

**THEMATIC PAPER 2**

**PROPERTY RIGHTS AND LEGAL EMPOWERMENT OF THE POOR IN THE  
PHILIPPINES**

Prepared by Dr. Amado Mendoza Jr.

For

**Economic, Social and Cultural Rights-Asia (ESCR-ASIA)**

In cooperation with GOP-United Nations Development Program – Fostering Democratic  
Governance  
and the University of the Philippines-National College for Public Administration and  
Governance (UP-NCPAG)

National conference draft (version as of 22 July, 2007)

Thematic Paper Two: PROPERTY RIGHTS

Amado Jr. M. Mendoza, Ph.D.  
ESCR Asia, Inc.

In Cooperation with UNDP-Philippines and University of the Philippines-National  
College of Public Administration and Governance (UP-NCPAG)

## **Property rights and legal empowerment of the poor in the Philippines**

Amado Jr. M. Mendoza, Ph.D.  
ESCR Asia, Inc.

This paper was commissioned by the New-York based Commission on the Legal Empowerment of the Poor (CLEP). It was written as one of the inputs to a national consultation conference that aims to unite all stakeholders behind an agenda/action for the poor's legal empowerment. Among others, the CLEP believes that a key aspect of poverty would be the weakness or imperfection of the property rights of the poor. A key argument states that strengthening these same rights through legal recognition (and all other means) is a *sine qua non* (even if insufficient) to enable poor people to get out of poverty. This paper is primarily interested in finding out how property rights of the poor in the Philippines could be strengthened as a necessary step towards poverty reduction. To do so, why their property rights are weak or insecure must be understood. The paper also seeks to identify the most important sources and incentives and the necessary institutions and potential alliances for change.

### **I. Introduction; nature and importance of property rights**

First and foremost, property rights (PRs) are legal categories and the legal nature of PRs must be grasped first. Properties are things over which a person or group of persons (or some juridical entity) has exclusive rights. Someone who has property rights is referred to as a right holder; but more commonly, he is referred to as an owner. Owners of property may be juridical individuals, the state, or a community. Property therefore is the object of property rights. A property right is the exclusive authority of the owner (or right holder) to determine how a piece of property is used. This right is actually a bundle of rights consisting of (a) the right to use the good (usufruct); (b) the right to earn income from the good; and (c) the right to transfer the good to others.<sup>1</sup>

Property rights represent the capacity to call upon a society to stand behind the right-holder's claim to a benefit stream. They therefore involve a relationship between the right holder and all others, and an institution that supports the claim by requiring others to uphold or respect the right (Bromley 1991). The last requirement is important; to be effective, property rights need recognition and legitimacy and enforcement structures. Ideally, it is the state that ultimately enforces and protects property rights of its citizens. States must be powerful enough to do so. The state's power is largely a function of its control over means of violence but asset holders must be convinced that such a power will not be used against them.

---

<sup>1</sup> The transfer of rights over a piece of property to another may be total or partial. For instance, the good may be bequeathed as an inheritance to another by the owner. In this instance, the full panoply of property rights will get transferred to the heir. In another instance, only the usufruct rights may be transferred to another without relinquishing ownership.

In reality, however, as Bates, Greif, and Singh (2002) remind us, the state is not the only social agent with assets for violence. Under these circumstances, it is also not the only agency that can protect and enforce property rights and contracts. Therefore, security of life and property are not intrinsic public goods that only a state can provide. They can also be private goods since they can be provided by private agents or non-state actors. Like the state, private actors must have control over some means of violence for them to be able to secure life and property. Absent the state, private agents will have the monopoly over means of violence and security becomes a pure private good. When states and non-state actors have access (even if unequal) to means of violence, then they become rival suppliers of security to private actors without such assets.

How important are property rights to the poor in society? Secure property rights provide not only an income stream today, but also incentives to invest in productive technologies and sustainable management of the resources for the future. The poor are usually those with weakest property rights; and secure rights over land, water, trees, livestock, fish, and genetic resources are fundamental mechanisms for reducing poverty. Insecure property rights compress the poor's time horizon (emphasis on the present) and consequently lock them in low-yielding livelihood strategies. Poverty is also exacerbated by lack of access to public services like potable water and health facilities. Collective action, or action taken by a group to achieve common interests, can help the poor overcome their limitations and enhance their access to productive assets. This is true even if the poor and women, as with property rights, are often at a disadvantage with respect to collective action. The disadvantage is usually a function of social exclusion, lack of time, lack of education and confidence to speak in meetings, and domination by local elites (Di Gregorio et al. 2005).

Current thinking and practice in law and development is dominated by the so-called 'rule of law' (ROL) paradigm especially with respect to property rights. The orthodoxy overlooks a central reality that in many developing countries, laws benefiting the poor exist on paper but not in practice unless the poor or their allies push for the law's enforcement. The rule of law (ROL) paradigm focuses too much on law, lawyers, and state institutions, and too little on development, the poor and civil society. It takes a 'top-down,' state-centered approach and concentrates on law reform and government institutions. It remains to be seen whether the dominant ROL paradigm should be the main means for integrating law and development. An alternative or even complementary approach—legal empowerment or the use of legal services and related development activities to increase disadvantaged populations' control over their lives—is often preferable (Golub 2003). The recourse to collective action, the presence of non-state rivals, and the weakness of state institutions in the developing world—all make the legal empowerment mode both necessary and viable. However, these two paradigms need not unduly compete with each other. They need to complement each other since rule of law with its requisite institutional arrangements are required for property rights (especially of the poor) to be enforced, protected, and expanded.

## *II. The context of property rights in the Philippines*

While property rights are exclusive, they are not absolute. Property rights could be limited in consideration of societal goals and the welfare of the greater number in society. The context within which property rights are recognized, enforced, and protected therefore matters.

The property rights system of the country is a product both of its colonial history and developments over the past few decades. The Spanish colonial state sought to impose property rights regimes that were alien to those previously instituted by the indigenous peoples of the archipelago, which included stewardship, usufruct, and communal ownership. In the process, massive asset theft typical of all colonial ventures occurred in the country. The main object of theft and ownership then was arable land. The American colonial state introduced the distinction between public and inalienable land and privately-owned and alienable real estate. In the process, several indigenous peoples in the highlands were disenfranchised of their so-called ancestral domains. The 1946-1972 post-colonial state continued these Western-originated property regimes even as the asset structure diversified over time. In general, access to political power guaranteed security of property rights and elites at various levels consolidated their political and economic positions.

Up to the eve of the declaration of martial law in September 1972, the property rights of rival elite factions were generally secure regardless of the political cycle's outcome. Ownership rights were not extinguished by an electoral loss. The elites were organized into two political parties that alternated in power at the national level. The ability of an elite faction to regain power in the next election deterred the faction in power from erasing the property rights of the 'outs.' Elite factions, therefore, were prevented by the possibility of electoral defeat from disrespecting the property rights of their rivals. The default behaviour was for the 'ins' to plunder the state treasury instead of confiscating the property of the 'outs.' Notwithstanding a constitutional provision for two presidential terms, no president has been able to win re-election until 1969 when Ferdinand Marcos won an unprecedented second term.

The balance of power between the rival elite factions shifted decisively in favour of his faction after Marcos' unprecedented re-election in 1969. He monopolized political power through the declaration of martial law in September 1972 and proceeded to violate the property rights of his political opponents (Kushida 2003). The demise of the dictatorship in February 1986 saw the post-Marcos elites attempting a restoration of pre-martial arrangements with respect to property rights and access to political power. The properties of the anti-Marcos elites (such as the Lopez, Lopa, and Jacinto families) were returned to their former owners while a new constitution adopted in 1987 provided the ground rules for political contestation and all but forestalled the possibility of new dictatorships. After an initial lock-out period, even the Marcoses were allowed back into the country and managed to win electoral posts or stand for elections. Despite the formation of a presidential commission mandated to recover the so-called ill-gotten wealth of the Marcoses and their cronies, these properties got entangled in a quagmire of unresolved law suits filed within and without the country.

The violation of elite property rights by Marcos during the dictatorship's heyday is like a genie let out of the bottle. Despite all efforts to date, the mess created by the initial massive cancellation of property rights has not been sorted out to satisfaction. The ownership of substantial portions of the equities of major Philippine corporations (including the top-ranked San Miguel Corporation and the Philippine Long Distance Telephone Company) remains contested. The fall of the dictatorship also led to the recognition of new asset claimants—the thousands of human rights victims who were tortured or murdered by Marcos' security forces and the coconut farmers disenfranchised by the so-called coconut levy. The claims of the human rights victims against the Marcos estate had been repeatedly recognized by US courts while the Philippine Supreme Court had repeatedly ruled that the coconut levy was a public fund and must be taken from the control of businessman Eduardo Cojuangco, who used the money to wrest control of the country's premier business firm—the San Miguel Corporation (SMC). To date, however, none of these judicial decisions have been enforced since rival claimants have managed to secure restraining orders against them.

The fundamental point to be made with the above digression is the fragility of property rights in the Philippines. If the properties of elites are not even sacrosanct, could we expect the assets of the non-elites and less-powerful to be more secure?

More recent developments shape the terrain for the poor's struggle for property rights in two major ways. Population growth, increased economic activity, continuing internal warfare, and worsening environmental degradation combined to make the struggle for poor people's rights a more difficult one. The need to ensure economic growth in response particularly to population growth and the opportunities offered by globalization (which includes the whole-scale revitalization of the mining and other extractive industries) increases demand for resources and pressure on property rights of the marginalized. This increased demand has specifically led to outsider (settler and corporate) encroachments on IP lands and resources. Environmental degradation effectively decreases the supply of valuable resources, increases the value of 'untainted' assets, and intensifies the contest for control over these same assets. Together with environmental problems, internal warfare has effected a significant movement of poor people from war-torn areas into more 'peaceful' jurisdictions and the nation's urban centers (swelling the urban poor population in the process). Anecdotal information suggests that the disorder spawned by internal wars have been used by powerful interests to claim ownership over assets in war-torn areas. In the international arena, the growing need of industrializing China for raw material inputs is a special factor in this over-all growth of demand for resources in the country.

On the other side of the balance, the end of authoritarianism in 1986 through a 'people power revolution' offered and continues to offer novel opportunities for popular empowerment. The 1987 Constitution institutionalized popular empowerment as fundamental state principle. While at times a shibboleth, the imperative for popular empowerment animates post-authoritarian practice and discourse. After 1986, the broad anti-dictatorship movement has morphed into a vibrant and more diverse mix of new

social movements (including geographically dispersed and grassroots-based environmental movements across the archipelago). On the policy front, the devolution of central governmental powers and functions to the local governments (through the Local Government Code of 1991) is another important development. All of these factors combined to widen and enhance the possibilities of ordinary people to have greater control over the lives and their communities, including making their property rights sturdier.

### III. A property rights situationer

In this section, a discussion of the property rights of the poor in the Philippines is offered. We start with a discussion of the ownership and administration of land, admittedly the most important asset and object of ownership as far as the poor are concerned. It is followed by a discussion of the property rights of key sections of the Philippine poor—peasantry, indigenous peoples, urban poor, fisher-folk, poor women, and street vendors and other informal workers. A discussion of key programs designed to improve the access of poor people to common resources (on state-own or public lands) under the rubric of ‘community-based natural resource management’ models is also included.

#### *The land administration system*

Land administration refers to the processes of recording and disseminating information about the ownership, value, and use of land. These processes include mapping and survey, identification of alienable and disposable lands, original land titling, transfer of title, land information and records, taxation, and land valuation (LAMP 2: n.d.).

