Cost effectiveness and sustainability: land administration services are provided in cost-effective ways that are sustainable in the long term

LGI 6.5 - Fees are determined transparently to cover the cost of service provision

### LGI 6.1 Mechanism for recognition of rights

***6.1.1 - There is no process for formal recognition of land possession by the poor occupying private lands, government lands, and public forestlands – D***

In the Philippines, existing laws do not allow formalization of informal occupation of private lands, government lands, and public forestlands, leading to continuing growth in informality. In the urban areas, private land occupation can only be formalized if the owner is willing to sell the property. In the case of government lands in urban areas, formal recognition of possession is only feasible if done under a Presidential Proclamation which awards the land to the occupants. This is not always feasible, and would depend on the outcome of investigation, primarily to determine if government has no future use of the land. Moreover, Proclamations can take a long time, and in many instances, the lack of careful study has brought about issues of claims and counterclaims which make it impossible to implement the Proclamation.

In the case of public forestlands, the granting of CSCs and CBFMAs, are not designed primarily to formalize possession or to secure the rights of occupants, although the latter emerges as secondary benefits. Thus, not all occupants are given CSCs and CBFMAs. There is no census of forestland occupants who shall be given such tenure instruments. The basis of providing tenure is to enable sustainable forest management, rather than to confirm possession of the occupant.

**Table 35. Formalization Processes for Informal Occupation**

Formalization	Formalization Process	Implementation	Growth in Informality	Comments/Score
Informal urban settlement on private land	3  Formalization possible only if the owner agrees to sell the property	3  Depends much on the initiative of the community	3  There has been growing informal settlements over the years	D
Informal urban occupation on public land	3  Possibility of formalization exists only if the land is not needed by government	3  Government programs not sufficient to meet demand resulting in housing gap	3  There has been growing informal settlements over the years	D
Informal occupation of forestland or protected areas (national parks, wildlife reserves, etc.) outside of ancestral domains	2  In forestlands, there is no inventory of settlers who need to be formalized  In PAs, the census and inventory of PA occupants have not been completed	2  In forestlands, there is no target to formalize all informal occupation  In PAs, there is target but implementation is very slow due to limited funding	3  There has been increasing informal settlements in forestlands and PAs in view of absence of effective rights recognition and enforcement and control measures	C  Recognition process not implemented consistently and effectively
<b>CODES:</b>	1=clearly defined rules that rules that cover most cases;  2 = Clearly defined rules that cover about half the cases;  3 = Rules not clearly defined, and/or most cases not covered.	1 = Efficient & transparent;  2 = Some discretion in implementation;  3 = Significant discretion	1 = Very limited number of new informal settlers in the past year;  2 = Some new informal settlers in the past year;  3 = Many new informal settlers in the past year.	

**6.1.2 - There is wide use of non-documentary forms of evidence along with other documents to support a claim. These have the same strength as the provided documents. B**

Current DENR processes for administrative titling allows for the acceptance of testimonial evidences where no documentary evidences are available. Testimonial evidences as contained

in a Joint affidavit of two disinterested person or adjacent property owners can be executed to support the application<sup>68</sup>.

The DAR process for identification of agrarian reform beneficiaries is also not fully dependent on documentary form of evidences.

In the award of PACBARMA in protected areas, proof of occupation through extent of cultivation, among others are used as basis for establishing rights to the tenure instrument. In the same manner, the award of CBFMA, ISF and other individual and community tenure instruments in the forestlands use non-documentary forms of evidence. More weight is given to actual occupation.

In the recognition of ancestral lands, proof of claims include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners. Any one (1) of the following authentic documents is recognized:

- Written accounts of the ICCs/IPs customs and traditions;
- Written accounts of the ICCs/IPs political structure and institution;
- Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
- Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
- Survey plans and sketch maps;
- Anthropological data;
- Genealogical surveys;
- Pictures and descriptive histories of traditional communal forests and hunting grounds;
- Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
- Write-ups of names and places derived from the native dialect of the community.

### ***6.1.3 - Legislation exists to formally recognize long-term, unchallenged possession in public lands - A***

There is strong recognition of long-term unchallenged possession under Philippine laws. However, all these apply only to public lands. Adverse possession of private lands is not recognized under Philippine laws. What is duly recognized however, is the long held right of the private property owner.

Commonwealth Act 141 recognizes 30 years possession either by himself or through his/her predecessors in interest, portions of public agricultural lands subject to disposition.

The Civil Code on the other hand, recognizes 10 years possession in good faith, and 30 years possession in bad faith.

The most recent legislation, that of Republic Act 10023 or the Residential Free Patent Law, recognizes continuous possession of 10 years to support a claim.

In the case of ancestral lands, occupation since time immemorial is recognized under the Constitution, and the IPRA.

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<sup>68</sup> DENR Manual of Land Disposition.

**6.1.4 - First-time recording of rights on demand includes proper safeguards. Fees for access vary greatly depending on the mode of titling. (Between A to D)**

There are various ways to secure original titles (Table 36).

**Table 36. Modes of First Time Titling**

<b>Titling Options</b>	<b>Type of Land</b>	<b>Costs Involved</b>	<b>Length of Process</b>	<b>Score</b>
Free Patent	Agricultural and residential	Filing fee of Php 150  Registration fee of Php 2,000 to 3,000	2-3 months to issue patent, plus 2-3 months to register  Note: Recently, this has extended to one to 2 years with the computerization at LRA	A
Homestead Patent	Agricultural	Filing fee of Php 150  Registration fee of Php 2,000 to 3,000	Will have to wait after one year to prove cultivation before titling process can begin	A
Miscellaneous Sales Patent	Residential and commercial	Bid price as percent of assessed value, usually not more than 2%. Sometimes, this depends also on the findings of the Appraisal Team which recommends zonal or market values which is higher	Can take up to one year	B
Judicial titling	Residential and commercial	Most expensive, exceeding 25% or property value; in some cases reaching up to Php 150,000 per parcel	Can take more than 2 years because of requirement for Solicitor General to file the case and repeated appearances in Court	D

Among all the titling options, the administrative process (Free Patent, for both agricultural and residential) is more widely used since it is more streamlined and entails the least amount of fees; in both cases not exceeding 0.5% of the property value. Titles issued under agricultural free patent mode however, carry a five year restriction on transfers and mortgage. The relevance of such restriction should be reviewed in light of the requirement of 30 and 10 years possession under the CA 141 and RA 10023.

For residential properties, the Free Patent has limited application to areas not exceeding 200 sq. m in highly urbanized cities and those that are zoned residential in the land use plans of LGUs

and actually used as residential. Properties outside of these will have to be titled either through Miscellaneous Sales or Judicial titling.

Miscellaneous Sales Patent requires the claimant to repurchase the property by paying a certain proportion of the assessed value. This mode of titling therefore is more costly on the part of the claimant; estimated to be less than 2% of the market value; which is still considered second to best by LGAF standards. Properties acquired through MSP carry the same restrictions on sale and mortgage as in Free Patent issued titles.

While judicial titles do not carry with them any restriction upon issuance; it is the most expensive mode of first time registration; exceeding 25% of the market value of the property. This is due to the payments that need to be made to lawyers, RDs, Local Assessors and DENR Land Officers and Clerk of Courts estimate the cost to be not lower than P 150,000 per parcel.

Experience from LAMP1 confirm that administrative titling, mainly through the Free Patent mode, can be completed in two months in agricultural areas; and about much faster in residential areas (based on REGALA experience). Likewise, the testing of titling procedures undertaken in LAMP1 attest that the judicial titling mode is very complex and takes a long time to complete. In the case of parcels in Leyte, two years was not enough to complete the entire process of judicial titling, as this require the Office of the Solicitor General to file the cases, and several appearances in courts.

For other types of urban lands such as commercial and industrial lands, the policies for appraisal and processes need to be reviewed to facilitate titling.

Through LAMP systematic adjudication process, the costs of first time titling has been brought down to minimum to encourage more claimants to formalize their ownership.

However, the RoD has started to add computerization fees and other charges after it has computerized its records, thus bringing up the total cost for first time registration.

## **LGI 6.2 Completeness of the Registry**

***6.2.1 - The cost of registering property in major cities in Mindanao is between 2% and 6% of property value. This is slightly higher than the average cost for the rest of the Philippines.***

Based on the WB Study on Cost of Doing Business (2011), Mindanao cities fare a bit lower when it comes to the cost of transferring commercial properties (Table 37). The costs however, does not account for capital gains tax, which is computed at 6% of property value (sale, zonal or assessed value, whichever is the highest). Incorporating these costs would make the transfer costs very high compared with international best practice.

**Table 37. Registering Property in the Philippines, Performance of Mindanao’s Major Cities (transfer of commercial property)**

	<b>Philippines</b>	<b>CDO</b>	<b>Davao City</b>	<b>Gen Santos</b>	<b>Zamboanga</b>
Rank  (data from 25 cities)	110  (with other economies)	24	20	25	23
Procedures (Number)					

	Philippines	CDO	Davao City	Gen Santos	Zamboanga
	9	8	8	9	9
Time (Days)	35	81	36	45	26
Cost (% of Property Value)	4.3%	5.3%	4.9%	5.6%	5.8%
LGAF Score	C	D	C	D	D

The number of procedures also varies very widely among the four Mindanao cities rated by the WB Cost of Doing Business Study. Among the steps, it took the most time to secure the Certificate Authorizing Registration (CAR) from BIR, which took between two to three weeks. Registration with the RoD took the longest time in Cagayan de Oro (60 days) which explains why it took the most number of days to register a property in the city (Table 38).

**Table 38. Steps in Property Registration, Mindanao's Major Cities  
(Cost of Doing Business, 2011)**

	Steps/Days	Phil	CDO	Davao City	Gen Santos	Zamboanga
	Check against encumbrances and obtain certified true copy of titles from RoD	4				
1	Prepare the notarized deed of sale and related documents	1	1	1	1	1
2	Obtain certified true copy of latest tax declaration and certificate of with improvement from the City Assessor's Office (CAO)	1*	1*	1*	2*	7
	Obtain Tax Clearance Certificate of RPT from Land Tax Division of CAO	2*	1*	1	1*	
3	Obtain Certificate Authorizing Registration (CAR) from the Bureau of Internal Revenue (BIR)	14	14	14	21	1
4	Pay documentary stamp tax and creditable withholding tax (CWT) at an authorized agent bank (AAB)	1	1	1	1	1
5	Pay the transfer tax at the CTO	1	1	1	1*	1*
6	Obtain tax clearance certificate of real property taxes from the Land Tax Division of the City Treasurer's Office (CTO)					1
7	Secure registration with the Register of Deeds (RD)	10	60	14	14	7
8	Obtain new tax declaration over the building and the land in the name of buyer from CAO	2	2	3	3	7

9	Receive inspection from CAO				1*	1*
	TOTAL DAYS	36	81	36	45	27
Note: * denotes simultaneous steps						

During the panel discussions, it was reported that the BIR issues new policies with each new Director. In Davao City, it now takes more than a month to issue CAR. This is due to a new requirement wherein the client has to secure the old CAR from RoD which is accessed through its archives, to show evidence that prior CARs were issued.

On the other hand, registration of transfers and original titles are now taking much more time with the computerization. During the panel workshops, it was reported that new titles submitted for registration in 2012, are only being distributed in 2015. This is because of the new requirement by the LRA to submit all titles at the Central Office for projection in their unified map before these are registered. DAR also reported that their titles take more than two years to be registered by the RoD, despite the budget that they provide for encoding, and payment for IT fee.

**6.2.2 - Between 50% and 70% of records for privately held land recorded in the registry are readily identifiable in maps (spatial records) – C**

The Philippines has only one register of all land records. However, there are various agencies involved in surveying, mapping and recording and approval of cadastre; and therefore, information relating to surveys and cadastral and municipal maps are spread across these organizations.

The Land Management Bureau and its regional offices in the DENR are responsible for cadastral survey of all alienable and disposable lands that are subject to original titling. Review and approval of survey plans are also the responsibility of the LMB and DENR regional offices.