The land administration system in the Philippines, with its colonial origins, is considered one of the most complex systems in Asia and is consequently plagued with institutional defects, inconsistencies, corruption, and unworkable practices. These defects include: multiple land administration agencies, multiple land administration laws, multiple land titling processes, multiple standards for surveying and mapping, multiple forms of certificate of title, multiple steps for land transfer, multiple standards for land valuation, multiple agencies undertaking valuation, and multiple taxes on land ownership and transfers. Predictably, these defects also offer multiple opportunities for corruption. These pathologies often lead to several problems including long and expensive delays to secure land titles<sup>2</sup> and the proliferation of fake titles. Consequently, there is a little confidence in the system and a relatively low level of registration of subsequent title transactions (LAMP 2; Roberts and Burns 2003). Separate estimates (De Soto 2000; Roberts and Burns 2003) indicate that more than half of all landed property (more than 8.4 million parcels with a combined value of US\$133 billion) lacked clear title. De Soto (2000) called these assets ‘dead capital’ since they could not be used as collateral for loans in the formal credit system.

The 1987 Constitution is the fundamental law which sets the basis of use and ownership of land in the Philippines. It recognizes three types of tenure—ancestral land, public land, and private land. Ancestral land belongs to indigenous peoples and communities as provided for by the Indigenous Peoples Rights Act (IPRA) of 1997 (Republic Act No. 8371). Ancestral lands may comprise forestlands, inland waterways, coastal areas, and natural resources above and below the land. All land over which public ownership is claimed is public land with the state as the recognized owner. Public lands are classified into four classes: alienable or disposable, forest, mineral lands, and national parks. Any alienable or disposable land can be further classified according to its use: agricultural, residential, commercial, industrial, educational, charitable and other similar purposes, and

---

<sup>2</sup> It can take up to three years to secure or transfer a land title and have it registered (LAMP 2).

reservations for town sites and quasi-public purposes. There are more than 10 ways of issuing title to alienable land, including patents, leases, decrees, and deeds of sale. Land that satisfies conditions for private ownership is private land. Ownership of private land is based on the principles of the Torrens land registration system (Roberts and Burns 2003).

The institutional setting for land administration and management is characterized by large, central agencies that are quite resistant to change. There are about fifteen (15) agencies involved and the two principal agencies are the Department of Environment and Natural Resources (DENR) and the Land Registration Authority (LRA) of the Department of Justice. There are two legal processes in gaining title to land—administrative and judicial. Administrative processes leading to titles are handled by three agencies. The DENR is responsible for issuing titles for all government or public land and the land alienated through the issuance of patents, decrees and other legal instruments. The Department of Agrarian Reform (DAR) implements the Comprehensive Agrarian Reform Program (CARP) mandated by the Comprehensive Agrarian Reform Law (CARL) of 1988 (Republic Act No. 6657) by issuing certificates of land ownership awards (CLOAs) to agrarian reform beneficiaries (ARBs)<sup>3</sup>. The third administrative titling procedure relates to indigenous land and is handled by the National Commission for Indigenous Peoples (NCIP) through the issuance of certificates of ancestral domain titles (CADTs) and certificates of ancestral land titles (CALTs).

Titles obtained through the judicial process are senior to titles obtained administratively since the former decrees absolute ownership while latter confers rights with conditions and limitations. Under the judicial process, occupants of land are required to apply to the courts to confirm existing rights to title based on evidence of ownership and occupation. Since 12 June 1945, occupation of land must be proved, a requirement impossible to meet in many cases since the original occupants are now deceased. The LRA, together with the Registry of Deeds meanwhile, is responsible for the initial registration of land titles and subsequent transactions.

Other government agencies involved in land administration and management include the Department of Finance, Department of Justice, National Mapping and Resource Information Authority (NAMRIA), Land Management Bureau (LMB), Land Management Services, Environmental Management Bureau, Housing and Land Use Regulatory Board, and the National Economic and Development Authority. The inevitable result of having so many departments and agencies involved in land management and administration, each supported by enabling laws, is confusion, overlapping functions, and long bureaucratic processes and delays which lead to litigation and corruption. Thus, one piece of land can be owned by two or more entities since two titles—one administrative and one judicial—were issued. It could also happen that the same asset can be covered by two administrative titles—for example, an ancestral domain claim (CADT or CADT) and a CLOA under the agrarian reform program. These overlapping claims generate conflict among the poor themselves—i.e., between

---

<sup>3</sup> There are 3.4 million hectares designated for conversion and redistribution under CARP.

indigenous peoples and agrarian reform beneficiaries. Or the same piece of land may be valued differently due to different valuation standards used by different agencies. The system is likewise handicapped by a corrupted and neglected cadastral surveying and mapping system. Furthermore, the existence of a hierarchy of rights over private land complicates the tenure system because many of the rights are for specific and temporary use, so the need for updating or conversion to a superior right, adds to the bureaucratic chain (Roberts and Burns 2003). For example, separate rights for ownership, cultivation, building, use and management can apply to land. When added to an already complicated regulatory system and a high degree of centralization, this creates concentration of power in numerous points of the process and increases the potential for bribes, discourages participation and engenders distrust of the formal tenure system.

These pathologies have led to a large informal market of land and property transactions. The complexity, delays, and costs of registering titles lead to a relatively low level of registration of subsequent title transactions. If and when transactions are formally registered, the value of the transaction is often unknown or falsified to minimize transfer taxes and other charges. Consequently, this makes it difficult for state agencies to impose the proper taxes needed to make improvements to public infrastructure and services.

In response to these problems, the national government is currently undertaking a program (LAMP 2) that is focused on the passage of a law that aims to integrate the key land administration agencies (LRA/RoD, NAMRIA, and LMB) into a single agency called the Land Administration Authority (LAA). The proposed LAA aims to reform the land administration system through standardization of the titling process and the decentralization of service through one-stop-shops. Additional reforms include the creation of a single valuation base through a proposed National Appraisal Authority (LAMP 2). Unfortunately, the recently adjourned 13<sup>th</sup> Congress (July 2004-June 2007) has failed to enact the proposed LAA bill.

### *Agrarian reform and the peasantry*

Land hunger among the Filipino peasantry had been recognized as the underlying cause of agrarian insurgency and rural poverty since the 1930s. While the problem had been somewhat appeased by settler programs of the frontier lands (especially Mindanao), the need for an agrarian reform program was increasingly recognized since the 1960s. When martial law was declared in 1972, Presidential Decree No. 27 issued by President Marcos provided for reform on lands devoted to rice and corn. After the fall of the dictatorship in 1986, the CARL of 1988 expanded coverage to 3.4 million hectares to be redistributed to agrarian reform beneficiaries (ARBs).

However, while agrarian reform has had a positive effect in reducing poverty (Reyes 2002), analysts believe that the full benefits of land redistribution have not been realized (Llanto and Ballesteros 2003, Ballesteros 2003). Said lands are practically 'dead assets' since property rights over them are 'imperfect' due to regulatory and bureaucratic impediments. Several key problems—identification of beneficiaries and actual coverage of the reform; land valuation; complicated land titling and registration, agency capture,

and the opposition of adversely affected parties—delayed the program’s implementation and had led to ‘imperfect’ ownership.

Identification of agrarian reform beneficiaries was difficult with the absence of updated lists of farming households in the *barangays*. Obtaining the names of seasonal and other farm workers was doubly hard. In many cases, landowners considered some farmers as illegal squatters instead of tenants or workers. Coverage of the reform was also complicated by land retention limits of landowners and their heirs and land use disputes. Land use issues, including conversion and exemption, are among the main reasons for cases filed on land reform, constituting about 16% of pending cases at the DAR (Ballesteros 2003).

The CARL provided that payment for private farmlands for redistribution to ARBs be based on ‘just compensation’. Just compensation implies that valuation is based on several indices including cost of acquisition, actual use and income, and assessment done by public assessors. These indices have been subject to heavy bargaining and valuation has never been transparent. However, majority of landlords rejected the assessed value of their lands and usually lodged appeals in special agrarian courts. Results of such appeals have generally been in favour of the landowners. Valuation issues therefore delayed program implementation and made redistributed land more expensive (Adriano 1994, Ballesteros 2003). Apart from the tedious land titling and registration process, several other titling problems cropped up. The registration and distribution of CLOAs and other rights-based documents even prior to the acceptance of the landowner of the valuation or payment in full led to conflict and confusion. The Supreme Court ordered in 1990 that landowners must be paid first before the registration of titles. When this order caused further delays, a compromise was reached wherein the registration of titles proceeded and deposits in the name of landowners were created in government banks. The title of the landowner was not cancelled but annotated to state that the land was covered by the CARP and the names of the ARBs were indicated in the title (Ballesteros 2003).

Another complication ensued with the issuance of collective CLOAs, a feature previously absent in the earlier land reform law. A collective CLOA is issued in the name of a farmer’s organization or cooperative. While this scheme allowed for easier registration of titles since the transfer is made only to a single juridical entity, individual ARBs cannot determine their holdings since subdivision surveys are not needed for the issuance of a collective CLOA. Furthermore, most of the farmer’s organizations were fictive and were formed in mere compliance with the law and the members were actually acting as separate individuals rather than functioning as collectives. Collective CLOAs also meant ‘imperfect’ ownership since not even a majority can sell, mortgage or use the title as collateral to obtain formal credit. About 18% of all CLOAs issued were collective titles which cover about 1.6 million hectares or almost half of the total land area covered by CARP (Ballesteros 2003).

Other restrictions on the conveyance or transfer of lands acquired through CARP indicated other dimensions of rights ‘imperfection’. There was a prohibition on any form

of transfer within 10 years of award and upon full payment of purchase price. In addition, a 5-hectare ceiling on ownership was set and only qualified ARBs can buy awarded land. Notwithstanding (or one can even say because of) these prohibitions, informal and quasi-formal land market transactions flourished. These included land pawning transactions, direct sales, sales through waiver of rights, sales through pawning, and sales through land conversion arrangements. Some of these transactions are formally documented and allowed by the DAR but some are covered by mere oral agreements. Ultimately, these transfers are 'illegal' and contestable and the risk of losing land rights is high since contracting parties have limited legal protection in cases of conflict (Ballesteros 2003; Ballesteros and de la Cruz 2006).

The opposition of affected parties, especially landowners, also adversely affected the program's implementation. The CARL offered an option for a voluntary land transfer (VLT) agreement whereby the landowner and tenant(s) agree to a direct purchase. This option practically legalized program evasion by landowners. It has been reported that most VLTs were faked sales to children and relatives of landowners (Borras 2002). Field studies of land reform villages indicated that land ownership concentration did not improve due to these evasion tactics (Ballesteros and de la Cruz 2006).

The local communist insurgency also opposed the program for various reasons. Apart from the revolutionary logic of opposing a state-sponsored program, the insurgents were also wary of independent peasant initiatives. Franco (2005a and 2005b) and Borras (2006) document how the New Peoples Army (NPA) opposed the assertion of an independent peasants' organization of their land rights under CARP in the Bondoc peninsula in Quezon province. The case study suggested that the NPA forged an 'unholy' alliance with the landlord for guns and cash. In the process, several peasant leaders were reportedly killed by the insurgents. However, another Bondoc case represented a successful acquisition of land rights of organized peasants working in tandem with reformist allies within and without the country, including local officials and state bureaucrats (to be discussed further in a later section of this paper).

Nowhere is the problem of land rights and agrarian reform more starkly illustrated than in Hacienda Luisita, the family estate of the powerful Cojuangco family which President Corazon Cojuangco Aquino (1986-1992) belonged to. The family patriarch took out loans on two separate occasions, each guaranteed by government financial institutions on the condition that the land would be redistributed to the peasants. The redistribution should have happened in 1967 and 1978 and the farmers turned to the courts for redress. In 1985, after a long legal battle, the courts ordered that the land be given to the farmers. During the 1986 snap presidential elections, incumbent President Ferdinand Marcos used the case as an election issue against Aquino. However, Corazon Aquino was declared President of the Republic in February 1986 when the Marcos dictatorship was dismantled by a bloodless popular uprising. In spite of the court's 1985 decision, the Cojuangcos signed in 1988 a stocks-for-land agreement with their farm workers. There were allegations that many farmers were forced to agree and give up their land rights. There were also complaints that returns on the stocks were meagre and could not support the farmers and their families. In July 2005, the Cojuangcos broke politically with President

Gloria Macapagal-Arroyo when Corazon Aquino asked for her resignation. Afterwards, the Department of Agrarian Reform (DAR) started issuing adverse rulings against the Cojuangcos. Things came to a head in November 2005 when thousands of peasants went on strike in protest over the 1988 agreement. When a massive military-police force moved to disperse them, violence ensued and several farmers were killed. In 2006, the Cojuangcos asked the Supreme Court to stop the DAR from distributing the estate to the farmers claiming there was no proof that the farmers wanted the stocks-for-land agreement to be rescinded. The case is still pending before the high tribunal (Evangelista 2007).