The LRA was also vested authority to review and approve survey plans. It maintains its own cadastral index maps based on the survey plans it reviews and approves; and this information are not shared with the DENR. Furthermore, there are differences in the projection of the index maps maintained by the LRA and DENR.

There is no complete inventory or index map showing the location of the various records and plans, customers are required to visit all three locations in order to build a complete picture over the area. The information in respect to patents is also stored in these three locations.

All titles registered at the different Register of Deeds Offices nationwide are supposed to be supported by an approved survey. Therefore all titles in the Registry should be reflected in the cadastre. However, the RoD's do not usually hold copies of these cadastral maps. Maps are also not used in the operations of the registries. Cadastral maps are held by DENR and mostly are not updated to reflect subsequent transactions such as subdivision or consolidation even if the surveys for these transactions are also being approved by the agency. A lot of records, including maps have been either lost or destroyed due to fires, natural calamities and the last war (World War II). Many of these lost or destroyed records have never been reconstructed/reconstituted. The inventory of land records were never taken seriously by the agencies that holds the records such that it is impossible to assess the actual number of records that still exist and those that have been lost or destroyed.

In order to address these gaps, the LARES –LTCP is conducting a map projection of all titled properties in its records in an effort to slowly build a complete picture of all registered titles. This is being done by digitizing title information, building up the cadastral parcel by parcel using the technical descriptions found in the title. Without links to the cadastral maps however, there is a high likelihood that the RoD/LRA maps which were derived from technical description on the titles, are not accurate and will contain errors, overlaps.

***6.2.3 - Relevant private encumbrances are recorded but this is not done in a consistent and reliable manner, and the cost of accessing them is too high (between B and C)***

Recording of private encumbrances are on voluntary or on-demand process, thus informal transactions are not recorded. The computerization cost has also made registration of encumbrances quite costly than before.

The following are the private encumbrances recorded on the title:

- Registration and release of mortgages
- Court or judicial orders
- Long-term leases
- Sale of portion or partial transfer
- Conditional sale
- Option to purchase or promise to sell
- Sale subject to redemption or repurchase/redemption of properties sold
- Surety and bonds
- Powers of attorney, letters of administration, appointment of guardian, resolution or revocation –
- Levy
- Adverse claims
- Lis pendens
- Extra-judicial settlement
- Right or ways
- Rent contract
- Attachments
- Building and improvements

***6.2.4 - All relevant public restrictions or charges are recorded – A***

Public restrictions include easements, prohibition on transfers, sales or mortgages for agricultural Free Patent, etc. In some cases, unpaid cadastral costs are also annotated on the titles.

In the case of areas affected by CARP, DAR has recently flagged the titles of properties covered by issuing Notice of Coverage and annotating these properties. This freezes the transactions on these properties, without proper clearances.

Where no fee is specified, registration/annotation of encumbrances will require payment of registration fee which uses a schedule (from a low of PhP 21 to a high of PhP 8,796) based on the assessed value of the land or the amount in consideration whichever is higher, plus issuance and certification fee and IT service fee (PhP 344.93/deed, instrument or entry).

***6.2.5 - Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request - B***

The computerization of records at LRA/RoD has made it possible to access information quite easily. The LRA has this facility where anybody can access records from anywhere in the Philippines. In Mindanao, all its RoDs are “live” meaning these are already computerized.

In addition, the LRA/RoD has established links with banks, PAGIBIG; enabling on line linkage in accessing copies of titles and making queries on titled properties.

#### ***6.2.6 - The records in the registry can only be searched by title number only - C***

The Land Titling Computerization Project (LTCP) of the LRA has made possible any search by owners name or title easier, faster and more accessible with the launch of the A2A (Anywhere to Anywhere Service) and PVS (Parcel Verification Service). In a computerized Registry (on-line to the LTCP) the primary key for searching the registry is the title number. The cadastral lot number can also be used to search the registry. The facility to search using property holders was however recently deactivated such that the RoD now have to revert to the manual search of the title if only the title holders name is known or given.

If searches have to be done manually, the easiest way is if the title number is known. Titles searches can also be done using the cadastral lot number or name of the titleholder but this will take more time to do.

The inability to search the registry by name of owner has made it difficult to take stock of properties held by persons. This was the case in some recent high profile investigations, wherein it took the RoD some time before the titles of the person were retrieved; only to find out that because the Registry does not retire old titles, some of the properties have been transferred to other persons.

#### ***6.2.7 Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any - A***

Titles and other documents in the different Registries are considered public document and by operation can be accessed by anyone. The searching of the records of the RODs is permitted by Property Registration Decree 1529. Section 56 therein provides:

“All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration (now administrator of LRA), may prescribe.”

The LTCP has made it more accessible to the public such that anywhere there is an on-line RoD, anybody can search for pertinent title information. An interested person in Manila can go to any of the on-line Registry anywhere in Manila to secure copies of titles or title information for lands located anywhere as long as the RoD in the location of interest is also already on-line. Access to the information or copies of the title documents do require payment of fees, including the IT service fee. Securing a certified or true copy for 1 title for example can cost PhP 401.30.

### **LGI 6.3 Reliability: Registry information is updated and sufficient to make meaningful inferences on ownership**

#### ***6.3.1 - Information in public registries are not linked with other types of land information; which compromise integrity of rights, and increase transaction cost - D***

Relevant land information in the Philippines: tax records, survey plans, and title records are produced and kept by various agencies with no provision for linkage.

**Table 39. Land Records Produced by LGUs and Agencies**

	Agency	Type of Data	System for Synchronization
Tax records	LGUs	Tax maps, Land value maps, assessment rolls	After registration of transactions at RoD, but not routinely done
Cadastre and Survey Plans	DENR	Survey plans, subdivision plans, list of claimants on untitled lots	None
	DAR	Survey plans of CLOAs, EPs, Homestead Patents	Submitted to DENR for review and approval
	LRA	Subdivision plans	None
	NCIP	Survey plans of CADTs	Submitted to DENR for issuance of Certificate of No Overlap
Registry	LRA/RoD	Title records	None
Patents/Titles	DENR	Free Patents, Miscellaneous Sales, Homestead	Submitted to RoD for registration
	DAR	CLOAs, Homestead Patents	
	NCIP	CADTs	

Title information is always linked to subdivision plans. However, because both DENR and LRA reviews and approve subdivision plans, subsequent transactions on the parcel are not captured in the projection map of DENR when this happens.

The weak link however, is between title information (and subsequent transactions thereof) and tax records at the LGUs. This results in outdated tax maps at the LGUs.

The function of the RoDs is simply to register the deed, without the benefit of cross checks with other related land information. This is where conflicts, overlaps, double titles could occur. The fact that there is no shared consolidated cadastral maps (CCMs) between DENR and LRA/RoD aggravates the situation.

In other cases, such as DAR issued CLOAs, the absence of mapped information on the location of such titles result in overlaps or conflicts with other lands.

As a result of these uncertainties, the banks, financing institutions, investors and other land buyers have to exert extra effort to trace back the title information to make sure this is legitimate and linked to an approved subdivision plan. For large properties, or multiple properties that require consolidation, this task can add up to the budget of the interested party.

Many professionals earn their living by providing this service. For the poor informal settlers for example, determining the veracity of records of the property they are interested in buying could be a significant drain on their budget.

### ***6.3.2 - Less than 50% of the ownership information (for both agricultural and non agricultural lands) in the registry/cadaster is up-to-date and reflects ground reality - D***

First, the fact that 49% of all parcels in Mindanao are untitled reflects the extent of incompleteness of the cadaster. The distribution of these untitled parcels however, between agricultural and non-agricultural areas is difficult to establish.

This also means that the registry does not capture this information on ownership rights, which have not been confirmed through titles. The longer the titling is delayed, the more outdated the records become since there are informal transactions happening on these unregistered properties.

Second, many of the land surveys have been approved years ago and that while land claims have changed since then, these are not captured in the cadastral maps held by DENR. Moreover, because the cadastral survey recently been completed for ARMM and not yet fully validated, these parcels are not yet documented in the DENR records.

Third, LGU records, which are considered to reflect the closest to the reality on the ground; are also incomplete. This is because majority of the LGUs are not conducting tax mapping and/or updating tax maps as a regular function.

Another reason is that there is poor sharing of information among the LGU Assessors, LRA and DENR. In many instances isolated surveys approved by DENR and LRA (subdivision and consolidation) are not shared with the local assessor's offices. There are several instances where surveys approved by the DENR Regional Offices are not even furnished to the field offices. It has been the experience under the LAMP 2 Innovation Support Fund and the ADBJFPR-REGALA Project that CENROs do not have a complete copy of the cadastral maps and other survey records. The CENROs are also not regularly furnished copies of subdivision plans (if furnished at all). The active maps within the DENR and LRA are its projection maps but these maps are treated as closely guarded secrets and never shared with other agencies. The current move to capture all the land records through the computerized Land Administration and Management System (LAMS) should be able to facilitate sharing of digital copies of records across the DENR hierarchy, and more importantly with local governments.

Another reason is that a large portion of property owners does not register their transactions due to a number of factors. A few RoD and LGU Assessors interviewed in the course of Philippines LGAF estimate that between 10-20% of such transactions are not registered. The reasons given were:

- High cost of capital gains tax
- High costs of surveys and lengthy process of survey approval
- Requirement for tax clearance from the Assessors' office which can entail higher expense particularly if the owner is in default in payments

In a study under LAMP2<sup>69</sup> to determine the extent to which subsequent transactions have occurred on titles and Certificates of Land Ownership Award (CLOAs) issued, and how these transactions are captured in the RoD, the following were the key findings:

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<sup>69</sup> LAMP2. **Study on Registration of Subsequent Land Transactions.** June 2010. The study was undertaken in Leyte, Bohol and Bukidnon. The study covered titles that were released during the period 1996-2000; meaning the titles have passed the restriction period and are eligible for subsequent transactions.

- 84% of all titles issued were still in the names of original owners as registered with the RoD; 16% of parcels have new lot owners;
- More than half of those reportedly under new owners have unregistered transactions.

Major reasons given for not registering subsequent transactions include the high cost of transfers; lack of familiarity with the process; too many requirements; lack of knowledge of the need to register; presence of red tape or fixers; high cost of back taxes that need to be paid; and no knowledge on where to register.

When respondents were asked about suggestions on how to improve the registration system; the following were given.

- create awareness on the importance of land registration through information and education campaign;
- adopt a simplified registration system with less requirements;
- reduce registration fees; and
- establish One Stop Shop for lands services

Among the 38 percent of respondents who encountered problems and difficulties in the registration process, the following feedback were given:

- processing at RoD is time consuming and slow;
- the OSS/RoD is located far from their residences;
- presence of red tapes/fixers;
- too many requirements, some of which are difficult to produce;
- expensive due to high costs of transport and other expenses in following up titles;
- it takes too long for the relocation survey to be done;
- cadastral survey is very slow and expensive, surveyors not readily available, and surveys are not done properly;
- subdivision of mother titles is very expensive;
- it is difficult to locate the boundaries of their properties;
- processing at DENR is very long and high expenses for payment of taxes.

For those involved in the CMP, participants have found it difficult to secure reliable records from the registry thus delaying the process for acquisition. The inconsistent records held by various agencies – LMB, LRA and Assessors Office further fueled the business of syndicates to benefit from the poor state of records. A number of case studies and documentations have revealed that this situation has contributed to the slow pace of formalization in the urban areas; and in the titling program of the government.

This situation has affected the credibility of the registry and cadastre; and the reliability of records kept therein. Such state affects the time and cost required to start investments, and property development, since verification and payments for such services would have to be required. A classic case was the well-publicized hearing of the Supreme Court Justice impeachment trial; where the LRA records yielded so many properties of the Justice registered under his name; only to find out that most of these have been subsequently transferred.

## **LGI: 6.4 Cost-effectiveness and sustainability: land administration services are provided in cost-effective ways that are sustainable in the long term**

### ***6.4.1 - The total fees collected by the Registry are less than 50% of the total registry operating cost - D***

The LRA, through its RoD, is one of the government's top earning agencies. Its income exceeds its operating costs by more than fourfold. Data gathered from the DBM's website showed that

for 2015; its appropriation is Php 902 Million; while its income for the first six months of 2014 is already Php 2.559 Billion. In 2013, its total income reached 5.485 Billion.