The future of agrarian reform in the Philippines is on the balance as funding for CARP will end on 2008. To date, the target of redistributing 3.4 million hectares to agrarian reform beneficiaries has not been reached. How the incoming 14<sup>th</sup> Congress responds to President Arroyo's call for a new agrarian reform program amidst the clamor of peasant groups will be a major factor in the continuing struggle for peasant land rights.

### *Poverty and property rights of indigenous peoples in the Philippines*

Our previous discussion showed how the imposition of foreign (through colonialism) property rights regimes and subsequent enactments of the post-colonial state have combined to either deprive or weaken the indigenous peoples' rights over their ancestral lands. To this end, it is important to establish whether this is the main cause of poverty among the indigenous peoples in the country.

The Asian Development Bank (ADB) believes there is no reliable data available at the national level as regards the relationship between ethnicity and poverty. Using extrapolation methods, ADB (2002) found tentatively that save for a limited number of regions, indigenous peoples' (IPs) are not likely to comprise the absolute poorest groups in the Philippines. The incidence of poverty in IP regions did not improve substantially between 1988 and 1997 and has in fact worsened in regions that registered the highest growth rates in average income. However, it is important to note that Philippine indigenous notions of 'poor' and 'poverty' generally differ from conventional understanding. IPs often emphasize that they have resources coveted by outsiders. Thus, impoverishment can be defined as the deprivation of resources—the dispossession from ancestral domains and the consequent breakdown of communal structures and institutions—that they already have rather than the absence of additional resources that might add to their well-being (Plant 2002).

The Spanish colonizers introduced the notion that land was a commodity which can be held as property, bought and sold, with the owner having the right to use and dispose of it as he sees fit. The American colonial government sustained this concept and also upheld the idea that the state had primary decision-making power over the land and the natural resources it contains. Several laws and policies were enacted to institutionalize these precepts, the earliest being the 1902 Land Registration Act No. 496, which required private persons and corporations to register the lands they occupied. Afterwards, several land acts were passed to encourage migrants to settle in the then-sparsely populated parts

of the country like Mindanao. For example, the 1903 Public Land Act No. 926 allowed individuals and corporations to apply for homesteads in Mindanao. These laws did not consider the situation of the frontier-dwelling indigenous peoples (IPs). For one, the concept of having to register their land was totally alien to the latter since land was held in common by their communities. In contrast, colonial land laws recognized only individuals and corporations as juridical entities. The IPs were also disadvantaged by their illiteracy; registration required a written application signed and sworn to by the applicant (Padilla 2007).

American colonial land laws consequently classified many of the indigenous peoples' lands as 'public' or 'unoccupied, unreserved, unappropriated agricultural lands' that government could hand over as homesteads to settlers. While during the three centuries of Spanish colonial rule, Mindanao did not experience much in-migration, this changed during the American colonial period as settlers from Luzon and Visayas were attracted by the free homesteads. By 1948 (after only two years of the Philippine Republic's existence), Mindanao provinces which previously had IPs as their majority population no longer did so (Rodil 1992).

The laws of the Philippine Republic up to 1986 showed contrary trends towards recognizing the IPs and their special ties to the land. The 1973 Constitution, released under the Marcos dictatorship, acknowledged the IPs' unique character. However, Marcos also issued Presidential Decree No. 705, which classified land with a slope of 18% and over as inalienable public forest land and thus placed most of the areas occupied by IPs beyond their control. Another decree (PD No. 410) had expressed the intention of protecting the ancestral lands of IPs but no implementation orders were issued. After the dictatorship's fall, the 1987 Constitution guaranteed the protection of IPs' rights to their ancestral domains and confirmed the validity of customary laws related to the land. The CARL of 1988 exempted IP areas from agrarian reform<sup>4</sup>. But it was only in 1993 when the Department of Environment and Natural Resources (DENR) issued Administrative Order No. 2 that IPs gained documentary recognition of claims to their ancestral domains. Under this order, an indigenous community can apply for a certificate of ancestral domain claim (CADC) for as long as it could ensure the proper protection and management of natural resources within the domain. Under this order, 85 CADCs covering 970,908 hectares had been awarded (Padilla 2007).

The enactment of the Indigenous Peoples Rights Act (IPRA or Republic Act No. 8371) in 1997 represented the high point of the IPs' struggle. The IPRA created the National Commission on Indigenous Peoples (NCIP) which was empowered to issue certificates of ancestral domain titles (CADTs) and certificates of ancestral land titles (CALTs).<sup>5</sup> The property rights created under IPRA were unique; ancestral domains are private but community property which belongs to all generations of IPs and therefore cannot be sold,

---

<sup>4</sup> This legal provision has not prevented the issuance of CLOAs on ancestral lands leading to disputes and conflicts between indigenous communities and agrarian reform beneficiaries.

<sup>5</sup> Ancestral domains are lands that IP communities own collectively while ancestral lands are areas claimed by indigenous individuals, families, and clans (ADB 2002). Ancestral domains are more extensive than ancestral lands (Padilla 2007).

disposed or destroyed. The rights of ownership and possession of IPs to their ancestral domains include rights of ownership, right to develop the land and its natural resources, right to stay in the area and against involuntary displacement and, in case of displacement, the right to return to the same area, right to regulate the entry of migrants, right to safe and clean water and air, right to claim parts of the ancestral domains which have been reserved for various purposes (except those reserved for common and public welfare and service) and the right to resolve land conflicts in accordance with customary law (IPRA, Sec. 7). With respect to ancestral lands, they have the right to transfer land or property rights to and among members of their community, and to redeem those lands that have been acquired from them through fraud, within a period not exceeding 15 years from date of transfer (IPRA, Sec 8). Section 12 relaxes the ‘time immemorial’ proviso by recognizing ancestral lands held for not less than 30 years prior to IPRA’s effectivity, provides that IPs have the option of securing individual title to ancestral lands under Land Registration Act 496, and included ancestral lands even with an 18% slope as alienable agricultural lands.

However, the law also provided significant limitations on IP property rights. Section 56 provided that all pre-existing property rights within ancestral domains shall be recognized and respected. The law therefore automatically retains land leases, contracts and permits granted to mining companies, loggers, ranchers, among others. Only upon the expiration of the contractual usufruct rights of non-IPs can the IPs (awarded with CADTs) decide whether they will be extended. Furthermore, the law also declares that IP rights to development of natural resources within ancestral domains are only priority rights. Non-IPs can use and develop these resources for up to a period of 50 years. Section 58 refers to environmental protection and allows for the priority use of ancestral domains as critical watersheds, mangrove areas, wildlife sanctuaries, and other protected areas provided IPs fully participate in deciding this priority.

Eminent domain is the legal prerogative of the state to appropriate or compulsorily purchase landed property for a government project or public purpose or interest. IPRA provides that IPs cannot be relocated from their ancestral domains without their free and prior informed consent (FPIC) except through eminent domain.<sup>6</sup> The law’s limitations stem from the adoption of a fundamental notion—that of public domain. Critics aver that public domain is the outcrop of a colonial doctrine (the so-called Regalian doctrine) that all lands that lacked proof of ownership when Spanish colonialists arrived in the archipelago in the 16<sup>th</sup> century, automatically came into the possession of the estate. They contrapose the notion of ‘native title’, which argues that ancestral domains were never under the colonial state’s jurisdiction.<sup>7</sup> IPRA actually recognizes that ancestral

---

<sup>6</sup> If IPRA provides exemption of ancestral domains from the state’s power of eminent domain, it will violate the constitutional proviso of ‘equal treatment before the law’ since non-IP lands are not exempt.

<sup>7</sup> Apparently, the debate over ancestral domain claims is not new. The American colonialists administered the indigenous areas of Mindanao and Sulu separately from the Christianized areas of the archipelago in recognition of the fact that the Spanish colonialists did not have full and effective control over the same areas. In 1904, the so-called *Cariño* doctrine surfaced the concept of ‘native title’ and argued that the Regalian doctrine itself states that IP lands are private lands and were not part of the public domain (Information offered by LSK representative, FGD with select representatives from government, CSOs, and academe, 1 June 2007, Ateneo de Manila Loyola, Quezon City).

domain rights of IPs rest on native title. Nonetheless, these lands must be considered part of the public domain and be under the jurisdiction of the post-colonial state. Otherwise, the Republic cannot pass any law pertaining to these lands if it does not have jurisdiction over them. If the Philippine state does not have jurisdiction, then another state controlled by IPs must be created to recognize and protect IPs ancestral domain rights. Absent such an alternative state, IPRA represents a pragmatic compromise between majority and minority rights and interests.

Similar problems that plagued the agrarian reform program also adversely affected IPRA's implementation including identification of beneficiaries, inadequate budgets, agency capture, and the opposition of affected parties including settlers, corporate interests and armed anti-state groups. If identification of agrarian reform beneficiaries in the lowlands proved to be difficult, the problems multiplied with respect to ancestral domains in the frontiers<sup>8</sup>. A clear understanding as to who the indigenous peoples are and where they can be found (and what lands constitute their ancestral domains) is both a technical and administrative matter. Apart from being hobbled by meagre funds, the NCIP also lacks adequate technical knowledge and skilled personnel. Padilla (2007) also relates how settlers and corporate interests together with conniving national and local officials subvert IPRA and operate business ventures within ancestral domains. The usual device is for officials to certify that a certain area is not populated by IPs or is not part of a claimed ancestral domain. Divide and rule tactics are also resorted to wherein scab IP leaders and communities show compliance with the 'free and prior informed consent' (FPIC) provision of the law.

The FPIC provision of the IPRA presents good opportunities for strengthening the bargaining position of indigenous communities vis-à-vis external interests such as corporations who wish to utilize the resources within ancestral domains. As provided for by the law, FPIC means the 'consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community' (IPRA Sec. 3). The consensus proviso is a strong measure since the consensus of everybody in the community is required to allow the entry of external interests into the ancestral domain for extractive activities. It also enables the indigenous community to forge the most favourable contractual terms with external parties. It may also be used against the misrepresentation of scab leaders and community factions. For the full benefit of FPIC to be realized, however, the IP community must be united and organized and indeed informed of the pros and cons of a proposed project. This is a necessity since the FPIC consensus proviso also has a downside: a single person within the community can veto a

---

<sup>8</sup> The NCIP executive director reported that the initial problem of beneficiary identification has since been resolved. The greater problem, she intimates, is the lack of coordination between different government agencies issuing administrative titles to land. For this reason, competing tenure and/or ownership instruments were issued over the same land area and have led to disputes between IPs and agrarian reform beneficiaries.

project even if it was deemed beneficial and equitable by the rest of the community. The assent of the veto player may have to be obtained through side-payments.<sup>9</sup>

The opposition of armed anti-state groups like the New People's Army and the Bangsa Moro movement to the IPRA must be explained. Padilla (2007) avers that for the NPA, IPRA puts its natural constituency, the poor or landless peasantry, at a disadvantage in the competition of land on the frontier. Furthermore, the titling of ancestral domains threatens to remove large areas theoretically available from the NPA's own revolutionary land reform program. On the ground, NPA fighters had continuously cautioned IP communities against engaging in the ancestral domain titling process. In Mindanao, NCIP surveyors and community volunteers are warned and harassed and technical mapping equipment were confiscated. Affiliated legal organizations have also consistently rejected and opposed ancestral domain delineation and the IPRA. To them, the only legitimate issues to be raised with respect to the frontier lands are the Philippine military's human rights violations during anti-insurgency operations. Consequently, they demand the scrapping of IPRA.