Given the Philippines' "one fund policy", all earnings are remitted to the Bureau of Treasury and the agency cannot retain any of its earnings. The agency is always dependent on what the national government will appropriate for its operation. If the agency can be allowed to retain a higher percentage of its surplus then this can allow the agency to undertake much needed projects that can further improve its capacity to perform its mandate.

In addition, the BOO Project through the LTCP is supposed to provide the investment requirements of the agency in the computerization of its records, and should be financially sustainable.

However, based on the panel reviews, it was reported that while the fees charged for services are high, most of these are for IT fees. For example, the fee for verification of a converted title is Php 253.45. Only 4.7% or Php 12.00 of this amount will be remitted to LRA, while the rest will accrue to the trust fund of LARES/LTCP. The RoD also shared that they have very minimal funds for operating costs even for the provision of simple supplies as pens, papers, etc. Their staff are also very limited, such that many of them have to perform multi tasks. There have been no increases of their budget for many years, which impact heavily on the staff.

***6.4.2 - Investment in human and physical resources is sufficient to maintain high service standards but does not allow for proactively responding to future needs and new developments in the sector. B***

There were three major initiatives in the recent years to improve land administration services:

**Computerization of RoDs - B**

- Title records were scanned, thus enabling easier access to records. However, the downside is, the cost of accessing records and registration of titles and encumbrances has gone up in order to pay for the IT fee. Moreover, there have been reports of delays in the issuance of titles by as much as 2-3 years in the case of Davao city, due to the need to bring the records to LRA QC to undertake the projection. In fact, the titles that are being released as of the time of the panel workshops in December date back to those lodged in 2012. There were also reports from DAR that their CLOAs have been delayed by almost a year.

**Completion of cadastral surveys - B**

- This should complete the documentation of all parcels, however, the parcel surveys in ARMM has recently been completed. Overall, there was massive investment in the last 6 years to accelerate implementation of this program.

**Computerization of DENR records - B**

- DENR is set to implement a 6-year program to computerize its survey records, lot data computation sheets and other land records. This should translate into provision of more accurate information and better service to the public. This so called Land Administration and Management System (LAMS) should however, address defective and missing records in DENR.

**Adoption of LGU led Titling - B**

- The DENR has approved the guidelines for LGU led titling following its experience from the LAMP. It has tasked its field offices to link with LGUs to ink Memorandum of Partnership Agreements (MOPAs) to facilitate titling of remaining untitled parcels. It would take dedicated resources and time to complete titling over a short period. A few

LGUs in Mindanao has embarked on this activity, but the development of an LGU specific Land Tenure Improvement Plan (LTIP) based on a careful assessment of land tenure issues and profile is essential to develop a more responsive and cost effective strategy. For example, areas with missing records have to reconstitute or re survey their lands, sections of the LGU covered with cadastral proceedings have to cancel these from the Courts to proceed with administrative titling, etc.

What is missing is acceleration of titling coverage to formally register all the remaining untitled parcels in Mindanao. This would require the combined efforts of both national and local governments.

#### **LGI: 6.5 Fees are determined transparently to cover the cost of service provision**

***6.5.1 - A clear rationale and schedule of fees for different services is publicly accessible and receipts are issued for all transactions - A***

***6.5.2 - Effective mechanisms to detect and deal with illegal staff behavior also exist in all registry offices and all cases are promptly dealt with - A***

***6.5.3 - There are published service standards (including dealing with deal with illegal staff behavior), the registry actively monitors its performance against these standards - A***

All fees to be paid at the Registry for transactions are publicly available. The computerization of all processes has also reduced opportunities for informal payments. Finally, the Civil Service Commission has high standards for performance of employees that need to be complied with.

### **Summary and Recommendations**

Mindanao's scores in the dimensions under this Module on Land Information are lower than those for the Philippines. While the policies and institutional framework remain the same, the impact on Mindanao is much greater where:

- There is no process for formal recognition of land possession by the poor occupying private lands, government lands, and public forestlands;
- Cadastral surveys are recently completed;
- Title registration takes about two years due to the need for LRA to capture the information;
- Despite the high computerization fees, operational budgets for Registries are so limited such that it constraints the effective dispatch of services;
- Registry records are out of date by an estimated 50% due to a number of reasons, among these the lack of unified land information system among agencies;
- The cost and time to register properties is higher than the average cost and time for the rest of the Philippines due to the long time it takes to register, and secure certificate authorizing registration;
- A large percentage of records cannot be readily identifiable in maps; and
- Information in public registries are not linked with other types of land information, thereby compromising integrity of rights, and increase transaction costs.

At the root of these issues are redundancies in the functions of agencies, development of information systems that are independent of each other, and lack of mechanisms for data sharing and unified map projection which depicts all rights on the land. The outcome is higher cost and longer period for the public to complete their transactions, with very little

improvement in services. The outdated and inaccurate records in the registry also breed opportunities for the production of duplicate and spurious records, which places investments at great risk. These are not good for investments, efficient functioning of the land market, and generation of jobs.

In order to address the above, the following recommendations are made:

LGUs to develop an integrated land information system through community participation; contingent on accessing data from LRA

A number of LGUs have successfully established such system, called the unified land information system (ULIS), which integrates and validates the records of RoD, DENR and LGU for the same parcel. This system removes redundancies, updates the record with the most recent transaction on ownership, and improves accuracy of lot areas by linking with the approved subdivision surveys from either DENR or LRA. The result is a complete picture of all parcels in an LGU, and a more accurate basis for land tenure improvement and real property tax collection. Once established, the system can be used to better detect RPT delinquencies, parcel based land use planning, creation of property values map, updating of schedule of market values, and other applications.

For this to be realized, it is essential to secure the full cooperation of the RoD in accessing data from its records; and access to DENR's cadastral records and other information such as the lot data computation sheets, patent records, and relevant data. To access RoD records, the LGUs can invoke the provisions of section 209 of the Local Government Code which mandates RoDs to provide local governments, abstract of its registries on an annual basis. Very few RoDs have complied with this provision, but it is worth discussing with the local Registries.

In support of the above, the DENR should undertake a program to inventory its records, restore missing records, and correct erroneous surveys. The ongoing computerization of DENR records through the Land Administration and Management System (LAMS) could facilitate this process.

Develop mechanisms for data sharing and common map projection of all parcels for subdivision surveys and titles issued by agencies; common data standards (DENR, LRA/RoD, LGUs)

The spirit of Joint DENR-DAR-DOJ-NCIP Administrative Order; is to cross reference with agencies approving the surveys before issuance of any title or instrument, particularly in problematic areas. However, this needs to level up to include the actual establishment of a unified projection system, and a continuing program for maintenance and updating, development of common data standards, and commitment to share records. This is easier said than done. Many attempts have been made to do this, but have been unsuccessful. A strong political commitment at the highest level is essential to make this happen. In addition, a higher directive such as an Executive Order mandating the agencies to set up this system could jump start the process.

BIR to reconsider bringing down CGT levels to encourage more formality in transactions, make registration of transfers more affordable

The high CGT costs in the country, considered one of the highest based on international standards, acts as a key constraint for the formalization of property transactions. A study has been made on the impacts of reducing CGT levels on the level of national revenues, by simulating the corresponding increases in registration of formal transactions. While it has been demonstrated that decreases in CGT can be counterbalanced with increases in revenues from transaction fees, there was not enough political support to push for this. A rethinking of this

strategy is in order, through updating of the study, and discussions with the government's fiscal managers.

Improve coverage of registry to include long-term leases in public lands, and other interests on the land

More complete registries should capture all interests on the land, including long term leases and tenure instruments in public lands. This should improve detection of overlaps, and improve security or protection for lease holders. Such registration could also boost the bankability of instruments on public lands, and could trigger credit provision from financial institutions. This in turn can stimulate land development and generate jobs.

For this to happen, it is essential that the DENR conduct an inventory of all long term leases, as well as the parcels of public lands that are still open, and where there are occupants whose rights remain to be recognized. These should smoothen the flow of investments and capital.

## 4.7 Land Valuation and Taxation

### Assessment of Indicators

**Indicators Assessed:**

LGI 7.1 - Transparency of valuations: valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible.

LGI 7.2 - Collection efficiency: land and property taxes are collected and yield from doing so exceeds collection cost

### **LGI 7.1 - Transparency of valuations: valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible.**

#### ***7.1.1 - Property assessment for tax purposes are not based on market prices and valuation rolls are not updated regularly - D***

The Local Government Code (LGC) of 1991 clearly prescribed that assessment of properties subject to taxation should be based on market prices.<sup>70</sup> Section 201 of the Code provides that “all real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated.” Section 219 of the Code further provides that “LGUs shall undertake a general revision of real property assessments within two years after the effectivity of the Code and every three years thereafter.”

There is however, wide disparity between what the law says and practice. Three factors basically influence the wide gap between the recorded values and the market prices:

- (i) the use of and reliance on the understated values submitted by property owners as basis of valuation;
- (ii) outdated methodology for determining schedule of market values (SMVs) and
- (iii) very poor record of local government units (LGUs) in regular revision of their SMVs thus rendering the recorded values outdated and obsolete.

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<sup>70</sup> The LGC, or Republic Act No. 7160 was approved on October 10, 1991 and became effective January 1, 1992.

**Box 4. Status of Updating of SMV by Provinces  
(as of June 11, 2014)**

- 62 out of 80 provinces (78%) have outdated SMV as of 2014
- 50 provinces are already overdue for general revision of property assessments and classification
- 30 provinces are compliant in conducting a general revision once every three years
- 12 of the compliant provinces did not use updated SMV according to base valuation year
- 13 years – the longest a province has not revised (Bukidnon)
- 5 in every 8 of provinces have property taxes contributing only less than 5% to their annual regular income

Source: [www.iskor.blgf.ov.ph](http://www.iskor.blgf.ov.ph)

**Out of the 25 provinces which have the longest record of not updating their SMVs, 9 are from Mindanao:**

- Lamitan City (ARMM) = 23 years (values as of 1992; since the Local Government Code was signed)
- Bukidnon and Lanao del Sur = 13 years (values as of 2002)
- Misamis Oriental and Surigao del Sur = 9 years (values as of 2006)
- Sarangani and Basilan = 8 years (values as of 2007)
- Sultan Kudarat and Misamis Occidental = 7 years (values as of 2008)
- Sulu = 6 years (values as of 2005)

**Out of the 25 cities which have the longest record of outdated SMVs, 4 are from Mindanao:**

- Valencia City = 23 years (values as of 1992)
- General Santos City = 21 years (values as of 1994)
- Oroquieta City = 19 years (values as of 1996)
- Kidapawan City = 18 years (values as of 1997)

**Five other cities have not updated their SMVs for more than 7 years:**

- Cagayan de Oro and San Salvador cities = 9 years (values as of 2006)
- Butuan City = 7 years (values as of 2008)
- Davao and Isabela cities = 8 years (values as of 2007)

Like many LGUs, the lack of political will undermines the efforts of City and Provincial Assessors in undertaking regular revision of values. In the Philippines, it is still a long way to go before Chief Executives fully appreciate the difference between the technical function of valuation and the political process of taxation. In addition to this, it is also essential for the BLGF to provide technical assistance to Assessors in implementing the procedures specified in the Mass Appraisal Guidebook (MAG) and the Manual for Real Property Assessment and Appraisal Operations (MRPAAO). Currently, there are only five cities in the Philippines which have been certified by BLGF as compliant with these procedures. These are: Legazpi City, Bayawan City, Alaminos City, Tayabas City, and San Carlos City.

**7.1.2 - Valuation rolls are publicly accessible - A**

The zonal values used by the BIR for the whole country are uploaded to its website and anyone may access this information by going online. In the case of the local governments, the BLGF has

likewise uploaded to its website the SMVs used by LGUs. Anyone can download from the website the scanned copy of the SMV as well as the ordinance that authorized it. The SMVs are also available in hard copies at the Assessor's office and anyone who may want to get information about the market values for a particular place or location can go to the Assessor and request for it. Technically, the SMVs are public records that should be accessible to everyone.