Another political force, the Bangsa Moro armed movement for self-determination fears that indigenous land claims in Mindanao might jeopardize its own aspirations for their own 'ancestral territory'. One must note that indigenous minorities in Mindanao are generally composed into two groups—the Islamized peoples who call themselves Bangsa Moro and the non-Islamized IPs known collectively as the *lumads*. As things currently stand, only the *lumads* have expressed interest in pursuing ancestral domain titling. The Bangsa Moro groups—the Moro Islamic Liberation Front (MILF) and the Moro National Liberation Front (MNLF)—have resorted to peace negotiations with the government in pursuit of their aims. The MNLF had forced an agreement with the government in 1996 while the MILF's negotiations with the government are currently at an impasse precisely on the question of ancestral territory.

Other unintended developments stemmed from IPRA's enactment. It has engendered disunities among the indigenous peoples. One source of dispute is how to view IPRA. The Cordillera Peoples' Alliance (CPA) for instance considers IPRA as a master act of deception given the persistence of the Regalian doctrine. On the other hand, IP organizations and supporting non-government organizations (NGOs) support IPRA while recognizing its imperfections. They see IPRA as a legal stepping stone towards further progress. The negative effects of IPRA are felt most at the community level. In the Cordillera, for example, there had been an increase in boundary disputes and conflicts over resources (e.g., water for irrigation). The IPRA also 'inspired' non-IP communities such as the Bantoanons in Romblon (migrants from Batangas) to claim imagined ethnic identities as a means to claim control over valuable land. There is also the view that these conflicts comes from the adoption of a generalizing concept of ancestral domain, that is, the notion that ancestral domain is a static or fixed concept of a communal territory, with persistence of indigenous socio-political institutions. The concept ignores

---

<sup>9</sup> This discussion on the implications of the FPIC provision of IPRA was suggested by Dr. Antonio de la Vina, dean of the Ateneo School of Government and member of the Empowerment of the Poor Project advisory panel.

the diversity and dynamism within many indigenous communities. It fails to recognize that many indigenous peoples have already adopted western property regimes and do not care much about domains. Still, some experts fear the IPRA could possibly lead to the privatization of the commons. These different views suggest that while progress had been achieved with the passage of IPRA, much needs to be done. There is apparently a need to adopt an area- and culture-specific ancestral land/domain policy that takes local nuances, processes and tenurial systems into consideration (ADB 2002).

### *Housing and the urban poor*

Experts have highlighted vulnerability, rather than long-term and steady deprivation, as the key concept in understanding urban poverty. The urban poor are managers of complex asset portfolios but which are exposed to shocks and stress, and the poorer the household, the lower its ability to cope with such crises. Urban households cope by diversifying their income sources (including illegal ones). However, the one asset they can least afford to lose, is access to housing in the city. However small or squalid a shanty may be, it represents probably the largest investment its owners have ever made. Its loss through eviction often leads to a downward spiral of homelessness, marginalization and further poverty. Thus, insecure housing and land tenure is the main source of vulnerability for the urban poor (Amis 1995, Berner 2000). Housing can be seen as a factor of poverty, an indicator of poverty, and a cause of poverty. Quality of life is affected by crowding, noise, dirt, and inadequate facilities; one's health is affected by lack of sanitation and unsafe water supply while future prospects are affected by restricted access to education.

While research indicates that not all residents of informal urban settlements are poor, only poor people generally accept the above conditions. The lack of supportive infrastructure and lack of security (because of the threat of demolition) are disincentives or barriers to entrepreneurship and investments and could help perpetuate urban poverty (Berner 2000). Urban poverty is largely determined by land supply and allocation and there is actually no housing gap even among the urban poor except for the minority who live on the streets. It is more a dearth of suitable and affordable land for housing and the crucial dividing line in the city separates those who have legitimate and secure access to urban land, and those who do not.

Land prices especially in the urban areas of the country have been rapidly and continuously rising in the course of globalization and commercialization and have led to greater competition over urban land. In the 1990s, land prices in the central business district of Manila were rising by as much as 50% annually while the prices of raw land rose at 25% per year. The widening disparity between soaring land prices and stagnating urban real incomes is at the root of the urban poor problem. Security of tenure through land ownership has become increasingly difficult to obtain. Most urban poor respond to the shortage of affordable land by 'squatting' or 'informal' occupation or settlement on available (meaning idle, unfenced, or unguarded) public or private land (Porio and Crisol 2004). Inadequate income is not the only factor responsible for the proliferation of urban informal settlements. The influx of rural migrants into the urban areas for various

reasons is a key factor. In Metro Manila for instance, while the poverty incidence is 17%, the informal population is estimated at 40 percent. Compared to other countries with same per capita income, the country has more people living in informal settlements (Yu and Karaos 2004).

Property and land tenure security in the Philippines are covered by the New Civil Code of 1950 and this system makes it very difficult for urban poor informal settlers to obtain tenure security. Under this law, tenure security is largely defined in terms of land ownership proven by possession of a formally registered title. Thus, informal settlers on public and private lands do not have any right at all to occupy the land and to enjoy whatever benefits are derived from such occupation. To control the growth of informal settlers, different political administrations have responded with a range of policies from eviction and criminalizing squatters to the provision of land and housing. As early as 1939, President Manuel Quezon bought large tracts of land in what will soon to be known as Quezon City for housing projects but these became middle class settlements. From the late 1960s to the mid-1970s, the Marcos administration continued to acquire lands outside Manila to relocate informal dwellers. Presidential Decree No. 772 was issued in 1975 (and was in existence until 1997), which declared squatting a crime and punishable by imprisonment or fine. During this period, the main policy followed was mass eviction and relocation of squatters to sites some 30-40 kilometers outside the city and placing them in extremely overcrowded bunk- or row-houses, or even simply dumping them. Not only did this prove to be inhumane but ineffective as well. The people who had once been attracted by the chances and opportunities in the metropolis simply drifted back (Porio and Crisol 2004, Starke 1996, Berner 2000).

The martial law administration also adopted another tack partly in response to the failure of the relocation/eviction programs. One approach was through a slum upgrading program. But because of the absence of systematic implementing rules and regulations, only a few of informal settlements were actually upgraded (Porio and Crisol 2004). The National Housing Authority (NHA) was created in 1975 with the express goal of serving the housing needs of the poorest 30% of the population. Its performance during the Marcos years was quite dismal; between October 1975 and December 1985, a total of 4054 new housing units, or some 400 per year, were constructed in NHA projects throughout the country (Berner 2000). The Ministry of Human Settlements was supposedly created to coordinate all of the government's efforts but it was more a political vehicle for the ambitious First Lady Imelda Marcos who wanted to succeed her husband as the nation's leader.

The post-martial government of President Corazon Aquino initially responded to the urban housing problem through a mortgage financing program. The Community Mortgage Program (CMP) was formulated in 1987 when a number of NGO leaders served in government. The CMP is basically a land consolidation and upgrading scheme, combined with a program which gives informal settlers access to formal credit. As a tenure instrument, CMP allowed poor people to acquire land and build houses without putting up collateral on their own since the land to be acquired served as the collateral for the mortgage loan. In a sense, the CMP was an instrument for legalizing unauthorized

settlements (through on-site development) or for informal settlers to acquire tenure security in relocation sites. CMP beneficiaries are required to be organized as the land titles are transferred to associations rather than individuals. After residents and the respective landowner have agreed on a price, the land is paid through a loan from the National Home Mortgage Finance Corporation (NHMFC) which is to be repaid over a period of 25 years. Loan amounts ranged from P30,000 to P100,000 for every household which can be used to buy the plot or build and improve housing structures.<sup>10</sup> NGOs were functional in all stages of the process: they inform the informal settlers about the legal requirements (e.g. official registration of the association), assist them during negotiations with the landowners, and offer services like surveying and legal advice. In all, the CMP has benefited about 137,000 households in over 1,000 urban and rural poor communities (Berner 2000, Porio and Crisol 2004).

The CMP was quite successful in Manila and other Philippine cities since it satisfied two diverse constituencies. The landowners can sell their land and revive 'dead' capital even at reduced prices, without the costs and risks of evicting the informal settlers. The informal settlers can buy security and prevent the incalculable risks of eviction. However, limited government funds and available loan values have not been able to cope with rising urban land prices. With the increasing scarcity of affordable land, the program appears to be no longer viable in highly urbanized areas where it is most needed. In addition, the program was plagued with the usual delays in processing of papers and decreasing collection rates from CMP beneficiaries (Cacnio 2001).

Similarly, the CMP has several unintended consequences including divisive conflict within urban poor communities. Berner (2000) notes that the division is between those who could pay and those who could not afford to continue paying their loan amortizations. Since the association holds common title to the property, it now becomes an instrument only of the paying beneficiaries. Those who are able to pay must also pay for the land of the drop-outs since the private owner sold the entire settlement instead of mere parcels. Thus, this has led to conflict between the association and the new 'squatters' and the paying beneficiaries want to evict the non-paying ones. In cases where poor beneficiaries who cannot keep up with amortizations are forced to leave and sell their housing rights, the usual buyers come from the more prosperous classes. As the settlement regularises, the processes of gentrification and social stratification proceed apace, as regular settlers make substantial investments in home and land development.

In the early 1990s, the passage of the Local Government Code (1991) and the Urban Development and Housing Act (UDHA) of 1992 marked the adoption of a more decentralized approach towards housing and urban development, integrating housing needs and urban poor participation in land use planning. Of immediate greater import to the urban poor are the UDHA's salient provisions. The UDHA provided compensation for housing demolished during evictions, provided informal settlers the first option to purchase the land they occupy, and required the availability of a relocation site with

---

<sup>10</sup> Key government informants report that CMP had two phases with P80,000 as the maximum loan amount in the first phase; and P180,000 in its second phase (FGD with select representatives from government, CSOs, and academe, 1 June 2007, Ateneo de Manila University, Loyola, Quezon City).

access to services before any eviction can take place. On balance therefore, UDHA recognized the property rights of the urban poor over their housing even if they did not own the land. Thus, informal settlers may not have rights to occupy the land but they are legally assured of housing in another location in case of eviction. In 1997, PD 772 was abrogated and squatting was de-criminalized.

Together with the growth of urban poor organizations and their political allies and the above-mentioned legal developments, a certain robustness of the property 'rights' of the urban poor have accrued through the years. While informal settlers do not have legal rights to the land they occupy, they enjoy *de facto* owner-like rights. They build their housing structures as well as develop their plots. If and when they decide to move they are able to 'sell' these structures. In cases of eviction, they are either compensated for these structures or assured of a slot in a relocation site. In most cases, they can also access services such as water and electricity. Legal intricacies as well as political realities leave actual landowners relatively powerless for they cannot regain possession of the land without long and costly legal battles, and eventually financial compensation for the informal settler. Owners face the interference of local politicians who have long nurtured the vote-rich 'banks' in urban poor settlements. All these factors give relative security and protection to the informal settler.

Of course, the security afforded by private title is rather absolute but is costly in terms of money and time. To this end, the government has utilized a few intermediate instruments of tenure such as presidential land proclamations, occupancy leases, and local ordinances. Land proclamations cover informal settlers on public lands and have improved tenure security of a large number of urban poor in a short time with minimum resources. Land proclamations assure informal settlers that they will not be evicted and social services will be improved while the formalization of plot ownership is being processed. President Arroyo had made use of this instrument to a greater degree than her predecessors and during her first two years, these proclamations have reached 645,910 families living in 33 informal settlements in Metro Manila and elsewhere covering more than 22,000 hectares (Murphy 2002). As a tenure instrument, land proclamation seems to be the most impressive. However, its application is limited since most squatters are occupying private land. Furthermore, it is still oriented towards ownership and land titling and the search continues for easier intermediate solutions like long-term leases and guarantees against eviction. It would be a mistake, however, to think that presidential land proclamations were entirely the initiative of the President. Murphy (2002) points out that except for a case where the proclamation was made to woo the political constituency of a political rival<sup>11</sup>, most proclamations were the result of the work of urban poor federations and NGOs over many years.

The need for alternative secure tenure arrangements is indicated by the thriving informal urban land markets in the country. According to an Asian Development Bank study, about 60-70% of the total households in various secondary cities in the country are

---

<sup>11</sup> This was the case for the land proclamation made by President Arroyo covering the Baseco estate to win over the supporters of deposed President Estrada after a failed uprising against her government in May 2001.

believed to have been acquired through the informal market (ADB 2001). The existence of the informal market is largely a function of the difficulties and high costs of obtaining legal title to land. Informal land transactions are based not on the sale of the title but on the sale of land use rights. It is often understood by the parties involved that the legal title may belong to a third party unconnected with the informal seller and, therefore, the buyer may at some point risk eviction by the legal owner. However, the complexities and costs of eviction afford informal buyers a modicum of tenure security. Some transactions involve land caretakers and informal lease arrangements. In other cases, squatting syndicates use fake or spurious titles to sell housing or usufruct rights.

A case study of Cebu City (Thirkell 1996) reveals the phenomenon of ‘downward raiding’ where rising urban land prices induce middle-income and even high-income families to buy out the land use ‘rights’ of poorer households living in informal settlements. A comparison of costs for formal and informal housing proves that the decision to buy into a slum area is not reckless but makes sound economic sense. The total cost of an informal housing unit is one-tenth of the comparative formal scheme. Thus accessible prices for informal plots and low eviction rates (due to high costs of eviction) in Cebu City make informal housing appealing to a broader range of urban families. The study also shows that poverty and the lack of resources render urban poor families more vulnerable to crisis-selling which in turn exploited by more wealthy groups to force low selling prices. Urban poor sellers often sell ‘rights’ because of emergencies and more often cannot regain the ‘land’ for the price received. They are then forced to seek alternative housing options or lands in poorer locations. While the study does not indicate that it has happened, the possibility of repeat emergency sales cannot be discounted. Unlike informal transactions involving agrarian reform beneficiaries in the countryside, urban informal markets are instances where even the absence of authentic rights-based documents does not impede negotiability.

### *Property rights of fisherfolk*

The Philippines is a Southeast Asian archipelago of more than 7,100 islands. Although fish catch in Philippine waters is highly seasonal, the country is the 12<sup>th</sup> ranked fish producing nation in the world, accounting for 2.3 million metric tons or 2% of the world’s total catch. It has 220 million hectares of territorial waters and with a coastline of almost 17,500 kilometers. However, traditional fishing grounds only cover some 126,500 square kilometres. Coastal waters support more than 450 coral and 2300 fish species but only an estimated 30% of coral reefs and half of the mangrove forests are intact. Fish is a major source of protein for Filipinos and accounts for the third largest amount of food consumed yearly, after rice and vegetables. However, the municipal fisheries sector had sustained declines in catch (by as much as 4.3% per year from 1993 to 1997) due to the open access nature of coastal and inland waters, lack of sustained livelihood opportunities, and a large domestic and international market for marine products. Contributing to decline in production and biodiversity is environmental damage caused by pollution (through mine tailings and chemical effluents) and siltation (induced by upland deforestation, mangrove deforestation, and conversion of mangrove

forests into fishponds), harmful fishing practices (e.g., blast and cyanide fishing, etc), and ineffective implementation of fishery laws (Fernandez, Matsuda and Subade 2000).

In the past, fishery policy prioritized increased fish production based on the notion that the country's waters (including municipal waters were under-exploited). Since the fall of the dictatorship in 1986, it had shifted to resource protection, conservation, and rehabilitation on one hand, and community empowerment and sustainable management on the other. Complimenting constitutional provisions on the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making, the Local Government Code of 1991 devolved from the national government functions such as agricultural and fishery services, reforestation, social welfare, and environmental management, among others. Development councils (at various local levels from village to province) were created and mandated to form, consolidate, and implement annual development and management plans for their land and coastal resources. Local governments have also been given regulatory powers in managing municipal waters.<sup>12</sup>

To poor fisherfolk, the key concern is the use and exploitation of municipal waters. The passage of RA 8550 or the Fisheries Code of 1998 is a milestone with the stated nationalist policy "to limit access to the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens". The same code provided for the preferential (but not exclusive) use of municipal waters by municipal (i.e. small) fisherfolk.<sup>13</sup>

In the said law, municipal fishing (as opposed to commercial fishing) refers to fishing within municipal waters using fishing vessels of three gross tons or less, or fishing not requiring the use of fishing vessels. Municipal fisherfolk are persons directly or indirectly engaged in municipal fishing and other related fishing activities. Municipal waters include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under RA 7586

---

<sup>12</sup> These powers include: (1) enforcement of fishery laws in municipal waters including the conservation of mangroves; (2) issuance of licenses for the operation of fishing vessels of three tons or less; (3) granting of fishery privileges to erect fish corrals; oyster, mussel or other aquatic beds; or *bangus* (milkfish) fry areas; (4) granting the privilege to gather or catch *bangus* fry, prawn fry or fry of other fish species; (5) enactment of ordinances penalizing the use of deleterious methods of fishing such as blast or toxic fishing; (6) protection of the marine environment and imposition of appropriate punishment for acts that endanger the environment such as blast fishing; (7) authorization of the establishment and operation of ferries, wharves and other structure; (8) regulation of the preparation, sale, and public consumption of fish; (9) approval of measures and adoption of quarantine regulations to prevent the introduction and spread of diseases; and (10) issuance of permits and licenses within municipal waters to construct fish cages; gather aquarium fishes; gather capiz shells; gather or culture shelled mollusks, establish seaweed farms; establish or culture pearls; transport fish and fishery products; and declare 'closed fishing seasons'.

<sup>13</sup> Other provisions of the Fisheries Code of 1998 are of interest to small fisherfolk. Sec. 24 mandates the DENR and the LGUs shall provide support to municipal fisherfolk through appropriate technology and research, credit, production and marketing assistance and other services. Sec. 25 stipulates that fishworkers shall be entitled to the privileges accorded to other workers under the Labor Code, Social Security System, and other benefits under other laws or social legislation for workers. Sec. 34 provides incentives for municipal and small scale commercial fisherfolk to include at least 10% of the credit and the guarantee funds of GFIs for post-harvest and marketing projects.

(The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and 15 kilometers from such coastline.

As mentioned earlier, the municipal and/or city government shall have jurisdiction over municipal waters. In consultation with the Fishery and Aquatic Resources Management Council (FARMC), the municipal/city government shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within its respective municipal waters. The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to RA 7160 by the *Sanggunian* (legislative council) of the province which has jurisdiction over the same. This last provision had given rise to conflicts between local governments.

The municipal or city government is also authorized by RA 8550 to issue an appropriate ordinance that allows small and medium commercial fishing vessels to operate within the 10.1 -15.0 kilometer area from the shoreline in municipal waters, provided no commercial fishing is done in municipal waters with depth of less than seven fathoms. Sec. 45 provides that public lands such as tidal swamps, mangroves, marshes, foreshore lands and ponds suitable for fishery operations shall not be disposed or alienated. Fishpond lease agreements (FLAs) may be issued for public lands that may be declared available for fishpond development primarily to qualified fisherfolk cooperatives or associations. Sec. 51 provides that fish pens, fish cages, etc. can be constructed and operated only within established zones duly designated by LGUs in consultation with the concerned FARMCs. In addition, not over 10% of the suitable water surface area of all lakes and rivers shall be allotted for aquaculture purposes like fish pens, fish cages, etc. Fisheries and Aquatic Resources Management Councils (FARMCs) shall be established in the national level and in all municipalities/cities abutting municipal waters and shall be formed by fisherfolk organizations/cooperatives and NGOs in the locality and be assisted by the LGUs and other government entities.

A particular provision of the Fisheries Code is of special interest to landless small fisherfolk.<sup>14</sup> Sec. 108 enjoins the DENR to establish and create fisherfolk settlement areas (in coordination with concerned government agencies) where certain areas of the public domain, specifically near the fishing grounds, shall be reserved for the settlement of municipal fisherfolk. However, this provision does not vest ownership rights to any fisherfolk. Nonetheless, problems surfaced with respect to this provision centered around the availability of land for fisherfolk settlements. Zones known as 'salvage areas' have been designated by the NIPAS law (RA 7856) near the fishing grounds and are supposed to be protected and unavailable for settlement. Furthermore, a joint administrative order issued by the DENR and the Department of Interior and Local Government ruled that the

---

<sup>14</sup> This concern was raised by fisherfolk leaders and representatives during the focus group discussions with Pos and NGOs in Cebu City, 19-22 May 2007.

fisherfolk settlement area should be established after the salvage zone. Problem is most of these particular areas are already titled to private owners. In short, while Sec. 108 has whetted the poor fisherfolks' appetite for settlement areas, available land for the purpose seems to be in short supply.

The possible conflict between the Fisheries Code and the Agriculture and Fisheries Modernization Act (AFMA) is another poor fisherfolk concern. The AFMA clearly makes industrialization as the main objective of modernization of the agriculture and fisheries sectors. The modernization of the fisheries sector would however entail increases in the utilization of limited coastal space and more efficient extraction methods and is therefore more likely to increase the rate of destruction of vital habitats and the exploitation of resources beyond sustainable levels. AFMA creates Strategic Agricultural and Fisheries Development Zones (SAFDZs) for the purpose of increasing production. These zones present enormous potentials for clashes with the framework of decentralized and localized fisheries management under the Fisheries Code and the Local Government Code.

#### *Community-based natural resource management models and experiences*

The Philippines is apparently among the pioneers in the world in community-based natural resource management (CBNRM) defined as a “process whereby local people and communities organize themselves and play a central role in identifying their resources and their development priorities, and in implementing natural resources management activities” (CBCRM Resource Center 2003). Evolving from the participatory development paradigm which sees people as both the key actor and beneficiary of the development process, CBNRM is often contrasted to the state-centered approach, wherein public officials and agencies lead in formulating policies, choosing management technologies, and implementing resource management programs. This approach argues that people who actually use a given resource and had accumulated knowledge from their regular interaction with the natural environment, are in the best position to protect and manage it (Ferrer, Cabaces and Polotan-de la Cruz, 2003; Ferrer and Nozawa 1997).

The country has gained rich experience in CBNRM with its few decades of practice in various environs. In coastal areas around the country, community-based coastal resources management (CBCRM) has gained a substantial following and some successes since its beginnings in the early 1970s (CBCRM Resource Center 2003). The Philippines also joined other tropical developing countries during the 1970s in adopting people-oriented forest management as the old industrial forestry paradigm failed to arrest alarming deforestation rates or to provide benefits to the rural poor (Duthy and Bolo-Duthy 2003). The failure of the old forestry paradigm is highlighted by the transformation of the country from net wood products exporter to net importer (Forest Management Bureau 1997).

A number of common areas of success and positive outcomes have emerged from the growing literature even while there has been a wide diversity in actual implementation. CBNRM have resulted in community involvement and empowerment, contributed

significantly towards the institutionalization of locally-generated management practices, effectively protected critical habitats, helped ensure a measure of livelihood security, and promoted active engagement of communities and the poor in governance mechanisms and processes.

Key to the growing adoption of the CBNRM approach in different locales within the country was the steady flow of appropriate legislation and related instruments. Apart from the Local Government Code, those of key importance include the NIPAS Law of 1992 (RA 7586) which recognized the crucial role of communities in the management of protected areas. Executive Order 263 (signed on 25 July 1995) adopted the Community-Based Forestry Management (CBFM) as the strategy for sustainable forestry and social equity. Together with the IPRA of 1998, community ownership and stewardship of the forestlands was recognized. Executive Order 240 (issued in 1995) further institutionalized the role of poor fishers in resource management by creating the Fisheries and Aquatic Resource Management Councils (FARMCs). In addition, the promulgation of international conventions and agreements resulting from such initiatives as the Earth Summit (Brazil 1992) and financial support from multi-lateral and bilateral institutions also aided the process (Ferrer 2001).