## **LGI: 7.2 Collection efficiency: land and property taxes are collected and yield from doing so exceeds collection cost**

### ***7.2.1 - There are limited exemptions to the payment of land/property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds but are not applied in a transparent and consistent manner - B***

The LGC effectively repealed all RPT exemptions previously given under special laws. It limited the number of properties that will enjoy tax exemption. Section 234 enumerates them as follows:

1. Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.
2. All charitable institutions, churches, parsonages or convents appurtenant thereto including mosques, non-profit or religious cemeteries and all lands, buildings and improvements which are actually, directly and exclusively used for religious, charitable or educational purposes.
3. All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power,
4. All real property owned by duly registered cooperatives as provided under RA No. 6938 (the Cooperatives Law).
5. Machinery and equipment exclusively used for pollution control and environmental protection.

The exemptions provided in the LGC are clearly based, in addition to equity and constitutional grounds, on national development policy and social considerations.

In some cases, however, LGUs have enacted local Ordinances that provide incentives to investors by way of imposing exemptions or deferment of RPT payments. The extent to which this is happening in Mindanao cities and provinces would need more detailed research in the respective Assessors Offices.

### ***7.2.2 - A large proportion of property tax payers are not listed on the tax roll - C***

Section 205 of the LGC prescribes that Provincial or City Assessors shall maintain an assessment roll listing all real property, whether taxable or exempt, located within the territorial jurisdiction of the LGU. Real property shall be listed, valued and assessed in the name of the owner or administrator, or anyone having legal interest in the property.

However, Assessors are not able to accomplish this list fully and accurately because of their strong dependence on the property owners reporting to them the details of their properties and very often, the property owners do not report to, or provide accurate reports to the Assessor. This is particularly true of buildings and improvements and machineries. Only when the Assessor and/or his staff go on ocular inspections do they discover new buildings and improvements and it is not unusual for these buildings/improvements to have been existing for

several years before they are discovered by the Assessor and listed in the assessment roll. The same is true for machineries.

Under the LGC, there are several government officials and private persons who are required to furnish the Assessor certain information but fail to do so. This includes the following:

- Registrar of Deeds to prepare and submit to the provincial city and municipal assessor an abstract of his registry “which shall include brief but sufficient description of the real properties entered therein, their present owners, and the date of their most recent transfer or alienation accompanied by copies of corresponding deeds of sale, donation or partition or other forms of alienation.”
- Any public official or employee who issues to any person “a permit for the construction, addition, repair, or renovation of a building, or permanent improvement on land, or a certificate of registration for any machinery, including machines, mechanical machines contrivances, and apparatus attached or affixed on land or to another real property, shall transmit within 30 days of its issuance, a copy of such permits or certificates, to the assessor of the province, city or municipality where the property is situated.”
- All geodetic engineers, public or private, are required to furnish free of charge “to the assessor of the province, city or municipality where the land is located with a white or blue print copy of each of all approved original or subdivision plans or maps executed by them within 30 days from receipt of such plans from the Lands Management Bureau, the Land Registration Authority of the Housing and Land Use Regulatory Board, as the case may be.”

With the above legal provisions, notwithstanding, the Assessor is usually not provided on a regular basis by the persons concerned, the information that are supposed to be transmitted to the Office. One of the reasons for this is lack of sanctions for non-compliance.

In the case of lands, the ones that are not usually listed in the assessment roll are those covered by the Comprehensive Agrarian Reform Program (CARP) that have already been transferred to the beneficiaries. Since the implementation of the CARP involves several agencies/institutions, the procedures are somewhat complicated such that information is not always given or received on time by the concerned party. Thus, the non-listing of the CARP beneficiaries who are now the new owners of the land, in the assessment roll.

**7.2.3 - Major cities in Mindanao outperform other LGUs in the Philippines on the average in terms of RPT collection efficiency. However, provinces fare poorly. Between A and B**

The average RPT collection efficiency for all LGUs in the Philippines is only 59%. However, major cities in Mindanao have higher collection levels (Table 40).

**Table 40. RPT Collection Efficiency of Major Cities in Mindanao**

Cities	RPT Accomplishment Rate (% Collection Based on Target)
Zamboanga City	81%
Cagayan de Oro City	81%
Davao City	85%
Cotabato City	59%
Butuan City	69%

Mindanao provinces perform poorly, from a low of 7% in Basilan, to 103% in Surigao del Norte.

**Table 41. RPT Collection Efficiency of Mindanao Provinces**

<b>REGION IX</b>	
BASILAN	7%
SULU	19%
TAWI-TAWI	16%
ZAMBOANGA DEL NORTE	32%
ZAMBOANGA DEL SUR	31%
ZAMBOANGA SIBUGAY	26%
<b>REGION X</b>	
BUKIDNON	43%
CAMIGUIN	26%
LANAO DEL NORTE	41%
MISAMIS OCCIDENTAL	26%
MISAMIS ORIENTAL	69%
<b>REGION XI</b>	
COMPOSTELA VALLEY	46%
DAVAO DEL NORTE	47%
DAVAO DEL SUR	54%
DAVAO ORIENTAL	25%
DAVAO OCCIDENTAL	
<b>REGION XII</b>	
LANAO DEL SUR	12%
MAGUINDANAO	13%
NORTH COTABATO	43%
SARANGANI	44%
SOUTH COTABATO	90%
SULTAN KUDARAT	9%
<b>CARAGA</b>	
AGUSAN DEL NORTE	54%

AGUSAN DEL SUR	49%
DINAGAT ISLANDS	50%
SURIGAO DEL NORTE	103%
SURIGAO DEL SUR	35%

In most LGUs, the statement of collectibles and collections are not accurate because parcel records and tax maps, which are the bases of assessments and collections are not accurate and incomplete.

Collection efficiency not only impact the ability of local governments to raise finances to support implementation of programs, but it also directly affect the budget for the Special Education Fund (SEF), which receives almost 50% of collections. An analysis of the reasons for low collections and development of action plan to improve performance is essential.

### Summary and Recommendations

Taxes from land and real property constitute one of the most stable base of revenues for local government units. They are fixed, and easy to detect. Revenues from RPTs are fully devolved, which should provide incentives for local governments to make good in the performance of this mandated responsibility. However, current practices have undermined the ability of local governments to utilize RPTs as a major revenue source. Outdated SMVs, incomplete valuation rolls, inaccurate tax maps, too much discretion in the granting of exemptions are practices that are common to most Philippine LGUs. In Mindanao, while cities performed better in RPT collections, provinces and municipalities have not. The contributory factors and corresponding recommendations are the following:

Lack of sanctions for failure to update SMVs. Although a mandated function, LGUs still equate tax increases with SMV updating, and is therefore a politically incorrect action to do, particularly in periods nearing elections. However, valuation is a technical function that captures the values of properties at market rates, while taxation is the political part of the equation which sets the assessment levels and taxation based on the values. Thus, while it is true that updating the values to current market levels would increase the base upon which taxes shall be paid, the LGUs still has the power to adjust the assessment rates to reduce the tax impact, and to ensure the application is more equitable across various segments of property owners. Moreover, the longer the LGUs delay the updating of SMVs, the stronger the impact this would have on the taxpayers with the next revision.

In addition to the DoF's name and shame campaign and the proposal to centralize the valuation function to a national agency as espoused in the draft National Valuation Act, there should be some form of incentives to encourage LGUs to undertake regular updating. These could be included in the revised Seal of Good Local Governance (SGLG), or other suitable mechanisms. The BLGF should also actively support local governments in developing their capacities for valuation – using the MAG and MRPAAO. This would require a massive and focused effort such that the LGUs are assisted through a learning by doing approach.

Inadequate access by LGU Assessors to updated transactions data from the RoDs, and failure of LGUs to conduct regular tax mapping exercises. These render the tax maps and assessment records incomplete, and not accurately capturing the developments that have taken place in their localities.

Other administrative remedies, such as improving capacities to increase collection efficiency have not been fully utilized by local governments. These include: (i) computerization of tax records to update and cleanse the system (ii) conducting regular field inspections on properties; (iii) re adjustments on assessments resulting from field inspections; (iv) monitoring of delinquencies; and (v) applying the administrative and judicial recourse in the collection of delinquent payments. The latter includes the conduct of public auction, and issuances of delinquency notices to erring taxpayers.

Some of the recommendations from the earlier sections are relevant to this (establishment of unified land information system, and development of implementing rules of section 209 of the Local Government Code regarding provision of RoDs of annual abstracts of registries to LGUs). In addition, there needs to be a continuing capacity development program for LGU Assessors and Treasurers to ensure these practices are more widely applied. LGUs should also be audited for their compliance with these mandated practices in property valuation and RPT collection efforts.

Too much dependence on the internal revenue allotment (IRA). National government transfers are entitlements of local governments to whatever earnings in total revenues. This pose as disincentives to LGUs to make an effort to increase local revenues, since there is a steady flow of funding transfers from the national government. However, the longer the LGUs delay action on increasing revenues from local taxes such as the RPTs, the longer it will take for LGUs to be dependent on the IRAs. Improving local capacities to update values and collect taxes takes some time, and the benefits should also gradually set in.

The ability of LGUs to generate locally generated incomes should also play an important part of the equation for the IRA. Together with other reform initiatives to amend the Local Government Code, the effect the IRA has on revenue generation efforts should be considered.

## 4.8 Dispute Resolution

Land disputes in Mindanao is convoluted as they cover not only administrative and management discords but include conflicts that trace their origins to unresolved social injustices of its colonial past. There are also disputes, as in the case of *rido*<sup>71</sup>, that usually end up in violence as part of the traditional practice of resolving conflicts. Resolution of land disputes, therefore, in Mindanao has to be addressed at various levels using different approaches. The Land Conflict Report prepared through another WB study discusses in more detail the nature, extent, and resolution mechanisms in the Bangsamoro region.

This section focuses on tackling administrative and management issues such as land registration, boundary disputes, ownership problems, access, and mortgage that have implications on tenure and property rights. Because of the extent of public land and the number of agencies involved in provision of tenure security, conflicts resulting from interplay of policies and execution of various mandates are also discussed. Resolving these disputes would have significant impact on enhancing productivity and, consequently, in generating jobs.

As in the entire country, the mechanisms and processes of settling these types of disputes may be categorized into two: judicial and administrative. Unique to Mindanao, however, is the presence of Sharia Courts, a special judicial body in the Autonomous Region of Muslim Mindanao, created to settle disputes among Muslim respondents. There are also informal

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<sup>71</sup> Editor for *Rido: Clan Feuding and Conflict Management in Mindanao* Wilfredo Torres defines this as an “armed [hostility] between families and kinship groups” over power, disputed land or other causes. Ridos can potentially intensify into small-scaled wars that persist for generations.

mediation and reconciliation bodies that have been established to handle complaints including that of land disputes.

### **Judicial Courts**

Land disputes may be filed at the Office of the Executive Clerk of Court who then determines or raffle the case to the appropriate sala. The Municipal Trial Court (MTC) handles land cases that involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed twenty thousand pesos (P20,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs<sup>72</sup>. For cases beyond this amount, they are lodged at the Regional Trial Court (RTC). Judgments rendered by MTC Judge may also be appealed at the RTC.

All judgments at the RTC can be appealed at the Court of Appeals (CA). And similarly, CA decisions may be petitioned to the Supreme Court where final judgments are rendered.

At the MTC/RTC levels, the length of time for the resolution of cases are influenced by availability of counsels and logistical nuances such as court calendars but land dispute cases in general take 2 to 5 years to resolve. For CA and SC, decisions will take much longer. Fortunately, around 90% these cases are resolved in the court of first instance.

The judicial cost of the cases depends on (1) the amount of the claims, and (2) the assessed value of the land in dispute. This excludes out of court expenses such as attorney's fees and litigation expenses which many farmers find prohibitive.