Notwithstanding the innovations and successes with CBNRM, I believe the approach is better seen as an environmental protection and resource management program of the 'commons' rather than a property rights for the rural poor enhancement platform.<sup>15</sup> Most practitioners opined that tenure security is beyond the approach's scope and that property issues must be pursued outside the CBNRM framework (CBCRM Resource Center 2003). In a review of community-based forestry management and tenure instruments in central Philippines, Bullecer *et al.* (n.d.) found that instrument holders harbored insecurity and some nagging fears of being eventually ejected upon realization that the land cannot be ultimately owned. In addition, uncertainty remains regarding the process of renewing the instruments. As evidence of cracks in official property rights regime, there are lands eligible for community-based tenure but with absentee land claimants or 'owners'. Insecurity and uncertainty over tenure have led to would-be instrument holders (even if they are the actual tillers) to desist from applying for tenure instruments. In some cases, some actually are instrument holders but continue to respect the rights of their 'landlords' and forward the latter's share of the produce. Bullecer and her associates noted the absence of initiatives to engage absentee land claimants in a scheme to resolve the status of their claims.

---

<sup>15</sup> Rivera-Guieb *et al.* (2004) opined that CBCRM (as implemented by POs and NGOs) was first seen as instrument for social and political reform rather than as resource management tool. However, the adoption of the CBCRM approach by international funding bodies such as the World Bank and ADB steered the programs "to focus mostly on resource conservation and use local participation to increase the efficacy of their program delivery, rather than a real instrument for local empowerment". In fact, these evaluators believed that the coastal area experiences were more authentic (empowerment-wise) than the forestry since control of tenure and program funding remained securely with the national government agency (DENR). They called the CBFM a 'pseudo-empowering instrument' while remaining largely a government scheme on centralized control. This rather harsh opinion is shared by Harrison (2003)

At best, the varied CBNRM experiences in diverse environs should be seen as attempts to resolve overlapping and/or conflicting access and usufruct rights over state-owned natural resource assets and to simultaneously ensure their protection and judicious use. From the property rights angle, what needs to be done is to arrive at more durable resolutions of rival claims and enhance the security of tenure of poor people over these ‘commons’.

*Property rights of poor women and informal workers*<sup>16</sup>

Women and men are afforded formal equality in property rights in the appropriate laws of the land—the New Civil Code, the New Family Code and the Comprehensive Agrarian Reform Law (CARL or RA 6657). The Indigenous Peoples Rights Act (IPRA) is either neutral or gender-blind as it concentrates on communal rather than individual property rights. RA 6657 explicitly guarantees the equal right to ownership of land and equal shares of farm produce of rural women. However it can be observed that very few rural women were given Certificates of Land Transfer (CLTs), Emancipation Patents (EPs), and Certificates of Stewardship Contracts (CSCs) because the male farmer is recognized as tiller and head of the family. While the wife is recognized as a beneficiary by virtue of the provisions on conjugal property in the Family Code, the documents are usually issued to the husband. In the case of death or permanent incapacity of the tenant beneficiary, succession to the farm holding tends to be biased against the female children. Rules provide that the ownership and cultivation of the farm shall be transferred to the heir who is (a) a full pledged member of a duly-recognized farmers’ cooperative; (b) capable of personally cultivating the farm; and (c) willing to assume the obligations and responsibilities of a tenant beneficiary. The second qualification may prevent female children from becoming heirs since the male farmers are considered the genuine tillers of the land. Likewise family tradition affecting succession usually favors the male children. As a result more female children tend to be landless. Under the CARP, land distribution is accompanied by the provision of support services. Considering that rules on land distribution tend to be biased in favor of men, it follows that they have an advantage over women in availing these support services. The more likely impact to women of having no ultimate right to land or of being landless is their limited access to credit. Formal and informal lenders either require land as collateral or use land ownership as basis for evaluating credit worthiness of borrowers (Geron 1991).

Unlike the previous sections of the Philippine poor, vendors and other informal workers are more interested in usufruct rights and legal recognition than in absolute ownership of inanimate assets. Street vendors are worried about tenure insecurity in their vending places while tricycle, pedicab drivers and other informal transport workers face insecurity with their ‘franchises’ and terminals. They are often the prey of mulcting police officers and other enterprising agents of the state. Even when they pay bribes, they remain insecure. Vendors usually try to scamper away when police and other local officials demolish their stalls or seize their wares. The franchising and designation of terminals for informal transport workers have been decentralized under the Local Government Code. However, they still face insecurity since other government agencies such as the

---

<sup>16</sup> While it’s true that there are gender concerns in all sectors of the poor—peasantry, fisherfolk, indigenous peoples, etc—I find it necessary to have a separate discussion on the property rights of poor women.

Metro Manila Development Authority (MMDA) often disregard these arrangements in the name of cleanliness and urban order. For example, MMDA operatives seized and burned several pedicabs in Malabon supposedly because of their illegal terminal. Home-based workers share a predicament with the urban poor. Since they work at home, their livelihoods are insecure due to the dangers of demolition (Nicolas 2007).

The various sub-sections of informal workers have organized themselves and engaged the national government during the pursuit of President Fidel Ramos' Social Reform Agenda (SRA). Among their key advocacies were security of livelihoods and security in the workplace; legal recognition and protection and access to legal services; and provision of insurance and health services. As a result of these engagements, Executive Order 452 was issued by President Ramos in 1997 instructing local governments to register street vendors and to give them alternative working/vending areas. However, the drafting of EO 452's implementing rules and regulations (IRRs) was completed only in 2002 after President Arroyo assumed office.

Thus, in so far as informal vendors are concerned, they have gained official recognition with EO 452 and its IRRs. However, Nicolas (2007) complains they have gained only paper recognition while the law is virtually not implemented. The IRRs of EO 452 decreed that the Department of Interior and Local Government (DILG) cannot take care of the needs of the sector and that the different local government units (LGUs) must enact and enforce the appropriate ordinances for informal vendors. She notes that only Quezon City has an ordinance for street vendors and even in this case, there were implementation problems. Instead of consulting with the vendors, for example, the assignment of alternative vending places was handled completely by city officials. Additionally, she noted that the MMDA often act contrary to EO 452's provisions. For instance, there was no moratorium on the demolition of vendor stalls. Nicolas (2007) sadly confessed that her colleagues are disheartened by these developments and will temporarily stop their advocacies at the national level. She said they will concentrate their efforts in developing allies within specific LGUs in the country.

For his part, Lim (2007), presidential assistant for public transport affairs and former head of a national federation of tricycle operators and drivers associations, believe that franchising had been so politicized and chaotic since the Local Government Code (LGC) transferred franchising from a national agency to LGUs. Since local officials did not want to offend voters, Lim claimed that no quotas were set for franchises issued by LGUs. He said this has resulted in chaos and excess supply of tricycles in many places and reduced incomes for tricycle drivers and operators. He favors a return of tricycle franchising powers to a national government agency as a solution.

#### IV. Politics of property rights: case studies

In this section, several case studies from different parts of the country are narrated to illustrate the difficulty and the complexities of poor people's struggle for their property rights. These case studies illustrate the necessity for key factors—effective community organization and participation, enabling laws and supportive governmental agencies, strong support from external allies (including mass media), among others—for success. Together, they combine to highlight the political character (on top of its legal nature) of the struggle for property rights recognition and enforcement.

##### *Catulin and San Narciso; two contrasting cases from the Bondoc peninsula*

Two cases from the Bondoc peninsula in Quezon province offer contrasting examples of peasant assertion of property rights over land. The Catulin case ended with the successful redistribution of land to several tenants who, together with their allies and supporters, pursued an imaginative legal-political strategy. The San Narciso case, meanwhile, featured a failed effort by peasants inspired by the Catulin success, faced by an unholy and hostile landlord-communist insurgent alliance, an indifferent local police and military still locked into an anti-insurgency mode (and therefore suspicious of local peasant organizing and initiatives, and hobbled by the lack of external allies.

The Catulin case was an agrarian dispute between a prominent local landowner and some 45 tenant-households involving a 174-hectare property in the Catulin *barangays* in the town of Buenavista, Quezon province. The main legal issue was whether the land in question was agricultural and eligible for distribution to the tenant-cultivators under the CARL (RA 6657). The landowner made the dubious claim that it was an untenanted cattle ranch and reforestation area. The Catulin case marked the first success in Bondoc peninsula of organized peasants petitioning for compulsory acquisition of land. It was a clear illustration of how state law empowers or disempowers contending land claimants by according or withholding legal recognition and legitimacy. It also shows how the mobilization of different kinds of political pressure is necessary for successful assertion of rights.

An earlier failed attempt to initiate agrarian reform proceedings in the estate taught the peasants, who organized themselves into the SAMACA (*Samahan ng mga Magsasaka sa Catulin* or Farmers' Association of Catulin), that local agrarian reform officials could not be relied on to uphold the law. In this new bid, they by-passed these local officials and addressed their petitions first to national officials to initiate compulsory acquisition proceedings and then to provincial officials to force state agencies to defend them against landowner harassment. Once the national administrative and provincial quasi-judicial machinery had been activated, SAMACA used direct action to speed up proceedings and resist or enforce particular rulings. It also mobilized external allies and the mass media to assert their legal claims in public and increase their political influence at opportune moments. While the peasant group managed to obtain favorable legal rulings in their favor, their implementation remained a problem as the landowner fought off tenants' effort to occupy the awarded land. National agrarian reform officials had to call on the

support of other state agencies, most especially the armed forces and the police, to concretely consummate the peasants' legal victory. Finally, with a large military escort, the new landowners were able to claim possession and occupy their respective farms.

The SAMACA victory had spillover mobilizing effects on tenant communities across the Bondoc peninsula, including the neighboring town of San Narciso. In this contrasting case, the assertion of land rights would turn out to be an especially violent conflict between the 'landholder' and some 35 tenant-households over a 130-hectare area located in sitio Libas, barangay San Vicente, a remote upland village in the town of San Narciso. The main legal issues involved ownership of the land in question and its classification (which will turn determine which set of agrarian reform rules and procedures under RA 6657 would apply). The ownership issue was crucial since there were obvious questions about the landholder's claims to the property. If the landholder was truly the owner of the land, then he would be eligible for just compensation from government for land redistributed to tenants.

The putative landowner in Sitio Libas certainly behaved in such manner: he had been collecting share payments from the tenants for years. Yet proof of ownership in the form of a title could not be found when the tenants began to investigate. With this discovery, the tenants devised a collective share payment boycott to goad the landholder to file theft or estafa charges against them. The idea was that the landholder will have to show proof of ownership to argue the case in court. If he could produce a land title, then state agrarian reform law will still apply regardless of the outcome of the criminal case. If he cannot produce title, the struggle will be over public land that he controlled illegitimately. If this was the case, the landholder cannot expect to win his legal case nor can he successfully resist the application of state agrarian reform laws. If the land was alienable and disposable public land, the peasant-claimants can contest the landholder's claim through their own application for title. If the land was inalienable public land, the peasants can apply for usufruct under the community-based natural resource management arrangements offered by the DENR. In all cases, state agrarian reform law was on the side of the San Narciso peasants, especially after it was eventually established that the land was alienable and disposable public land and that the landholder did not have any legal claim to ownership.

A marked presence of the underground guerilla movement alongside the landholder's private armed group—elements absent in Catulin—made all the difference in the San Narciso case. An uncanny landlord-insurgent alliance attacked and eventually prevented the Sitio Libas tenants from claiming the land even while the latter's legal claim gained strength. State military and police forces in the area remained locked in an anti-insurgency framework and were reluctant to protect the tenants against the predations of both the guerillas and the landholder's goons. Since the peasant organization was neither government-initiated or sponsored, it was suspected by the state security forces of being pro-rebel. With powerful agents asymmetrically ranged against them, the peasants suffered violent retaliatory attacks resulting in loss of lives and physical dislocation. The physical attacks against the peasants were understandable given the dubiousness of the landholder's property rights. One of their leaders was meanwhile kidnapped and

subsequently harassed and was eventually killed by the communist insurgents. More deaths ensued forcing others into hiding and causing most families to flee the area. The San Narciso case clearly demonstrates that state law, while necessary, is insufficient. State-provided enforcement mechanisms are clearly crucial for unarmed peasant-claimants especially if rival claimants are heavily armed.