### **Alternative Dispute Resolution**

In the interest of lightening court dockets in the formal Judicial Courts, complainants are highly encouraged to settle disputes amicably. Courts even require, as a pre-condition for filing a complaint, a certification from the *Pangkat* Secretary that mediation or conciliation has been conducted but no settlement has been reached (Sec. 412, RA 7160).

There are 12 mechanisms for ADR that are currently in place in the country: the Barangay Justice System(BJS), a private agency and 10 administrative agencies<sup>73</sup>. For land disputes, the often used mechanisms are the BJS and the DAR's Adjudication Board (DARAB) and Agrarian Law Implementation (ALI). There is also the Commission on the Settlement of land Problems (COSLAP). It is an agency under the Department of Justice that is mandated to settle all types of dispute involving land, whether urban or rural, but has not been so active recently<sup>74</sup>.

#### *Administrative Mechanisms*

Government agencies handling land matters are bestowed with quasi-judicial powers to settle land disputes as mandated by law. Though their jurisdictions are limited to their specific mandates, they can receive complaints, ascertain and verify circumstances, establish legislative and legal basis and decide on the case.

The Department of Agrarian Reform (DAR), for example, has the "primary jurisdiction to determine and adjudicate all agrarian disputes or matters except those pertaining to the

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<sup>72</sup> Sec. 33 (3), B.P. 129, as amended

<sup>73</sup> Disini, D. P. et al. Dispute Resolution Mechanisms in the Philippines. Institute of Developing Economies (IDE-JETRO). Japan, March 2002.

<sup>74</sup> Ibid.

determination of just compensation and resolution of criminal offenses arising from the implementation of agrarian laws”<sup>75</sup>.

DAR has also established mechanisms in implementing its quasi-judicial functions. Under the Office of the Secretary is DARAB and this set up cascades down to regional and provincial Offices (DAR Executive Order No. 129-A, 1987).

The Department has formulated its own procedures that are not bounded so much with technical rules as in the formal courts. The cost of filing complains is also not prohibitive. The complainant pays only a filing fee of Ph750 plus a legal research fee of Ph20. Moreover, the pauper litigant is exempted from the payment of the filing fees (DARAB Rules of Procedures, 2003, Rule XXIII, Sec. 2)<sup>76</sup>.

Similar mechanisms and procedures are being carried out by the DENR and the NCIP in their own primary jurisdictions as mandated by law.

#### *Philippine Mediation Center (PMC)*

Pursuant to Supreme Court “en banc” Resolution A.M. No. 01-10-5-SC-PHILJA, dated October 16, 2001, and in line with the objectives of the Action Program for Judicial Reforms (APJR) to decongest court dockets, among others, the Court prescribed guidelines in institutionalizing and implementing the mediation program in the Philippines. The same resolution designated the Philippine Judicial Academy as the component unit of the Supreme Court for Court-Annexed Mediation and other Alternative Dispute Resolution (ADR) Mechanisms, and established the Philippine Mediation Center (PMC).

Mediation is a process of settling disputes with the assistance of an acceptable, impartial and neutral third party called a mediator. The mediator helps parties identify issues and develop proposals to resolve their disputes. Once the parties have arrived at a mutually acceptable arrangement, the agreement becomes the basis for the court’s decision on the case.

This form of mediation is also known as court-annexed mediation since the case has already been filed in court.

#### *Katarungang Pambarangay*

The Katarungang Pambarangay or the Barangay Justice System (BJS) is an alternative dispute mechanism established under RA 7160 or the Local Government Code. It is an alternative, community-based mechanism for dispute resolution of conflicts between members of the same community<sup>77</sup>.

It covers all types of cases, including land disputes, but with some exemptions. It cannot handle, for example, offenses punishable by imprisonment exceeding one (1) year or a fine exceeding P5,000.00, where one party is the government or any subdivision or instrumentality thereof of, or where the dispute involves real properties located in different cities or municipalities (RA 7160).

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<sup>75</sup> DAR. FAQs on Rules and Procedures of DARAB and ALI. Diliman, Quezon City, Philippines.

<sup>76</sup> Ibid.

<sup>77</sup> Katarungang Pambarangay Handbook. Downloaded from <http://www.accessfacility.org/barangay-justice-system-katarungang-pambarangay>

BJJ is not totally new and it is inherent in the Filipino culture of settling disputes peacefully<sup>78</sup>. In fact, *in barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of settling disputes through their councils of datu or elders are recognized without prejudice to the applicable provisions of the IPRA (Sec. 399, RA 7160).*

For agrarian disputes, the Barangay Agrarian Reform Committee (BARC) is mandated to mediate/conciliate under Section 47 and 53 of R.A. No. 6657 or the Comprehensive Agrarian Reform Program (CARP).

#### *Customary Laws and Practices*

The cultural, social and ethnic dimensions of conflict resolutions especially among the indigenous peoples and cultural communities (*lumads*) even in this modern times are still very much widely practiced and observed. Customary practice has the advantage of understanding better the conflicts because the *lumads'* speak their own language and they respect the authority of their tribal leaders. Disputes are most likely to be resolved because they put high primacy on preserving harmony and peace in their communities.

The use of customary laws and processes is anchored on Section 65 of IPRA law (RA 8371) on the primacy of customary laws and practices which states that *when disputes involve ICC's/IP's, customary laws and practices shall be used to resolve the conflict.*

The Talaandig Tribe in Mirayon, Talakag, Bukidnon usually has a designated and recognized "*Palahusay*" who acts as the reconciliator among the tribal groups. The *Palahusay* can be a tribal chieftain, a tribal leader, or an elder who has the qualities of being wise, honest and can render fair judgement. If the conflict is related to land, the *Palahusay* will first conduct his own research on the history of the land contested and other information related to the case. Evidences are needed.

In cases where conflicts are not resolved by traditional system, the contending parties can bring the conflict to the Regional Hearing Officer of the NCIP provided "*that no such disputes shall be brought to the NCIP unless the parties have exhausted all remedies and a Certification shall be issued by the Council of Elders that the disputes has not been resolved*" (Section 66 of IPRA).

#### **Disputes Arising from Implementation of Various Laws**

Implementation of various laws results in overlaps in conferring property rights and resource use rights in public domain. This can be attributed to a number of interrelated factors, such as:

- Absence of rigorous mapping of individual rights and integrated data set and projection map which depicts all rights to property and resources;
- Weak implementation of various laws, or differences in interpretation of laws;
- Preponderance of numerous laws and agencies giving rights to land and resources with limited coordination among them; and
- Human factors such as errors in survey and projection, procedural lapses, and lack of due diligence in investigation of potential overlaps.

These result in confusion as to which right is valid, puts into question the rights of various parties over land and resources, thereby affecting the security of instrument that was issued, in turn creating uncertainties in investments.

A few cases will serve to illustrate the above points.

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<sup>78</sup> Robiso, R. R. Barangay Justice System.

### *Issuance of Collective CLOAs in non A&D lands*

*"Groups of Farmer Beneficiaries" is a category of unorganized farmers who are in the same collective CLOA. In many instances, collective CLOAs issued to unorganized ARBs were awarded in non-private agricultural landholdings, such as the big CLOAs issued in lands covered by Proclamation 2282 (KKK lands). Collective CLOAs were issued mainly to facilitate reporting of LAD Accomplishment. Waiting for the completion of the subdivision survey (subdivision of the big landholding into individual lots for allocation to the beneficiaries would take a long time. Pending the conduct of the subdivision survey, DAR already issued collective CLOAs and reported them as accomplishment. Once accomplished, however, its subdivision became less priority compared to the coverage of new lands for distribution to the ARBs. As a result, close to one-half of the Emancipation Patents and Certificates of Land Ownership Award (EPs and CLOAs) that were issued were in the form of collective CLOAs.<sup>79</sup> Many of these big collective CLOAs were issued during the 90s from 1993 to 1996. Under CARPER (RA 9700), however, issuance of individual CLOAs was made the general rule. Collective CLOAs can only be issued if four conditions are satisfied, all of which refer to the greater economic efficiency that would result from collective ownership of the land.*

*DAR is at present validating jointly with LRA these collective CLOAs issued since the start of the program, starting with the big CLOAs, meaning area per CLOA is above 24 hectares. Preliminary results show that a significant proportion was issued in non-alienable and disposable lands. This validation of the land classification of the landholdings distributed will be followed by on the ground validation of the ARBs to determine whether the ARBs listed in the CLOAs possess the qualifications required of farmer beneficiaries. Should there be adverse findings regarding the land classification but there are actual ARBs in possession of the land and are actually cultivating them, DAR will discuss with the DENR whether the lands can be reclassified as alienable and disposable. If not, whether there are alternative tenurial instruments that can be given to the ARBs in order to protect their rights. Cancellation of the CLOAs will only be a last step.<sup>80</sup>*

It must be noted that Presidential Proclamation (PP) 2282 essentially released some 1.5 million of lands as A&D and turned these over to DAR for distribution under CARP. Also noteworthy to note is that when these lands were identified, there was no projection map to show the exact locations of these lands. In the process of CLOA issuance, it is the DENR that reviews the location of the parcels, to ensure that based on land classification maps, these lands are indeed, part of the A&D lands. Subdivision surveys are also reviewed by the DENR before new parcel records are created, and CLOAs issued. Based on mapping projections done by the Philippine Association for Intercultural Development (PAFID), most of these areas identified under PP 2282 are indeed within forest lands, ancestral domains, and other parts of the public domain.<sup>81</sup>

Since DAR has no projection maps of all the titles it has issued under CARP, it has entered into a MOA with LRA to: (i) retrieve the CLOAs issued so that these can be checked with actual occupants; and (ii) project the locations of these CLOAs to determine whether there are overlaps and if positive, the extent of overlaps with other tenure rights. Based on these information, it plans to discuss with DENR how the issue can be resolved.

### *Issues in Implementation of FPIC*

Cases of land conflicts between IP communities and large corporations (Bagobo-Tagabawa

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<sup>79</sup> In Mindanao, there were 914,453 hectares of collective CLOAs issued as of September 2015; which is about 42.6% of total collective CLOAs issued nationwide.

<sup>80</sup> DAR Report on Status of Collective CLOAs, September 2015.

<sup>81</sup> Interview with Dave de Vera, Executive Director, PAFID. August, 2015.

Tribes and HEDCOR in Davao del Sur; and between Subanons in Siocon, Zamboanga del Norte and Toronto Ventures, Inc.)<sup>82</sup> In both cases, the companies were reportedly able to secure FPICs from some members of the IP communities whereas the legitimate indigenous leaders and the rest of the community were solidly against the projects, thus causing unrest and conflict among the members. Cases like these are common, where the entry of projects cause divisiveness among the community, in some instances escalating into violence and armed conflicts. These demonstrate the weakness in the facilitation of securing FPIC, and lack of assertion on the genuine process of FPIC. Thus, the rights of indigenous peoples are undermined, creating mistrust and closing the opportunity for open and transparent dialogue on other important issues.

#### *Long-term leasehold agreements between CLOA holders and corporations engaged in large-scale plantations*

In the course of CARP implementation, properties of the NDC were turned over to DAR. At the time this happened, the NDC has already entered into contracts with Guthrie Corporation in Agusan del Sur. The award of CLOA was given to farmer groups who were formerly employees of the company. At the time the CLOA was issued, the names of beneficiaries were not listed in the title thus causing uncertainty as to who are excluded and who are included. Now that the group has split into two with one party opting out of the contract, the challenge is determining who among the beneficiaries should be part of which group and the entitlement they have under the program. One party wanted to re negotiate the terms of agreement due to excessively very low rental fee. There are a number of similar cases like these, which is resulting in validation, negotiations, and going back to the records when the CLOA was first issued.<sup>83</sup> Situations like these cause uncertainties in the rights given to the CLOA members, and also on the part of the investor.

#### *Questions of Authority on Issuance of Mining Moratorium*

Until Executive Order 79 was issued in July 2012, some local governments, by virtue of the autonomy vested upon them through the Local Government Code, have issued Ordinances declaring mining moratorium in their jurisdictions. Thus, this created a stoppage for some time, as MPSAs and mining explorations have been issued by the central government.

While section 12 of EO 79 explicitly stated that local ordinances should be consistent with the Constitution and national legislation, some LGUs are still asserting their powers and authority under the LGC, thereby creating an environment of uncertainty and tension in areas affected by the moratorium.

#### *Overlapping Claims, Tenurial Instruments Titles*

It is common knowledge that because different agencies issue multiple tenurial instruments without a common reference map and shared database, there have been cases of overlaps as follows:

- CLOAs, Free Patent and CADT on mining areas (e.g., Saguitarius Mines, Inc.);
- Titles (Free Patents) in protected areas;
- CLOAs in timberlands and protected areas;
- Titles (Free Patents) in timberlands.

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<sup>82</sup> Daytec-Yañgot, Cheryl L. Undated. FPIC: A Shield or Threat to Indigenous Peoples' Rights? ([http://www.thai-ips.org/Documents/FPIC\\_philippines.pdf](http://www.thai-ips.org/Documents/FPIC_philippines.pdf))

<sup>83</sup> Interview with DAR Undersecretary Grageda, November 16, 2015.

There are no easy resolutions to these, except to work out suitable administrative mechanisms to correct the mistakes made in the issuance of land and resource use rights.

## Assessment of Indicators

### Indicators Assessed:

LGI 8.1 Assignment of Responsibility: responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against

LGI 8.2 The share of land affected by pending conflicts is low and decreasing

**LGI 8.1 Assignment of Responsibility: responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against**

***8.1.1 – While there are parallel avenues for dispute resolution and cases cannot be pursued in parallel through different channels, there is no sharing of information - D***

The Rules of Courts provide for a clear assignment of responsibilities for resolving conflicts. Rule 7, Section 5 requires a certification from the BJS/LP before it accepts cases filed before higher courts.

Unfortunately, there is no dedicated higher court to handle land cases. They are normally classified as civil and/or criminal case. As such, these are not easily detectable. Merits and details of the case are considered privileged information and one has to rely on the accounting or case index that only contains nature/caption of the case appearing on the complaint or petition.

***8.1.2 - Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities, and where these are not available informal institutions do not exist or cannot perform this function in a way that is locally recognized. - C***

Among indigenous groups, there exist traditional conflict resolution mechanisms that are effective in resolving conflicts within the community. Inter tribal conflicts are resolved through Council of Elders, or through the facilitation of NCIP or other parties.

For non-indigenous groups, the Barangay Justice System offers the first level of recourse to conflict resolution.

Civil society and religious institutions may also act as mediators. For agrarian related cases, there are the DAR Adjudication Board (DARAB) and the ALI.

However, decisions from these may not always be equitable nor are the disputes always immediately resolved with finality. *“There are local resolutions of conflicts that are not binding, especially with the next generation<sup>84</sup>”*. Regarding the formal institutions, there are still many people, particularly among the poor, who find these legal processes “alien” or unfamiliar and

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<sup>84</sup> Fermin Adriano, World Bank, LGAF-WB Workshop Panelist, Cagayan de Oro City, December 2, 2015

due to the cost of filing cases, maintaining legal counsel, insecurities of facing lawyers, among others. Accordingly, “*legal process should be palatable to the lumads and Moro*”<sup>85</sup>.

**8.1.3 - There is a local informal dispute resolution system that makes decisions that are not always equitable but this system is recognized in the formal judicial or administrative dispute resolution system - C**

The Barangay Justice System is one mechanism whereby informal dispute resolution is encouraged. Only after there is no agreement will the case be allowed to be elevated to the Courts.

In addition, there are informal dispute resolution mechanisms in Mindanao particularly among indigenous groups, but the extent to which these are recognized in formal system shall be explored.

In Bangsamoro region, the Shari’a law is widely practiced. The Shari’a District Courts (SDCs) and Shari’a Circuit Courts (SCCs) were created in 1977 through Presidential Decree 1083, and are also known as the Code of Muslim Personal Laws. These courts have been established to resolve cases involving Muslims<sup>86</sup>. However, the Shari’a law is somehow limited only to the resolution of civil cases, such as, marriages, divorce, custody/guardianship of children, registration and communal properties<sup>87</sup>.

In customary system, decisions may not always be equitable and not equal with women, young people and strangers are disadvantaged. For instance, the Shari’a law allows man to have many wives but the woman can only have one husband<sup>88</sup>. This is also true to other customary laws of indigenous tribes. In property ownership, the husband owns the properties, except for those properties acquired by the woman before marriage<sup>89</sup>.

**8.1.4 - A process exists to appeal rulings on land cases at high cost and the process takes a long time/the costs are low but the process takes a long time - C**

The Rules of Courts provides a clear mechanism for appeals. Rule 40 provides the process for appeals from decisions of the Municipal Trial Court. The process for appeals from decisions of the Regional Trial Courts is contained in Rule 41. Rule 43 provides for the process of petitioning for review of RTC decision to the Court of Appeals. Rules 44 – 55 lays down the procedures for appeals at the Court of Appeals. Rule 56 B contains the procedure for appeals in the Supreme Court.

**Based on the Philippines LGAF, the processes for appeal of land dispute rulings entails high cost and takes a long time to resolve.** A review of cases decided by the Supreme Court in 2012 showed that in more than 90% of the cases it took more than 20 years for cases to be resolved with finality. Even cases first filed with the lower court as far back as 1970 were only decided by the Supreme Court in 2012.

**In Mindanao**, at the Municipal and Regional Trial Courts (MTC/RTC) levels, the length of time for the resolution of cases are influenced by availability of counsels and logistical nuances such as court calendars but land dispute cases in general take 2 to 5 years to resolve. For CA and SC,

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<sup>85</sup> Lordilie Enjambre, Mindanao Development Authority, LGAF-WB Workshop Panelist, CDOC, December 2, 2015

<sup>86</sup> [http://www.muslimmindanao.ph/shari'a/code\\_muslim.pdf](http://www.muslimmindanao.ph/shari'a/code_muslim.pdf)

<sup>87</sup> [http://www.muslimmindanao.ph/shari'a/code\\_muslim.pdf](http://www.muslimmindanao.ph/shari'a/code_muslim.pdf)

<sup>88</sup> <http://www.clarionproject.org/understanding-islamism/womens-rights-under-sharia>

<sup>89</sup> <http://www.clarionproject.org/understanding-islamism/womens-rights-under-sharia>

decisions will take much longer. Fortunately, around 90% these cases are resolved in the court of first instance.

The judicial cost of the cases depends on (1) the amount of the claims, and (2) the assessed value of the land in dispute. This excludes out of court expenses such as attorney’s fees and litigation expenses which many farmers find prohibitive.

**LGI 8.2 The Share of land affected by pending conflicts is low and decreasing.**

**8.2.1 - Land disputes in the formal court system are between 10% and 30% of the total court cases. – B**

In a research conducted at the Office of Executive Clerk of Court in Cagayan de Oro<sup>90</sup>, land disputes comprise 25.6% of the total number of cases filed. This circumstance is reflected in one of the branches, the Regional Trial Court Branch 41, having 22.6% land cases of their entire portfolio.

**Table 42. Data on land disputes as a percentage of the total number of cases received in formal courts in Cagayan de Oro City, 2015<sup>91</sup>.**

Type of Land Dispute	Number of Conflicts	
	Office of Executive Clerk of Court	Regional Trial Court Branch 41
1. Inheritance/ Family Dispute	2	1
2. Property transaction/ contract	11	2
3. Challenge to Ownership	21	5
4. Expropriation	0	2
5. Boundary Dispute	0	0
6. Dispute over use	0	0
7. Trespass (Ejectment)	7	0
8. Right of Access/ passage	2	
9. Mortgage/loan	9	1
10. Others	12	8
<b>Total Land Disputes</b>	<b>64</b>	<b>19</b>
<b>Total cases in sample/data set</b>	<b>249</b>	<b>84</b>
<b>% of land disputes</b>	<b>25.7</b>	<b>22.6</b>

<sup>90</sup> The Hall of Justice of Cagayan de Oro City was gutted by fire last 2014 destroying all the records. The cases cited here are the reconstituted records of pending cases.

<sup>91</sup> Data are based solely on the caption of the cases filed or reconstituted, without regard to the particular facts involved therein.

**8.2.2 - A decision in a land related conflict is reached in the first instance court within 2 years or more for 90% of the cases - D**

**In Mindanao, at the MTC/RTC levels,** the length of time for the resolution of cases are influenced by availability of counsels and logistical nuances such as court calendars but land dispute cases in general take 2 to 5 years to resolve. For CA and SC, decisions will take much longer. Fortunately, around 90% these cases, are resolved in the court of first instance.

**In the Philippines,** it is almost impossible for land related cases to be settled within one year in the first instance Court anywhere in the Philippines. In the case of Tacloban, Leyte; the Executive Judge reported that it is common for land cases to take more than 5 years in the Courts to get resolved. Other RTCs reported too that it is very common to have land cases still unresolved in the lower courts that are more than 10 years old.

**8.2.3 - The share of long-standing conflicts is greater than 20% of the total pending land dispute court cases. - B**

**In CDO,** 90% of the cases are resolved in the Court of First Instance.

**In the Philippines,** a review and analysis of all cases decided by the Supreme Court in 2012 revealed that of the total 961 cases decided with finality, 163 involved land dispute cases. Of these, 159 or 97% took more than 5 years for the lower courts to issue decisions.

It was pointed out, however, that an accurate count may not be obtained if courts are the only determinant. The land cases being discussed about in the dimension are those cases that involve inter-departmental conflicts e.g. NCIP's claims in conflict with DENR but there are also intra-organizational issues in the RTC that need to be counted.

Two deficiencies are needed to be added in the rating of the indicator:

- *Court cases on land disputes.* In the RTC, when a case is tracked as a land case, it refers to a land registration case.
- *Reporting system of courts.* The government reporting system refers to service count. For instance, when a case is resolved at the RTC, this case is counted but it does not necessarily mean it is fully resolved because the case can still go up to the Court of Appeals and the Supreme Court, both of which will take on separate and respective counts of the cases filed in these levels. In addition, the Supreme Court will not divulge information on the pending cases.

## **Summary and Recommendations**

Social injustice as a result of land dispossession in the colonial past either by force or by legal manipulations may take a while to resolve. No appropriate formal or informal mechanisms yet exist. These issues will have to be addressed through political negotiations with the consent of the general public, particularly those of the Mindanawons.

The recent Comprehensive Agreement on the Bangsamoro, however, provides the creation of the Transitional Justice and Reconciliation Commission (TJRC) tasked to undertake a study. It is

intended to promote healing and reconciliation of the different communities that have been affected by the conflict including those marginalized through land dispossession.

Other than these challenges that may be narrowly situated in the ARMM areas in general, land disputes are fairly contained and that mechanisms for dispute resolution are in place. Rules of the courts are relatively clear and there are rooms for appeal, if needed.

A more encouraging development is the institutionalization of alternative dispute mechanisms as a required step before going to the formal courts. Initial figures from the BJS show that from 1980 to 1999, BJS received 147,341 cases per year and roughly around 87% of these have been settled through mediation or arbitration. Similarly, DARAB handled 167,525 cases per year from 1988 to 1999 and settled 92% of these cases.<sup>92</sup>

The cost of resolving cases is not prohibitive and are accessible. The difficulty comes when cases are appealed at higher courts.

Line agencies engaged in land administration and management such as DAR, DENR and NCIP are vested with quasi-judicial power to mediate and conciliate disputes within their primary jurisdictions. Unfortunately, overlapping jurisdictions among these agencies are not easily resolved.

This problem is recognized by these agencies and issued a Joint Memorandum Order No. 01-12 on January 2012 *Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of the DAR, DENR, LRA and the NCIP in Order to Address Jurisdictional and Operational Issues Between and Among the Agencies.*

Unfortunately, they found it difficult to settle among them at the local (provincial and regional) level as they have to be answerable to their agency managers. They have to follow strictly their mandate that, in the first place, is the source of the confusion.

It is essential that some administrative remedies be worked out to address the errors and overlaps in rights recognition, so that these do not escalate into conflicts, and that an environment of peace and stability among communities and investors is in place.