### *The HPFP experience*

At this point, it is interesting to note the self-help experience of the Homeless Peoples Federation of the Philippines (HPFP) in improving tenure security for informal settlers. HPFP is a self-help community-based federation of urban poor organizations that promotes savings mobilization. The funds raised through voluntary savings are used towards securing land tenure through purchase and ownership, upgrading of informal settlements, and improving the economic status of its members. What is interesting is the use of voluntary savings not only as a strategy for financing investments but also as a social mechanism to mobilize communities and open possibilities for engagements with local governments.

As of December 2002, the HPFP had 39,000 members and had mobilized combined savings of P35.3 million (US\$700,000) and has leveraged US\$1.7 million from different stakeholder such as government agencies and local governments, multilateral institutions and donor agencies for shelter-related financing. It is established nationwide and, at the time, was involved in 11 land acquisition projects. The entire system is managed by community residents who have slowly learned how to record their savings and lending activities as well as the legal complexities of land purchase and development (Yu and Karaos 2004). Interviews with HPFP organizers (Maulawin, Haddad and Tuason 2007) reveal how a careful orientation of a savings group explains why no interest is paid. In this sense, savings operations were not merely financial activities but were simply the hook through which self-help efforts were organized. And yet they help remedy the lack of housing finance from national government agencies.

However, the HPFP organizers pointed out that none of the communities have yet completed payment for the lands they had purchased directly from private landowners. To this end, while they are still committed to ownership and land titling, they also see the need to explore intermediate tenure arrangements such as long-term leases (Maulawin 2007).

### *Apo and Sumilon: a tale of two islands*

The Apo and Sumilon islands marine reserves mark the country's initiation of a coastal resources management approach that involved the participation of fisherfolk and their local government in the process. However, the specific histories of these reserves provide a stark contrast. Though both began with marine conservation and education programs at the community level initiated by the Silliman University in 1973 at Sumilon, and in 1976 at Apo, each followed distinct trajectories that eventually resulted in different outcomes.

In 1973, biologists and social scientists from Silliman University set up a community-level marine conservation program in the towns of Oslob and Santander in Cebu province. In April 1974, the Oslob municipal council passed an ordinance authorizing Silliman University to establish a marine park around Sumilon island and to regulate fishing and gathering of any marine products in the area. However, new mayors were elected in both towns in 1980 and they had links to commercial fishing interests. Soon after, several serious fishing violations occurred in the reserve. Silliman appealed to the national government on several occasions and the reserve was declared a nationally protected fish sanctuary under a Bureau of Fishery and Aquatic Resources (BFAR) order. With this order, BFAR assumed legal responsibility while Silliman administered protection and management and carried out research. However, the order alienated many local government officials who in turned whipped up the resentment local fisherfolk (Ferrer et al. 2004; Parras 2001).

Observers noted that the Sumilon experience relied too much on external actors (local government officials, national government agencies, and academic institutions). What is sorely lacking and is key to its limited success and ultimate failure is the lack of engagement and participation of the fishing community itself (White and Vogt 2000; Russ and Alcalá 1999).

The Apo island experience remedied this lack and was therefore more successful than Sumilon. Silliman initiated another marine conservation and education program at Apo in 1976. In 1982, the municipality of Dauin and Silliman agreed to set up a marine sanctuary. With the agreement, the local community effectively protected the 0.45-kilometer long section of the southeast side of Apo island even without a local ordinance. Earnest work began in 1984 when the Marine Conservation and Development Program (MCDP) commenced. As designed, the MCDP directly involved the local community in the whole process of implementation. By April 1985, the island community proposed a comprehensive marine reserve/sanctuary plan which was endorsed by the Dauin municipal council in August 1985. The municipal ordinance on the reserve was approved a year later.

Across the years, the setting up of the Apo island reserve had strong local community support, participation, and compliance with management regulations. Core groups of residents eventually formed the basis of the Marine Management Committee involved in the drafting of the municipal ordinance. The said ordinance laid the legal basis for the reserve's establishment and covered areas such as surveillance and collection of visitors' fees and donations and in the construction of a community education center. However, the community-based management model of Apo was reversed with the passage of the National Integrated Protected Area System (NIPAS) law in 1992. With the subsequent declaration of the island as a 'protected seascape', it is once again under the control of a national government agency, the DENR through the Protected Area Management Board (Ferrer et al. 2004; Russ and Alcalá 1999).

## V. Concluding remarks

Among the key findings of this paper include a realization that property rights protection and enforcement is a key shortcoming of the Philippine state. Path dependence also contributed to the problem since the violation of elite property rights during the martial law period has yet to be redressed. Nevertheless, significant legal advances—CARL, UDHA, and IPRA, among others and innovative programs such as the CMP and CBNRM—in the recognition, protection, and enhancement of the poor’s property rights have been achieved over the past twenty years or so. Legal advances however may be necessary but are insufficient to ensure that the poor enjoy full-blooded ownership rights. Problems of implementation abound and agency capture and the opposition of a broad range of political forces have led to a relative weakness and imperfection of the property rights gained so far. The conflicts of laws as well as the confusion caused by overlapping claims over the same asset must likewise be resolved.

Contrary to de Soto, assets of the poor in the Philippines are not completely ‘dead’ but are rather ‘less-than-fully-alive’. While indeed they do not enable the poor access to formal credit, they afford access to informal credit and are negotiable in the informal markets. Rights-based documents issued by the state are negotiable yet even the absence of such documents have not prevented informal market transactions over the assets of the poor.

A careful consideration of the Philippine experience in property rights clearly indicate that the poor acquire or assert property rights through two principal means—changes in state policy and the implementation of corresponding public programs or through self-help efforts—or a combination of the two. The imperfection of the poor property rights requires further policy reform and the resolution of various implementation problems.

*‘Bibingka’ strategy: recipe for successful assertion of property rights of the poor*

Full recognition and realization of the property rights of poor people in any country is equivalent to a revolution especially given the vast panoply of opponents from incumbent presidents to corporate interests to insurgent groups and movements. The poor often acquire or assert their rights and interests through two principal modes: changes in state policy and government programs and through self-help measures. There is in fact no great wall between the two and an inter-active dialectic exists. Usually, pro-poor changes in public policy and programs are a response or consequence of years of pro-poor organizing and political mobilization. However, even if changes in state policy and programs are achieved, they do not automatically lead to pro-poor results. Opposition by vested interests commences with the policy debate that usually precedes changes on policy. However, their opposition continues even when policy is changed. With their allies within the bureaucracy, they try to block or blunt the implementation of pro-poor government programs. Successful redistribution or assertion of the poor’s property rights appears to require the complementation of initiatives by reformist state actors ‘from above’ and mobilization by autonomous groups ‘from below.’ While this

‘bibingka’<sup>17</sup> strategy was a metaphor formulated by Borras (1998) regarding land reform, it appears apropos for all pro-poor property rights struggles. The ‘bibingka’ strategy appears to be an effective corrective to the central problem identified by Golub (2003)—that in many developing countries, pro-poor laws exist only on paper but not in practice.

### *Recommendations*

This paper’s writer is actually daunted by the task and the need to write this concluding section. Based on his understanding of the issues involved, two sets of tasks are forwarded as recommendations. These include policy reform and program implementation reform. The policy reform arena involves four key elements—resolution of the conflict of laws, enactment of additional or remedial legislation, transformation of ‘inferior’ or ‘junior’ policy (such as executive orders) into full-blooded laws; and the complete translation of national policy and laws into implementing rules and regulations (IRRs), administrative orders, and the adoption of appropriate ordinances at the local government levels (from the village up to the province and the autonomous regions). The implementation reform arena involves three crucial items—increased or assured funding for crucial programs such as agrarian reform, simplification of property registration and titling processes, and harmonization of multi-agency programs and procedures (largely to prevent the issuance of overlapping and conflicting claims over the same asset).

More specific recommendations have been aired in the various FGDs and consultations conducted in connection with the preparation of the four thematic papers on legal empowerment of the poor. For example, basic sector leaders and representatives recommend the adoption of a so-called Magna Carta for the informal sector, the enlargement of agrarian reform policy to cover seasonal farm workers, the creation of a construction workers’ levy, and amendments to the Barangay Medium Business Enterprise (BMBE) law, especially the provision to exempt such enterprises from minimum wage legislation, among others. They also call for the strengthening of EO 452 for vendors through its conversion into a full blooded law (qua Republic Act) and the adoption of appropriate ordinances at all local government levels.

While sharing the same concern for resolving conflict of laws and harmonization of the many government programs implemented by different public agencies, select representatives from government, CSOs, and the academe reiterated the need to simplify titling and registration procedures. For this reason, a key recommendation is to push for the adoption of the proposed bill to create a single land administration agency.

Refinement of these recommendations and the possible adoption of a multi-stakeholder legal empowerment program is the object of this national consultation conference. As the conferees reflect on the various papers and their recommendations as well as their own discussions, may I also suggest that we carefully consider the means by which claim-makers among our poor people would become more aware of their rights and their own potentials so they can pursue their claims in a more efficacious manner. Similarly, we

---

<sup>17</sup> The *bibingka*’ is a native cake in the Philippines prepared through the application of heat below and above the cake that allows for even cooking.

should also think through how better our duty-bearers can understand and more faithfully fulfil obligations to the marginalized amongst our midst.

## References

- ADB. 2002. Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Philippines. Manila: Asian Development Bank.
- ADB. 2001. "An overview of the Philippine housing sector." Draft Final Report, 2 March 2001, Asian Development Bank, Manila.
- Adriano, L. 1994. "DAR, land reform-related agencies and the CARP: a study of government and alternative approaches to land acquisition and distribution." Discussion Paper No. 94-13, Philippine Institute for Development Studies.
- Amis, P. 1995. "Making sense of urban poverty." *Environment and Urbanization* 7(2): 145-157.
- Ballesteros, M. F. 2003. "Property Rights in Land Reform Areas." *Policy Notes* No. 2003-14, Philippine Institute for Development Studies.
- Ballesteros, M. and A. dela Cruz. 2006. "Land Reform and Changes in Land Ownership Concentration: Evidence from Rice-Growing Villages in the Philippines." Discussion Paper No. 2006-21, Philippine Institute for Development Studies.
- Bates, R., A. Greif, and S. Singh. 2002. "Organizing Violence." *Journal of Conflict Resolution* 46(5): 599-628.
- Berner, E. 2000. "Poverty Alleviation and the Eviction of the Poorest: Towards Urban Land Reform in the Philippines." *International Journal of Urban and Regional Research* 24(3): 554-566.
- Borras, S. 1998. The Bibingka Strategy in Land Reform Implementation: Autonomous Peasant Movements and State Reformists in the Philippines. Quezon City: Institute for Popular Democracy.
- Borras, S. 2000. "CARP in its 12<sup>th</sup> Year: A Closer Examination of the Agrarian Reform Performance." *Political Brief*, Institute for Popular Democracy, Quezon City.
- Borras, S. 2002. "Stuck in the Mud: Land Reform under the Macapagal-Arroyo Administration." *Political Brief*, Institute for Popular Democracy, Quezon City.
- Borras, S. 2006. "Redistributive land reform in 'public' (forest) lands? Lessons from the Philippines and their implications for land reform theory and practice." *Progress in Development Studies* 6(2): 123-145.
- Borras, S. and T. McKinley. 2006. "The Unresolved Land Reform Debate: Beyond State-Led or Market-Led Models." *Policy Research Brief* No. 2, UNDP/International Poverty Centre.
- Briones, R. 2000. "Property Rights Reform in Philippine Agriculture: Framework for Analysis and Review of Recent Experience." Discussion Paper No. 2000-29, Philippine Institute for Development Studies.
- Bromley, D.W. 1991. Environment and economy: Property rights and public policy. Cambridge, MA.: Blackwell.
- Cacnio, F. C. 2001. "Microfinance Approach to Housing: The Community Mortgage Program." Discussion Paper No. 2001-28, Philippine Institute for Development Studies.
- Chiong-Javier, M. E. 1989. "Ownership and Property Rights Issues in Watershed Resource Management." *Journal of Philippine Development* 26(1): 101-113.