It is also apparent that while there are not much disputes among private parties, the administration by various agencies of their mandate to issue titles and tenorial instruments, coupled with the lack of a unified mapping projection of all rights given has escalated the overlaps and contributed to uncertainties in the title deeds and/or tenure, including long term leases on public lands. Some of these overlaps are borne out of errors in projection, inadequate capacities and diligence in field validation, as well as the incomplete mapping and inventory of occupants and rights holders on both private A&D and public lands.

There is no complete inventory of such overlaps, and therefore the magnitude of the problem is not easy to report. However, from all indications, it is safe to say that this is a huge problem in Mindanao, where title issuance has been very much delayed, where there are large tracts of land under long term leases, and where collective CLOAs occupy almost a million of land; where ancestral domains cover more than 3.37 million of land area; and where most of the CARP areas distributed were in public lands.

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<sup>92</sup> Supreme Court of the Philippines Judicial Reform Project, *Assessment of the Alternative Dispute Resolution Programs in the Philippines*, pp. 19, 29.

In addition to the recommendations mentioned above on having unified projection systems, harmonizing land records across agencies, development of protocols for information sharing, the following recommendations are made:

Conduct a comprehensive inventory of conflicting government issued titles and instruments. It is essential to have a good sense of the magnitude of the problem before any practical program can be developed. Such an inventory could start with the agencies based on what complaints have been lodged in their respective offices; and then progressing towards more commonly known problematic areas. Based on certain typologies, some “standard” solutions can be developed, working with communities and local government units. It is essential that such administrative solutions be developed with the participation of rights holders or occupants in order to formulate practical solutions to the issues. These could then contribute to developing models for reconciling disputes, and or correcting the errors that have been committed in the past. Some good examples on how IP communities have managed to resolve overlaps with CADTs is the experience of some of holders in Davao, wherein long term agreements with IP communities and private persons have been forged to develop portions of their domain for commercial and other economic uses. The instrument that the IP communities used can be further examined and the case more fully reviewed to determine how such an informal system has worked to the mutual benefit of the parties affected.

Undertake a systematic dispute resolution program. This could be tied up with titling or tenure security improvement program. The aim is to ensure that any pending land issue is unlocked in order for the rights holders to freely and fully enjoy the benefits therefrom. This should reduce investors’ risk, at the same time enable the rights holders to get the most out of his/her ownership or rights over the property. The plan of DAR to resolve past errors in the issuance of CLOAs under CARP through negotiations with DENR is one solution that can be applied. Other areas of conflict would include: CLOAs with CADTs; IFMAs within CBFMAs; unrecognized forest communities in areas under IFMA, CADTs, etc.

## 5.0 Conclusions and Recommendations

This study was motivated by the question: *how does the quality of land governance affect investments and generation of more and better jobs in Mindanao?*

The hypotheses being: *land investments create jobs. However, investments flow when lands are free of encumbrances, where tenure rights are recognized and enforced, land market transactions are open and transparent, disputes are fairly and quickly settled, and land management and administration is efficient and effective. Moreover, good land governance creates a policy environment that stimulates economic activities among local investors and rights holders for them to share benefits equitably, access credit and invest in business undertakings that generate jobs.*

The assessment made through the LGAF process revealed that the state of land governance in Mindanao is much below international best practice, and worse than the state of the Philippines' land governance. Mindanao's performance fared lower in the following indicators:

- Recognition of continuum of rights
- Respect for and enforcement of rights
- Although not assessed as part of the Philippines LGAF, Mindanao's performance under the indicator **rights to forests and common lands** are still considered second best practice;
- Effectiveness and equity in land use regulations
- All the indicators under **public land management** namely: (i) identification of public land and clear management; (ii) justification and time efficiency of acquisition process; (iii) transparency and fairness in acquisition process.
- Although not all indicators and dimensions were assessed in the Philippines LGAF on **transfers of large tracts of land to investors**, Mindanao fared less on all dimensions and indicators under this Module: (i) transfer of public land to private use through clear and competitive process; (ii) private investment strategy; (iii) effective, consistent and transparent policy implementation; (iv) and accessibility by the public of contracts involving public lands.
- On **public provision of land information**, both the Philippines and Mindanao scored the same except that in Mindanao, its rating is lower in the following dimensions: (i) formalization of land possession by the poor; and (ii) financial sustainability of the registry; (iii) recording of all relevant private encumbrances; (iv) searchability of the registry; and (v) synchronization of all information in public registries to ensure integrity of rights and reduce transaction costs.
- Clear process for property valuation;
- **On dispute resolution**, Mindanao's scores are worse in the following dimensions: (i) clear assignment of responsibility in conflict resolution; (ii) accessibility to the public of conflict resolution mechanisms; (iii) agreements reached through informal dispute resolution systems; and (iv) accessibility, affordability and timeliness of processes for appealing dispute rulings.

On the other hand, Mindanao performed better in the following dimensions:

- Recording of women's property rights as accorded by law;
- Restrictions on urban land ownership effectively serves public purpose;
- Land use planning effectively guides urban spatial expansion in Davao city, compared to Quezon City – two biggest cities in Mindanao and Davao, respectively;
- In key cities in Mindanao, large cities perform better in real property tax collection compared to the Philippines average for all LGUs.

The comparison of Philippines and Mindanao scorecards appear as **Annex A**.

Most of the above performance reflects the inability of the national government to develop capacities of its field offices, undertake policy and institutional reforms. These play out in Mindanao in a dramatic way because of the inherent large areas covered, the historical conflicts, and the unique challenges faced by the region in dealing with socio economic and cultural issues.

The assessment of land governance in Mindanao highlighted uncertainties of land rights due to conflicting policies, weak institutions, limited access to land information, ineffective and inefficient bureaucracy.

Overall, these have constrained the potential of Mindanao to encourage investments and generate more and better jobs.

Combined, these have created a situation where:

**There is a great proportion of land that have insecure rights**– about 2.29 million parcels in public alienable and disposable lands. In public lands, there is an undetermined number of people and areas where occupants’ rights have not been recognized. This creates disincentives to invest in productive use of the land, and locks these properties out of the formal land market. Access to formal credit is also constrained, including under valuation for sale and informal mortgage.

There is weak recognition of IP rights, and CADTs are not developed to their potential, thus leaving communities impoverished. These involve a significant area of Mindanao – 3.37 million hectares.

**There is great uncertainty in land rights even for those who have been issued titles, tenure, and long-term leases because of the manner by which these have been issued, and the way the records to rights are kept at various agencies.**

These result in rights holders not able to protect their rights and investments. For potential investors, this situation has created an environment where it is difficult to find land to develop, even with the availability of capital. Where interest is present, the unclear property rights to land has made negotiations a challenging process, and there is uncertainty as to who the legitimate rights holders are that the investors should negotiate with. A progressive approach to unbundle the encumbrances that make these titles and rights insecure should be undertaken.

**The potential for forest development to contribute to more and better jobs in Mindanao remains below optimal due to weak governance in public land management.**

An undetermined number of occupants of forestlands, who are not covered by tenure instruments such as CBFMA, SIFMA, CSCs, do not have secure rights, thus there is no incentive to engage in long-term investments to improve land productivity. *In Mindanao where forestlands constitute more than 6 million hectares and where about 700,000 hectares are under open access conditions, bringing these lands to productive use through secure tenure rights is an important requisite for job creation.*

On the part of investors, finding large tracts of public lands for agroforestry development has been hampered by: overlapping rights, absence of updated information, presence of undocumented occupants who do not have secure property rights, and bureaucratic procedures. Identifying the persons with whom negotiations should be made has been a significant constraint, in view of unclear land rights, and the presence of disputes. As a result, investors incur additional costs and risks due to these factors.

If only there is more efficient and effective determination of land that could be made available for large scale investments, if the rights of occupants can be recognized to enable them to benefit from partnerships with commercial interests, and if there is more transparent system for mapping of all rights in public lands, then the potential contribution of developing the portion of forestlands that could be designated for productive use to generate jobs would be enormous. This should be coupled with stable policy environment that effectively regulates utilization and sustainable forest management.

**Large areas of land are affected by overlaps and conflicts.** Due to administrative weaknesses and lack of effective coordination among agencies, many titles, rights and tenure instruments are marred by errors and conflicts thereby diminishing their value, the security attached to these rights, and potential for investments. It is essential that there be a comprehensive assessment to determine the magnitude of the problem, and a systematic way of dealing with these issues with the affected parties that are mutually acceptable, and are within the administrative recourse of existing laws.

Collective CLOA holders with weak capacities are unable to fully benefit from large commercial farm operations and economies of scale through the AVAs.

**In Mindanao, almost half of the total A&D lands are covered by CARP, essentially locking these lands out of the land market.** About a million hectares are covered by collective CLOAs. Experience with AVAs have been spotty, with many unorganized and weak ARBs not able to negotiate fair terms with the investors, thus losing out on the opportunity to benefit from economies of scale in commercial agricultural development. It is important that a review of the AVA agreements be made, the guidelines be examined, and a program to strengthen the capacities of ARB organizations be directed at those with existing agreements. This would require a facilitated approach so that the inequitable arrangements can be corrected in a way that benefits both parties. The new AVA Guidelines issued by DAR in June 2016 is a step in the right direction. Its implementation and impact on improving the welfare of farmer associations with AVA agreements need to be monitored.

**Local governments are not able to fully discharge their responsibilities on land use planning and regulations, property taxation and valuation to improve service delivery.** The result is increased dependence on the national government, unplanned urban growth, and increasing informality.

The recommended actions for each of the land governance thematic areas are discussed in more detail in section 4.0.

To address the above and create more and better jobs in Mindanao, the following summarizes the recommendations proposed for the **short and medium term**:

1. Develop administrative mechanisms to address current conflicts and overlaps in land and resource use rights. This could be undertaken through a case by case approach, assisted by Facilitators, and procedures for resolution documented.
2. Develop an inter operable land information system that reflects all the interests on land, their status and metes and bounds. This should be supported by a common projection systems which reflects all the rights and interests in the parcels, including long term leases and interests in public lands and ancestral domains.
3. Accelerate titling of untitled lands by providing incentives to LGUs to develop and implement tenure security improvement programs. In support of this, the LGUs should establish their unified land information system to reflect all the parcels, and associated information

4. Strengthen capacities of LGUs on property taxation and valuation.
6. Build on the gains from CARP by developing and implementing a program to address second-generation issues, and complete CARP implementation as soon as possible.
7. Conduct an inventory of public lands under long-term lease agreements to determine their current status; properly mark areas that are open for investments.
8. Complete mapping and recognition of tenure rights in public forestlands and protected areas.
8. Develop a physical framework plan for Mindanao; and
9. Speed up recognition of IP rights through completion of mapping and registration of ADTs; strengthen IP communities and develop ADSDPPs.

In parallel, the above actions should be supported by pursuing the following **policy agenda for the long term**:

- Remove overlaps in the duplication of land administration functions of LRA and DENR;
- Improve access to land information from RoD/LRA.
- Unify all title deeds involving Free Patents, CLOAs, CADTs, etc.; create a uniform projection map which shows all interests on land, and have all these registered in the RoDs;
- Expand the registry to include long term leases and other interests in public lands;
- Remove the 5 year restriction on agricultural Free Patents;
- Remove the approval of property valuation function from local governments and establish an independent National Valuation Authority to undertake such responsibility

All the above actions can be encapsulated in an **updated Lands Sector Development Framework** which will spell out the key strategies for achieving the above in Mindanao, and the rest of the Philippines.