- Co, M. J. 2004. "The Formal Institutional Framework of Entrepreneurship in the Philippines: Lessons for Developing Countries." *The Journal of Entrepreneurship* 13(2): 185-203.
- David, Cristina, et al. 2003. "Land reform and land market transactions in the Philippines." Terminal Report. Philippine Institute for Development Studies.
- De Soto, H. 2000. The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else. New York: Basic Books.
- Di Gregorio, M., K. Hagedorn, M. Kirk, B. Korf, N. McCarty, and R. Meinzin-Dick. 2005. "A Framework on Institutional Change for Resource Management and Poverty Reduction: The Role of Property Rights and Collective Action." Paper presented at the 99<sup>th</sup> seminar of the European Association of Agricultural Economists, Copenhagen, August 24-27, 2005.
- Durand-Lasserve, A. and G. Payne. 2006. "Evaluating Impacts of Urban Land Titling: Results and Implications: Preliminary Findings." (Ms.)
- Evangelista, P. 2007. "Monuments." *Philippine Daily Inquirer*, 25 February 2007.
- Franco, J. 2005a. "Making property rights accessible: movement innovation in the political-legal struggle to claim land rights in the Philippines." Working Paper No. 244, Institute of Development Studies, Sussex University.
- Franco, J. 2005b. "On just grounds: the new struggle for land and democracy in Bondoc Peninsula." In J. Franco and S. Borras, eds. On just grounds: struggling for agrarian justice and citizenship rights in the rural Philippines. Quezon City: Institute for Popular Democracy, pp. 115-194.
- Franco, J. 2006. "Making Land Rights Accessible: Potentials and Challenges of a Human Rights Approach to Land Issues." *Agrarian Notes*, Philippine Ecumenical Action for Community Empowerment (PEACE).
- Geron, M.P.S. 1991. "Gender Issues in Agrarian Reform and Rural Non-Farm Enterprises." Working Paper No. 91-16, Philippine Institute for Development Studies (PIDS).
- Golub, S. 2003. "Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative." Carnegie Endowment for International Peace (CEIP) Working Paper No. 41.
- Gutierrez, E. and S. Borras. 2004. "The Moro conflict: landlessness and misdirected state policies." East-West Center Policy Studies No. 8.
- Harrison, S. 2003. "Property rights issues in small-scale forestry in the Philippines." *Annals of Tropical Research* 25(2): 77-87.
- Kelly, P. 1998. "The politics of urban-rural relations: Land use conversion in the Philippines." *Environment and Urbanization* 10(1): 35-54.
- Kelly, P. 2003. "Urbanization and the Politics of Land in the Manila Region." *Annals of the American Academy*
- Kushida, K. 2003. "The political economy of the Philippines under Marcos: Property rights in the Philippines from 1965 to 1986." *Stanford Journal of East Asian Affairs* 3(1): 119-126.
- Lamberte, M. and M. C. Manlangit. 2003. "Household Poverty: Addressing the Core of Microfinance." *Policy Notes* No. 2003-15, Philippine Institute for Development Studies (PIDS).

- Land Administration and Management Project (LAMP) 2, Department of Environment and Natural Resources. "Frequently asked questions." <http://www.phil-lamp.org/faq.html> (Accessed on January 24, 2007).
- Llanto, G. 2004. "Microfinance in the Philippines: Status, Issues and Challenges." *Policy Notes* No. 2004-10, Philippine Institute for Development Studies.
- Llanto, G. and M. Ballesteros. 2003. "Land Issues in Poverty Reduction Strategies and the Development Agenda: Philippines." Discussion Paper No. 2003-03, Philippine Institute for Development Studies.
- Manlangit, M. C. and M. Lamberte. 2003. "Efficiency and Gender Concerns: Issues Confronting Philippine Credit Cooperatives." *Policy Notes* No. 2003-16, Philippine Institute for Development Studies (PIDS).
- Murphy, D. 2002. "Proclamation Study—Preliminary Report." Urban Poor Associates, Quezon City.
- Murphy, D. and T. Anana. 1994. "Evictions and fear of evictions in the Philippines." *Environment and Urbanization* 6(1): 40-49.
- Nagarajan, G., C. David, and R. Meyer. 1992. "Informal Finance Through Land Pawning Contracts: Evidence from the Philippines." *Journal of Development Studies* 29(1): 93-107.
- Nagarajan, G., M. Quisumbing, and K. Otsuka. 1991. "Land pawning in the Philippines: an exploration into the consequences of land reform regulations." *The Developing Economies* 29(2): 124-144.
- NCIP. 2004. ADSDPP Primer. Quezon City: National Commission on Indigenous Peoples.
- Padilla, S. 2007. "Indigenous Peoples, Settlers and the Philippine Ancestral Domain Land Titling program." (Forthcoming in Frontier Encounters. University of Zurich Press).
- Plant, R. 2002. Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Regional Report. Manila: Asian Development Bank.
- Porio, E. and C. Crisol. 2004. "Property rights, security of tenure and the urban poor in Metro Manila." *Habitat International* 28(2): 203-219.
- Reyes, C. 2002. "Impact of Agrarian Reform on Poverty." Discussion Paper No. 2002-02. Philippine Institute for Development Studies (PIDS).
- Reyes, C. 2002. "The Poverty Fight: Have We Made an Impact?" Discussion Paper No. 2002-20, Philippine Institute for Development Studies.
- Reyes, C. 2004. "An Initial Verdict on Our Fight Against Poverty." Discussion Paper No. 2004-48, Philippine Institute for Development Studies.
- Roberts, B. and T. Burns. 2003. "Land Administration Reform in the Philippines: Challenges and Lessons." Paper presented at the 7<sup>th</sup> International Congress of Asian Planning Schools Association, Hanoi, Vietnam.
- Rodil, R. 1992. "Kasaysayan ng mga Pamayanan ng Mindanao at Arkipelago ng Sulu, 1596-1898." MA Thesis, University of the Philippines.
- Starke, K. 1996. "Leaving the slums." PULSO Monograph 16, Institute of Church and Social Issues, Quezon City.
- Thirkell, A. J. 1996. "Players in urban informal land markets; who wins? who loses? A case study of Cebu City." *Environment and Urbanization* 8(2): 71-90.

- Tongson, E. and T. McShane. 2004. "Securing Land Tenure for Biodiversity: Conservation in Sibuyan Island, Romblon, Philippines." Paper presented at the UNU-WIDER and EGDI Conference on Unlocking Human Potential: Linking the Informal and Formal Sectors, Helsinki, Finland.
- UN-Habitat. 2006. Analytical Perspective of Pro-Poor Slum Upgrading Frameworks. Nairobi: United Nations Human Settlements Programme.
- Vargas, A. 2002. "The Philippines Country Brief: Property Rights and Land Markets." Land Tenure Center, University of Wisconsin-Madison.
- World Bank. 2001. Filipino Report Card on Pro-Poor Services. Environment and Social Development Sector Unit, East Asia and Pacific Region.
- Yu, S. 2003. "Documentation of the experience of the Homeless People's Federation of the Philippines." (Ms.).
- Yu, S. and A. M. Karaos. 2004. "Establishing the role of communities in governance: the experience of the Homeless People's Federation Philippines." *Environment and Urbanization* 16(1): 107-119.
- CBCRM Resource Center. 2005. "Community-Based Natural Resources Management: A People-Centered Alternative Towards Environmental Protection and Sustainable Development." (Ms.).
- Ferrer, E. 2001. "Historical Overview of Community-Based Coastal Resources Management." (Ms.).
- Ferrer, E., R. Cabaces, and L. Polotan-de la Cruz. 2003. "Affirming the Forces that Give Life and Energy: Revisiting the Theory and Practice of CBCRM in the Philippines." (Ms.).
- Rivera-Guieb, R., J. Graham, M. Marschke, and G. Newkirk. 2004. "Different Gardens, Different Blossoms: An Analysis of the Experience with Community Based Coastal Resource Management in the Philippines, Viet Nam and Cambodia." <http://dlc.dlib.indiana.edu/archive/00001473/>
- Ferrer, E., L. Polotan-de la Cruz, A. Vera, J. Cleofe, G. Taynang, R. Cabaces, and M. Reynaldo. 2004. "A Tale of Two Islands: An Evolution of Coastal Resources Management in the Philippines." (Ms.).
- Vera, A., J. Cleofe, and B. Balderrama. 2003. "Accounting a Decade or So of CBCRM: Impacts, Trends and Challenges." (Ms.).
- Fernandez, P., Y. Matsuda, and R. Subade. 2000. "Coastal Area Governance System in the Philippines." *Journal of Environment and Development* 9(4): 341-369.
- Parras, D. 2001. "Coastal Resource Management in the Philippines: A Case Study in the Central Visayas Region." *Journal of Environment and Development* 10(1): 80-103.
- Manlagñit, M.C. and M. Lamberte. 2003. "Efficiency and Gender Concerns: Issues Confronting the Philippine Credit Cooperatives." *Policy Notes* No. 2003-16, Philippine Institute for Development Studies.
- Duthy, S. and B. Bolo-Duthy. 2003. "Empowering People's Organizations in Community Based Forest Management in the Philippines: The Community Organizing Role of NGOs." *Annals of Tropical Research* 25(2): 13-27.

- Nakanishi, T. "Comparative Study of Informal Labor Markets in the Urbanization Process: The Philippines and Thailand." *The Developing Economies* 34(4): 470-496.
- Forest Management Bureau (DENR). 1997. "Country Report-The Philippines." Asia-Pacific Forestry Sector Outlook Study-Working Paper Series, Food and Agriculture Organization.
- Harrison, S. 2003. "Property Rights Issues in Small-scale Forestry in the Philippines." *Annals of Tropical Research* 25(2): 77-87.
- Prill-Brett, J. 1997. "Resource Tenure and Ancestral Domain Considerations: Their Importance to a CBNRM Agenda." *Zig-Zag* 2(10): March 9, 1997.
- Bullecer, R., et al. 2004. "Review and Evaluation of Community-Based Tenure Instruments in Central Philippines." Sustainable Watershed Advocates Network (Ms.).
- Danguilan-Vitug, M. 1997. "The Politics of Community Forestry in the Philippines." *Journal of Environment and Development* 6(3): 334-340.
- White, A. and H. Vogt. 2000. "Philippine Coral Reefs under Threat: Lessons Learned after 25 Years of Community-Based Reef Conservation." *Marine Pollution Bulletin* 40(6): 537-550.
- Russ, G. R. and A. Alcala. 1999. "Management Histories of Sumilon and Apo Marine Reserves, Philippines, and their Influence on National Marine Resource Policy." *Coral Reefs* 18: 307-319.
- Batongbakal, J. (n.d.). "A Crowded Shoreline: Review of the Philippines' Foreshore and Shore Land Management Policies." Coastal Resource Management Project, DENR (Ms.).

#### Interviews by the Author

- Haddad, Ruby. Community organizer, Homeless People's Federation of the Philippines (HPFP). Quezon City, 15 January 2007.
- Lim, Ariel. Presidential assistant for public transport affairs, Office of the President. Manila, 17 January 2007.
- Maulawin, Tomas. Program director, Philippine Action for Community-Led Shelter Initiatives, Inc. (PACSII). Quezon City, 15 January 2007.
- Padilla, Sabino Jr. Executive director, AnthroWatch. Quezon City, 7 February 2007.
- Nicolas, Mercedes. President, Katipunan ng Maraming Tinig ng Manggagawang Informal (KATINIG). Malabon, 19 January 2007.
- Suello, Consuelo. Deputy executive director, Urban Asset Reform Project Management Office, Office of the President. Manila, 23 January 2007.
- Tuason, Celia. Community organizer, Homeless People's Federation of the Philippines (HPFP). Quezon City, 15 January 2007.