## **Annex A – LGAF Scorecard**

Mindanao VS. The Philippines - Land Governance Scorecard					
Pan-LGI-Dim			Topic	Min	Phil
<b>PANEL 1: Land Rights Recognition</b>					
<i>LGI 1: Recognition of a continuum of rights</i>					
1	1	1a	Individuals' rural land tenure rights are legally recognized	D	A
1	1	1b	Individuals' rural land tenure rights are protected in practice.	D	
1	1	2	Customary tenure rights are legally recognized and protected in practice.	C	
1	1	3	Indigenous rights to land and forest are legally recognized and protected in practice.	C	
1	1	4	Urban land tenure rights are legally recognized and protected in practice.	B	
<i>LGI 2: Respect for and enforcement of rights</i>					
1	2	1	Accessible opportunities for tenure individualization exist.		B
			• Collective group rights by farmers cooperatives/associations under agrarian reform	C	
			• Community group rights over natural resources in public forest lands	D	
			• CMP	C	
1	2	2&3	Individual land in rural and urban areas is formally recorded and mapped	C	C
1	2	4&5	The number of illegal land sales and informal (illegal) lease transactions is low.	C	
1	2	6	Recording of women's property rights in land as accrued by relevant laws	A	C
<b>PANEL 2: Rights to Forest, Common Lands &amp; Rural Land Use</b>					
<i>LGI 1: Rights to Forest and Common Lands</i>					
2	1	1	Forests are clearly identified in law and responsibility for use is clearly assigned.	C	
2	1	2	Common lands are clearly identified in law and responsibility for use is clearly assigned	B	
2	1	3	Rural group rights are formally recognized and can be enforced.		
			• Customary group rights	A	
			• Collective group rights by farmers cooperatives/associations under agrarian reform	A	
			• Community group rights over natural resources in public forest lands	B	
2	1	4	Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice.	B	
2	1	5	Multiple rights over common land and natural resources on these lands can legally coexist.	B	
2	1	6	Multiple rights over the same plot of land and its resources (e.g. trees) can legally coexist.	D	
2	1	7	Multiple rights over land and mining/other sub-soil resources located on the same plot can legally coexist.	B	
2	1	8	Accessible opportunities exist for mapping and recording of group rights.	B	
2	1	9	Boundary demarcation of communal land.		
			• Indigenous lands/CADTs	B	
			• CBFMAs	C/	

				D	
			• CLOAs	A	
<i>LGI 2: Effectiveness and equity of rural land use regulations</i>					
2	2	1	Restrictions regarding rural land use are justified and enforced.	B/ C	
2	2	2	Restrictions on rural land transferability effectively serve public policy objectives.	B/ C	A
2	2	3	Rural land use plans are elaborated/changed via public process and resulting burdens are shared.		B
			• Protected areas	A	
			• Forestlands	B	
			• Ancestral domains	A	
2	2	4	Rural lands, the use of which is changed, are swiftly transferred to the destined use.		
2	2	5	Rezoning of rural land use follows a public process that safeguards existing rights.		
			• Protected areas	A	
			• Forestlands	B	
			• Ancestral domains	A	
2	2	6	For protected rural land use (forest, pastures, wetlands, national parks, etc.) plans correspond to actual use.	C	C
<b>PANEL 3: Urban Land Use, Planning, and Development</b>					
<i>LGI 1: Restrictions on Rights</i>					
3	1	1	Restrictions on urban land ownership/transfer effectively serve public policy objectives.	A	B
3	1	2	Restrictions on urban land use (disaster risk) effectively serve public policy objectives.	B	
<i>LGI 2: Transparency of Land Use Restrictions changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups.</i>					
3	2	1	Process of urban expansion/infrastructure development process is transparent and respects existing rights.	C	
3	2	2	Changes in urban land use plans are based on a clear public process and input by all stakeholders.	B	B
3	2	3	Approved requests for change in urban land use are swiftly followed by development on these parcels of land.		C
<i>LGI 3: Efficiency in the Urban Land Use Planning Process: Land use plans are current, implemented, do not drive people into informality, and cope with urban growth</i>					
3	3	1	Policy to ensure delivery of low-cost housing and services exists and is progressively implemented.	C	
3	3	2	Land use planning effectively guides urban spatial expansion in the largest city.	A	C
3	3	3	Land use planning effectively guides urban development in the four next largest cities.		C
3	3	4	Planning processes are able to cope with urban growth.		C
<i>LGI 4: Speed and Predictability of Enforcement of Restricted Land Uses</i>					
3	4	1	Provisions for residential building permits are appropriate, affordable and complied with.	A	A
3	4	2	A building permit for a residential dwelling can be obtained quickly and at a low cost.		
			• Davao and Zamboanga	A	
			• Cagayan de Oro and General Santos	B	

<i>LGI 5: Tenure regularization schemes in urban areas</i>					
3	5	1	Formalization of urban residential housing is feasible and affordable.	B/ C	C
3	5	2	In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and housing.	A	
3	5	3	A condominium regime allows effective management and recording of urban property.		A
<b>PANEL 4: Public Land Management</b>					
<i>LGI 1: Identification of Public Land and Clear Management</i>					
4	1	1	Criteria for public land ownership are clearly defined and assigned to the right level of government.	C	C
4	1	2	There is a complete recording of public land.	C	A
4	1	3	Information on public land is publicly accessible.	D	C
4	1	4	The management responsibility for different types of public land is unambiguously assigned.	C	C
4	1	5	Responsible public institutions have sufficient resources for their land management responsibilities.	C	C
4	1	6	All essential information on public land allocations to private interests is publicly accessible.	C	C
<i>LGI 2: Justification and Time-Efficiency of Acquisition Processes</i>					
4	2	1	There is minimal transfer of acquired land to private interests.	A	A
4	2	2	Acquired land is transferred to destined use in a timely manner.	C	C
4	2	3	The threat of land acquisition does not lead to pre-emptive action by private parties.	B	
<i>LGI 3: Transparency and Fairness of Acquisition Procedures</i>					
4	3	1	Compensation is provided for the acquisition of all rights regardless of their recording status.	C	C
4	3	2	Land use change resulting in selective loss of rights there is compensated for.	D	B
4	3	3	Acquired owners are compensated promptly.	C	A
4	3	4	There are independent and accessible avenues for appeal against acquisition.	B	B
4	3	5	Timely decisions are made regarding complaints about acquisition.		
<b>PANEL 5: Transfer of Large Tracts of Land to Investors</b>					
<i>LGI 1: Transfer of Public Land to Private Use Follows a Clear, Competitive Process and Payments are Collected</i>					
5	1	1	Public land transactions are conducted in an open transparent manner.	C	
5	1	2	Payments for public leases are collected.	C	
5	1	3	Public land is transacted at market prices unless guided by equity objectives.	D	
5	1	4	The public captures benefits arising from changes in permitted land use.	C	C
5	1	5	Policy to improve equity in asset access and use by the poor exists, is implemented effectively and monitored.	C	
<i>LGI 2: Private Investment Strategy</i>					
5	2	1	Land to be made available to investors is identified transparently and publicly, in agreement with right holders.	C	B
5	2	2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process.	C	

5	2	3	Public institutions transferring land to investors are clearly identified and regularly audited.	C	
5	2	4	Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (incl. sub-soil).	D	
5	2	5	Compliance with contractual obligations is regularly monitored and remedial action taken if needed.	C	
5	2	6	Safeguards effectively reduce the risk of negative effects from large scale land-related investments.	C/ D	
5	2	7	The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice.	C	
<i>LGI 3: Policy Implementation is Effective, Consistent and Transparent</i>					
5	3	1	Investors provide sufficient information to allow rigorous evaluation of proposed investments.	C	A/D
5	3	2	Approval of investment plans follows a clear process with reasonable timelines.	C	B
5	3	3	Right holders and investors negotiate freely and directly with full access to relevant information.	C	B
5	3	4	Contractual provisions regarding benefit sharing are publicly disclosed.	D	C
<i>LGI 4: Contracts Involving Public Land are Public and Accessible</i>					
5	4	1	Information on spatial extent and duration of approved concessions is publicly available.	D	
5	4	2	Compliance with safeguards on concessions is monitored and enforced effectively and consistently.	C	C
5	4	3	Avenues to deal with non-compliance exist and obtain timely and fair decisions.	C	B
<b>PANEL 6: Public Provision of Land Information: Registry and Cadastre</b>					
<i>LGI 1: Mechanisms for Recognition of Rights</i>					
6	1	1	Land possession by the poor can be formalized in line with local norms in an efficient and transparent process.	D	
6	1	2	Non-documentary evidence is effectively used to help establish rights.	B	B
6	1	3	Long-term unchallenged possession is formally recognized.	A	A
6	1	4	First-time recording of rights on demand includes proper safeguards and access is not restricted by high fees.		
			• Free Patent and Homestead Patent	A	A
			• Miscellaneous Sales	B	B
			• Judicial titling	D	D
<i>LGI 2: Completeness of the Land Registry</i>					
6	2	1	Total cost of recording a property transfer is low.		D
			• Davao City	C	
			• Cagayan de Oro, General Santos and Zamboanga cities	D	
6	2	2	Information held in records is linked to maps that reflect current reality.	C	D
6	2	3	All relevant private encumbrances are recorded.	B/ C	A
6	2	4	All relevant public restrictions or charges are recorded.	A	A
6	2	5	There is a timely response to requests for accessing registry records.	B	A
6	2	6	The registry is searchable.	C	A
6	2	7	Land information records are easily accessed.	A	A

<i>LGI 3: Reliability of Registry Information</i>					
6	3	1	Information in public registries is synchronized to ensure integrity of rights and reduce transaction cost.	D	
6	3	2	Registry information is up-to-date and reflects reality on the ground	D	C/D
<i>LGI 4: Cost-effectiveness and Sustainability of Land Administration Services</i>					
6	4	1	The registry is financially sustainable through fee collection to finance its operations.	D	A
6	4	2	Investment in land administration is sufficient to cope with demand for high quality services.	B	A/B
<i>LGI 5: Fees are Determined Transparently</i>					
6	5	1a	Fees have a clear rationale, fee schedule is public, and all payments are accounted for.	A	A
6	5	2	Informal payments are discouraged.	A	B
6	5	3	Service standards are published and regularly monitored.	A	
<b>PANEL 7: Land Valuation and Taxation</b>					
<i>LGI 1: Transparency of Valuations</i>					
7	1	1	There is a clear process of property valuation.	D	B
7	1	2	Valuation rolls are publicly accessible.	A	A
<i>LGI 2: Collection Efficiency</i>					
7	2	1	Exemptions from property taxes payment are justified and transparent.	B	C
7	2	2	All property holders liable to pay property tax are listed on the tax roll.	C	C
7	2	3	Assessed property taxes are collected.	A/ B	C
<b>PANEL 8: Dispute Resolution</b>					
<i>LGI 1: Assignment of Responsibility</i>					
8	1	1	There is clear assignment of responsibility for conflict resolution.	D	
8	1	2	Conflict resolution mechanisms are accessible to the public.	C	A
8	1	3	Mutually accepted agreements reached through informal dispute resolution systems are encouraged.	C	A
8	1	4	There is an accessible, affordable and timely process for appealing disputed rulings.	C	C
<i>LGI 2: The Share of Land Affected by Pending Conflicts is Low and Decreasing</i>					
8	2	1	Land disputes constitute a small proportion of cases in the formal legal system.	B	B
8	2	2	Conflicts in the formal system are resolved in a timely manner.	D	D
8	2	3	There are few long-standing (> 5 years) land conflicts.	B	D
<b>PANEL 9: Institutional Arrangements and Policies</b>					
<i>LGI 1: Clarity of Mandates and Practice</i>					
9	1	1	Land policy formulation, implementation and arbitration are separated to avoid conflict of interest.		C
9	1	2	Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap).		C
9	1	3	Administrative (vertical) overlap is avoided.		B
9	1	4	Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible.		B
9	1	5	Overlaps of rights (based on tenure typology) are minimal		

			and do not cause friction or dispute.		
9	1	6	Ambiguity in institutional mandates (based on institutional map) does not cause problems.		
<i>LGI 2: Equity and Non-discrimination in the Decision-making Process</i>					
9	2	1	Land policies and regulations are developed in a participatory manner involving all relevant stakeholders.		A
9	2	2	Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.		
9	2	3	Land policies address ecological and environmental goals; progress towards these is publicly monitored.		
9	2	4	The implementation of land policy is costed, matched with benefits and adequately resourced.		C
9	2	5	There is regular and public reporting indicating progress in policy implementation.		A
9	2	6	Land policies help to improve land use by low-income groups and those who experienced injustice.		
9	2	7	Land policies proactively and effectively reduce future disaster risk.		

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